

Eagle Test Systems, Inc.  
Form 10-Q  
August 02, 2007

**Table of Contents**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-Q**

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

For the quarterly period ended **June 30, 2007**

**OR**

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

**Commission File Number 000-51828**

**EAGLE TEST SYSTEMS, INC.**

**(Exact name of registrant as specified in its charter)**

**Delaware**

(State of incorporation)

**36-2917389**

(I.R.S. Employer Identification No.)

**2200 Millbrook Drive, Buffalo Grove, Illinois**

(Address of principal executive offices)

**60089**

(Zip Code)

Registrant's telephone number, including area code: **(847) 367-8282**

(Former Name, Former Address and Former Fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 22,962,615 shares of Common Stock, par value \$0.01 per share, outstanding as of August 01, 2007.

**Table of Contents**  
**EAGLE TEST SYSTEMS, INC.**  
**( The Company )**  
**INDEX**

	<b>Page</b>
<b><u>Part I. Financial Information</u></b>	
<b><u>Item 1. Financial Statements</u></b>	
<u>Condensed Consolidated Balance Sheets as of June 30, 2007 (unaudited) and September 30, 2006</u>	3
<u>Condensed Consolidated Statements of Net Income (unaudited) for the three and nine months ended June 30, 2007 and 2006</u>	4
<u>Condensed Consolidated Statements of Cash Flows (unaudited) for the nine months ended June 30, 2007 and 2006</u>	5
<u>Notes to Condensed Consolidated Financial Statements (unaudited)</u>	6
<b><u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u></b>	10
<b><u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u></b>	16
<b><u>Item 4. Controls and Procedures</u></b>	16
<b><u>Part II. Other Information</u></b>	
<b><u>Item 1. Legal Proceedings</u></b>	17
<b><u>Item 1A. Risk Factors</u></b>	17
<b><u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u></b>	17
<b><u>Item 3. Defaults Upon Senior Securities</u></b>	18
<b><u>Item 4. Submission of Matters to a Vote of Security Holders</u></b>	18
<b><u>Item 5. Other Information</u></b>	18
<b><u>Item 6. Exhibits</u></b>	18
<u>Signatures</u>	19
<u>Exhibit Index</u>	20
Certification of CEO Pursuant to Section 302	
Certification of CFO Pursuant to Section 302	
Certification Pursuant to 18 U.S.C. Section 1350	

Edgar Filing: Eagle Test Systems, Inc. - Form 10-Q

302 Certification of Chief Executive Officer

302 Certification of Chief Financial Officer

906 Certification of CEO and CFO

2

---

**Table of Contents****PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**EAGLE TEST SYSTEMS, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share and per share data)

	<b>June 30, 2007 (unaudited)</b>	<b>September 30, 2006</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 10,803	\$ 51,071
Marketable securities	101,865	24,875
Accounts receivable, net of allowances of \$541 and \$616	13,918	17,338
Receivable from sale of common stock		31,185
Inventories	19,891	22,378
Deferred income taxes	5,542	4,512
Prepaid expenses and other current assets	1,736	2,143
 Total current assets	 153,755	 153,502
Property, plant and equipment, net	10,846	11,745
Other assets	507	639
 Total assets	 \$ 165,108	 \$ 165,886
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 3,925	\$ 5,941
Current portion of capital lease obligations	273	261
Deferred revenue	2,057	9,409
Accrued compensation and related liabilities	3,261	5,734
Accrued income taxes	2,523	2,949
Other accrued expenses	3,174	3,470
 Total current liabilities	 15,213	 27,764
Long-term liabilities:		
Capital lease obligations, less current portion	189	379
Deferred income taxes	734	941
Other long-term liabilities	419	388
 Total long-term liabilities	 1,342	 1,708
Stockholders equity:		

Edgar Filing: Eagle Test Systems, Inc. - Form 10-Q

Preferred stock, par value \$0.01 per share 10,000,000 shares authorized, no shares issued or outstanding as of June 30, 2007 and September 30, 2006		
Common stock, par value \$0.01 per share, 90,000,000 shares authorized as of June 30, 2007 and September 30, 2006; 22,961,053 and 22,655,283 shares outstanding as of June 30, 2007 and September 30, 2006, respectively	230	227
Additional paid in capital	174,132	169,709
Accumulated deficit	(25,809)	(33,522)
Total stockholders' equity	148,553	136,414
Total liabilities and stockholders' equity	\$ 165,108	\$ 165,886

The accompanying notes are an integral part of these condensed consolidated financial statements.

**Table of Contents**

**EAGLE TEST SYSTEMS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF NET INCOME**  
(In thousands, except share and per share data)

	<b>Three Months Ended June 30, (unaudited)</b>		<b>Nine Months Ended June 30, (unaudited)</b>	
	<b>2007</b>	<b>2006</b>	<b>2007</b>	<b>2006</b>
Net revenue	\$ 19,858	\$ 36,779	\$ 65,202	\$ 87,791
Cost of goods sold	7,490	12,256	25,787	28,605
Gross profit	12,368	24,523	39,415	59,186
Operating expenses				
Selling, general and administrative	8,212	8,014	24,294	21,259
Research and development	2,353	2,088	6,715	6,555
Operating income	1,803	14,421	8,406	31,372
Interest expense	94	71	345	3,481
Other (income) and expense				
Income from marketable securities	(1,091)	(615)	(3,559)	(1,097)
Investment impairments				24
Increase in value of warrants				5,466
Other (income) expense, net		33	(8)	21
Income before taxes	2,800	14,932	11,628	23,477
Provision for income taxes	792	5,260	3,915	10,158
Net income	\$ 2,008	\$ 9,672	\$ 7,713	\$ 13,319
Net income per share, basic	\$ 0.09	\$ 0.47	\$ 0.34	\$ 0.16
Net income per share, diluted	\$ 0.09	\$ 0.46	\$ 0.33	\$ 0.09
Weighted average shares outstanding, basic	22,957,154	20,651,934	22,895,597	11,782,483
Weighted average shares outstanding, diluted	23,170,193	20,937,003	23,123,810	16,973,554
Income available to common stockholders:				
Net income	\$ 2,008	\$ 9,672	\$ 7,713	\$ 13,319
Retained earnings adjustment for redemption of redeemable preferred stock				(11,430)
Income available to common stockholders	\$ 2,008	\$ 9,672	\$ 7,713	\$ 1,889

The accompanying notes are an integral part of these condensed consolidated financial statements.





**Table of Contents**

**EAGLE TEST SYSTEMS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	<b>Nine Months Ended June 30,</b>	
	<b>2007</b>	<b>2006</b>
	<b>(unaudited)</b>	
<b>Cash flows from operating activities:</b>		
Net income	\$ 7,713	\$ 13,319
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	2,624	2,253
Investment impairments		24
Gain on sale of property and equipment	(9)	
Accretion of discount and redemption premium on long-term debt		1,752
Increase in value of warrants		5,466
Non cash compensation related to stock options	380	285
Excess tax benefits from stock based compensation	(395)	
Deferred income taxes	(1,237)	(2,705)
Changes in operating assets and liabilities:		
Accounts receivable	3,420	(10,695)
Inventories	2,992	(4,894)
Prepaid expenses and other current assets	407	(1,328)
Other assets	132	(239)
Accounts payable	(2,016)	6,378
Deferred revenue	(7,352)	5,187
Accrued compensation and related liabilities	(2,473)	1,311
Accrued income taxes	(31)	3,237
Other accrued expenses	(296)	(9)
Other liabilities	31	35
Net cash provided by operating activities	3,890	19,377
<b>Cash flows from investing activities:</b>		
Net purchases of marketable securities	(76,990)	(13,000)
Sale of property and equipment	9	
Capital expenditures	(2,230)	(1,840)
Net cash used in investing activities	(79,211)	(14,840)
<b>Cash flows from financing activities:</b>		
Payments of long-term debt		(30,595)
Payments of capital lease obligations	(178)	(184)
Redemption of redeemable preferred stock		(32,500)
Proceeds from issuance of common stock, net of issuance costs	34,836	86,680
Excess tax benefits from stock based compensation	395	
Net cash provided by financing activities	35,053	23,401
Net increase (decrease) in cash and cash equivalents	(40,268)	27,938

Edgar Filing: Eagle Test Systems, Inc. - Form 10-Q

Cash and cash equivalents at beginning of period	51,071	9,976
Cash and cash equivalents at end of period	\$ 10,803	\$ 37,914

Supplemental disclosure:

Transfer of equipment from fixed assets to inventory	\$ 505	\$
--	--------	----

The accompanying notes are an integral part of these condensed consolidated financial statements.

**Table of Contents**

**EAGLE TEST SYSTEMS, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(In thousands, except share and per share data)**  
**(Unaudited)**

**1. The Company**

Eagle Test Systems, Inc. (the Company) designs, manufactures, sells, and services automated test equipment (ATE) for the semiconductor industry. The Company's test systems test analog, mixed-signal, and RF (Radio Frequency) semiconductor devices. Semiconductor designers and manufacturers worldwide use semiconductor test systems to test devices at different stages during the manufacturing process. These tested devices are incorporated into a wide range of products, including digital cameras, MP3 players, cellular telephones, video/multimedia products, automotive electronics, computer peripherals, and notebook and desktop computers. The Company is headquartered in Buffalo Grove, Illinois, where the Company develops and manufactures its test systems. The Company operates in one industry segment: the design, manufacture and marketing of automated test equipment. The Company also maintains various offices worldwide for sales, service and research to support its customer base directly. The operations of, and net investment in, foreign subsidiaries are not material.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited condensed consolidated financial statements include the accounts of the Company and its wholly owned foreign subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

The accompanying unaudited condensed consolidated financial statements have been prepared by the Company in accordance with accounting principles generally accepted in the United States for interim financial information and the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, the accompanying condensed statements do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. The accompanying unaudited condensed consolidated financial information should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended September 30, 2006, included in the Company's Annual Report on Form 10-K. The results for interim periods are not necessarily indicative of the results to be expected for the year.

***Preparation of Financial Statements and Use of Estimates***

The accompanying unaudited condensed consolidated financial statements have been prepared by the Company and reflect all adjustments, which, in the opinion of management, are necessary for the fair statement of the results. The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities as of the date of the financial statements and the reported amounts of income and expenses during the reporting periods. Actual results can differ from those estimates.

***Stock Options***

The Company records compensation expense using the fair value of options granted over the vesting service period on a straight-line basis including those options that are subject to graded vesting. Under Statement of Financial Accounting Standard (SFAS) No. 123R, the Company uses the Black Scholes Option Pricing Model to determine the fair value of the options granted. This model uses such factors as the market price of the underlying shares at date of issuance, exercise price of the option, the expected term of the option, which is approximately six years, utilizing the simplified method as set forth in Staff Accounting Bulletin (SAB) No. 107, a risk free interest rate range of approximately 4.5% to 4.9%, and an expected volatility rate range of approximately 54% to 65%, based upon a peer group of companies given limited historical data for the Company's own stock. The resulting fair value of \$3,204 for options granted thus far in fiscal 2007 will be amortized to expense as vesting occurs, which is over approximately five years. Expense recognized under SFAS 123R for the three months ended June 30, 2007 and 2006 was \$202 (\$169 net of taxes), or \$0.01 per basic and diluted share, and \$104 (\$101 net of taxes), or \$0.00 per basic and diluted share, respectively. Expense recognized under SFAS 123R for the nine months ended June 30, 2007 and 2006 was \$380 (\$323 net of taxes), or \$0.01 per basic and diluted share, and \$285 (\$247 net of taxes), or \$0.02 per basic and \$0.01

per diluted share, respectively.

**Table of Contents**

**EAGLE TEST SYSTEMS, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except share and per share data)  
(Unaudited)

**3. Inventories**

Inventories consist of the following:

	<b>June 30, 2007</b>	<b>September 30, 2006</b>
Raw materials	\$ 6,929	\$ 7,185
Work-in-process	4,190	6,741
Finished goods	8,597	6,086
Inventory at customers under purchase orders	175	2,366
	<b>\$ 19,891</b>	<b>\$ 22,378</b>

The Company's policy is to establish inventory reserves when conditions exist that suggest inventory may be in excess of anticipated demand or is obsolete based upon assumptions about future demand for products or market conditions. The Company regularly evaluates the ability to realize the value of its inventory based on a combination of factors including the following: forecasted sales or usage, estimated product end-of-life dates, estimated current and future market value and new product introductions. Purchasing and alternative usage options are also explored to mitigate obsolete inventory exposure. When recorded, reserves are intended to reduce the carrying value of inventory to its net realizable value. Inventory of \$19,891 is stated net of inventory reserves of \$10,849 as of June 30, 2007. Inventory of \$22,378 is stated net of inventory reserves of \$9,088 as of September 30, 2006. If actual demand for products deteriorates or market conditions are less favorable than those the Company projects, additional inventory reserves may be required.

**4. Stockholders' Equity and Long-Term Debt****Equity Offerings**

On October 3, 2006, the Company closed a public offering to sell 2,000,000 shares of common stock to the public at an offering price of \$16.50 per share, generating net proceeds of \$30,580. Since the shares were sold on September 27, 2006, the transaction was included in stockholders' equity and the gross proceeds of \$31,185 recorded as a receivable from sale of common stock as of September 30, 2006. On October 11, 2006, the underwriters exercised their option to purchase an additional 200,000 shares, generating net proceeds of \$3,062. The Company retained the proceeds for working capital and general corporate purposes.

**Long-term Debt**

In connection with the completion of the Company's initial public offering on March 14, 2006, the 12% Senior Subordinated Convertible Notes held by investment funds managed by TA Associates (collectively, the Investors) were converted into \$29,995 in 12% Senior Subordinated Notes and 525,040 of \$0.01 common stock warrants. The common stock warrants were exercised by the Investors. The Senior Subordinated Notes were repurchased from the Investors with a portion of the proceeds from the initial public offering for \$29,995, along with the payment of a 2% early redemption premium of \$600. The unamortized debt discount of \$1,033 from the original issue of the 12% Senior Subordinated Convertible Notes was charged to interest expense in March 2006 in connection with recording the note conversion and redemption. Interest expense related to the Senior Subordinated Convertible Notes was \$0 and \$1,753 for the three and nine months ended June 30, 2006, respectively.

**Warrants**

Prior to the exercise of the common stock warrants in connection with the initial public offering, the warrants enabled the Investors to put the warrants to the Company at fair value at any time after September 30, 2008. The

warrants were thereby considered liability instruments and recorded at fair value based upon independent valuations. The change in the value of the warrants was an increase of \$0 and \$5,466 for the three and nine months ended June 30, 2006 and the change in the fair value was recorded in the income statement as other expense. The warrants were exercised by the Investors on March 14, 2006 in connection with the Company's initial public offering and the carrying value of \$8,133 was reclassified to stockholders' equity.

7

---

**Table of Contents**

**EAGLE TEST SYSTEMS, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except share and per share data)**  
**(Unaudited)**

**5. Net Income Per Share**

Basic net income per common share is computed by dividing net income available to common stockholders by the weighted-average number of common shares outstanding for the period. Diluted income per common share reflects the maximum dilution that would have resulted from the assumed exercise of Series A Convertible Preferred Stock, warrants, and stock options, as applicable, and is computed by dividing net income available to common stockholders by the weighted-average number of common shares and all dilutive securities outstanding unless the computation is anti-dilutive. The Series A Convertible Preferred Stock was converted and the Redeemable Preferred Stock was redeemed in connection with the Company's initial public offering on March 14, 2006.

A reconciliation between basic and diluted earnings per share (EPS) is as follows:

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>June 30,</b>		<b>June 30</b>	
	<b>2007</b>	<b>2006</b>	<b>2007</b>	<b>2006</b>
Net income	\$ 2,008	\$ 9,672	\$ 7,713	\$ 13,319
Basic EPS:				
Adjustments to income:				
Retained earnings adjustment for conversion of redeemable preferred stock *				(11,430)
Income available to common stockholders	2,008	9,672	7,713	1,889
Weighted-average common shares outstanding	22,957,154	20,651,934	22,895,597	11,782,483
Basic net income per common share	\$ 0.09	\$ 0.47	\$ 0.34	\$ 0.16
Diluted EPS:				
Adjustment to income:				
Dividend on redeemable preferred stock-as converted	\$	\$	\$	\$ (406)
Income available to common stockholders	\$ 2,008	\$ 9,672	\$ 7,713	\$ 1,483
Weighted-average common shares outstanding	22,957,154	20,651,934	22,895,597	11,782,483
Plus impact of convertible preferred stock and warrants and stock options, as applicable	213,039	285,069	228,213	5,191,071
Diluted common shares	23,170,193	20,937,003	23,123,810	16,973,554
Diluted income per common share	\$ 0.09	\$ 0.46	\$ 0.33	\$ 0.09

\* The difference between the fair market value of the Redeemable

Preferred Stock  
at date of issue  
of \$21,070 and  
the redemption  
price of \$32,500  
was charged to  
retained  
earnings. This  
adjustment is  
used to reduce  
net income to  
arrive at income  
available to  
common  
stockholders for  
purposes of  
calculating  
earnings per  
common share  
in accordance  
with Emerging  
Issues Task  
Force Topic  
D-42- The Effect  
on the  
Calculation of  
Earnings per  
Share for the  
Redemption or  
Induced  
Conversion of  
Preferred Stock .



Table of Contents

**EAGLE TEST SYSTEMS, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except share and per share data)**  
**(Unaudited)**

**6. Income Taxes**

The Company accounts for income taxes under the asset and liability method whereby the expected future tax consequences of temporary differences between the book value and the tax basis of assets and liabilities are recognized as deferred tax assets and liabilities, using enacted tax rates in effect for the year in which the differences are expected to be recognized. The Company's effective tax rate will vary to the extent items used to derive book income are not deductible for income tax purposes. The Company's income tax expense was \$792 for a 28.3% effective tax rate, and \$3,915 for a 33.7% effective tax rate, for the three and nine months ended June 30, 2007, respectively. The primary reason for the difference in the effective tax rates for these periods is the increase in tax exempt investment income relative to total taxable income during the three months ended June 30, 2007. The Company's income tax expense was \$5,260 for a 35.2% effective tax rate, and \$10,158 for a 43.3% effective tax rate, for the three and nine months ended June 30, 2006, respectively. The primary reason for the difference in the effective tax rates for these periods is due to the increase in value of warrants of \$0 and \$5,466 in the three and nine months ended June 30, 2006, which is not tax deductible. Since the warrants were exercised by the Investors on March 14, 2006 in connection with the Company's initial public offering, there was no warrant charge in the three and nine months ended June 30, 2007.

In June 2006, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. (FIN) 48, *Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109*, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 will become effective for the Company during the first fiscal quarter of 2008. The Company is still evaluating the impact of FIN 48 but does not expect it to have a material impact on its financial condition or results of operations.

**7. Commitments and Contingencies****Contingencies**

The Company's sales agreements indemnify its customers for any expenses or liabilities resulting from claimed infringements of patents, trademarks, or copyrights of third parties. The terms of these indemnification agreements are generally indefinite after execution of the agreement. The maximum amount of potential future indemnification is unlimited. However, to date, the Company has not paid any claims or been required to defend any lawsuits with respect to any claim.

From time to time, the Company may have certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues contingent liabilities when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. In the opinion of management, there are no pending claims of which the outcome is expected to result in a material adverse effect on the financial position, results of operations, or cash flows of the Company.

**Product Warranty**

The Company's systems are sold with warranty provisions that require the Company to remedy deficiencies in quality or performance of its products over a period ranging from 12 to 24 months. The policy of the Company is to establish warranty reserves at the time revenue is recognized at levels that represent the estimate of costs that will be incurred to fulfill those warranty requirements.

The following table shows the details of the product warranty accrual:

**Product Warranty Activity**

<b>Nine Months Ended</b>	
<b>June 30,</b>	
<b>2007</b>	<b>2006</b>

Edgar Filing: Eagle Test Systems, Inc. - Form 10-Q

Balance at beginning of period	\$ 1,068	\$ 563
Warranty expenditures	(1,725)	(727)
Provisions for warranty	1,720	987
Balance at end of period	\$ 1,063	\$ 823

**Table of Contents****Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**  
**Forward Looking Statements And Projections**

*This Quarterly Report on Form 10-Q contains forward looking statements. Forward looking statements relate to future events or our future financial performance. We generally identify forward looking statements by terminology such as may, will, should, expects, plans, anticipates, could, intends, target, projects, contemplates, believes, estimates, predicts, potential or continue or the negative of these terms or other similar words. These statements are only predictions. We have based these forward looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, results of operations and financial condition. The outcome of the events described in these forward looking statements is subject to risks, uncertainties and other factors described in Management's Discussion and Analysis of Financial Condition and Results of Operations, and elsewhere in this Quarterly Report on Form 10-Q, and in the Risk Factors contained in the Annual Report on Form 10-K for the period ended September 30, 2006. Accordingly, you should not rely upon forward looking statements as predictions of future events. We cannot assure you that the events and circumstances reflected in the forward looking statements will be achieved or occur, and actual results could differ materially from those projected in the forward looking statements. The forward looking statements made in this Quarterly Report on Form 10-Q relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events.*

**Overview**

We design, manufacture, sell and service high-performance ATE for the semiconductor industry. Our test equipment addresses our customers' volume production needs and is designed to enable our customers to achieve low overall cost-of-test per device. Our innovative products test analog, mixed-signal and RF semiconductors. Semiconductors tested by our systems are incorporated into a wide range of products in high-growth markets, including digital cameras, MP3 players, cellular telephones, video/multimedia products, automotive electronics, computer peripherals, and notebook and desktop computers.

Our business and operating results depend significantly on the level of capital expenditures by companies in the semiconductor industry. Historically, the semiconductor industry has been highly cyclical with recurring periods of over-supply and under-supply, which has resulted in wide fluctuations in demand for our products and services. These demand fluctuations have resulted in significant variations in our revenue, expenses and results of operations. For example, our net revenue in the three months ended June 30, 2007 was \$19.9 million, compared to \$36.9 million in the three months ended September 30, 2006. Fluctuations are likely to continue in future periods.

Changes in industry conditions often occur very rapidly and can be very difficult to predict. Thus, we cannot foresee the timing and extent of such changes or their effect on our customer orders and revenue with significant accuracy. In addition, these cycles typically have a disproportionately negative impact on capital equipment manufacturers, including providers of test systems. As part of our strategy to address this volatility and lack of visibility, we outsource a substantial portion of our manufacturing functions to third party subcontractors. The purpose of this strategic outsourcing model is to reduce our fixed costs, making our expense structure more flexible during downturns. Outsourcing also allows us to increase production rapidly to capitalize on market opportunities during upturns. We believe our outsourcing strategy provides us with the flexibility to respond more rapidly to changes in industry conditions and demand for our test systems.

Historically, a significant portion of our revenue in each quarter and year has been derived from sales to relatively few customers. While we seek to expand and diversify our customer base, we expect our revenue to continue to be derived from a small number of customers. In the three months ended June 30, 2007, sales to Texas Instruments Incorporated and ON Semiconductor Corporation accounted for 29.3% and 14.1% of our net revenue, respectively, and sales to our five largest customers accounted for an aggregate of 62.2% of our net revenue. In the three months ended June 30, 2006, sales to Texas Instruments Incorporated and Intersil Corporation accounted for 55.0% and 10.4% of our net revenue, respectively, and sales to our five largest customers accounted for an aggregate of 82.4% of our net revenue.

During a given quarter, a significant portion of our revenue may be derived from the sale of a relatively small number of test systems. Our test systems range widely in average selling price, depending upon many factors such as model, configuration and level of testing resources sold with the system. Consequently, a small change in the number or product mix of systems sold may cause significant changes in our operating results. Thus, we do not believe that period-to-period comparisons of our financial results are necessarily meaningful, and they should not be relied upon as an indication of our future performance.

On October 3, 2006, the Company closed a public offering to sell 2,000,000 shares of common stock to the public at an offering price of \$16.50 per share, generating net proceeds of \$30.6 million. Since the shares were sold on September 27, 2006, the transaction was included in stockholders' equity and the gross proceeds of \$31.2 million recorded as a receivable from sale of common stock as of September 30, 2006. On October 11, 2006, the underwriters exercised their option to purchase an additional 200,000 shares, generating net proceeds of \$3.1 million. The Company retained the proceeds for working capital and general corporate purposes.

## **Table of Contents**

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, we will be required, beginning with our fiscal year ending September 30, 2007, to include in our annual report our assessment of the effectiveness of our internal control over financial reporting. Furthermore, our registered independent public accounting firm will be required to report on our assessment of the effectiveness of our internal control over financial reporting and separately report on the effectiveness of our internal control over financial reporting. We have not yet completed our assessment of the effectiveness of our internal control over financial reporting. If we fail to timely complete this assessment, which we do not anticipate at this time, or if our independent registered public accounting firm cannot attest to our assessment, we may be subject to regulatory sanctions and a loss of public confidence.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires us to make estimates, assumptions and judgments that affect the amounts reported in our financial statements and the accompanying notes. We base our estimates on historical experience and various other assumptions that we believe to be reasonable. Although these estimates are based on our present best knowledge of the future impact on us of current events and actions, actual results may differ from these estimates, assumptions and judgments.

We consider critical those accounting policies that require our most subjective or complex judgments, which often result from a need to make estimates about the effect of matters that are inherently uncertain, and that are among the most important of our accounting policies in the portrayal of our financial condition and results of operations. These critical accounting policies are: revenue recognition, valuation of excess and obsolete inventory, accounting for warranty reserves, determination of our allowance for sales returns and uncollectibles, and stock-based compensation.

*Revenue Recognition.* We derive revenue primarily from sales of test systems and individual resource boards. Substantially all of our revenue to date has been denominated in United States dollars. Revenue related to test system sales is recognized when:

- we have a written sales agreement;

- delivery has occurred or services have been rendered;

- the price is fixed or determinable; and

- collectibility is reasonably assured.

Installation services are generally part of the test system sale. Revenue from test system sales is deferred until the test system is delivered, installed and accepted at the customer location.

When sales to a customer involve multiple elements, revenue is recognized on the delivered element, provided that the undelivered element is a standard product with evidence of fair value, there is a history of acceptance of the product with the customer, and the undelivered element is not essential to the customer's application. When a sale of a test system includes post contract customer support, or PCS, revenue for the PCS is recognized ratably over the PCS period. Revenue related to individual resource boards is recognized upon shipment.

In a few instances we have entered into short-term rental agreements with customers for the use of our test systems. We recognize rental revenue ratably over the applicable rental period. Rental revenue is included as a component of test system sales and has been immaterial to date.

*Inventory Reserves.* We state our inventories at the lower of cost or estimated market value, determined on a first-in, first-out method. We establish inventory reserves when conditions exist that suggest inventory may be in excess of anticipated demand or is obsolete based upon assumptions about future demand for test systems or market conditions. We evaluate the ability to realize the value of our inventory based on a combination of factors, including forecasted sales or usage, estimated product end-of-life dates, estimated current and future market value and new product introductions. Purchasing and alternative usage options are also explored to mitigate obsolete inventory exposure. If actual demand for test systems deteriorates or market conditions are less favorable than those we project, additional inventory reserves may be required.

We determine the valuation of excess and obsolete inventory by making our best estimate considering the current quantities of inventory on hand and our forecast of the need for this inventory to support future sales of our test

systems. We often have limited information on which to base our forecasts. If future sales differ from these forecasts, the valuation of excess and obsolete inventory may change.

*Warranty Reserves.* Our test systems are sold with warranty provisions that require us to remedy deficiencies in quality or performance of our test systems. We are also subject to laws and regulations in the various countries in which we sell regarding vendor obligations to ensure product performance. At the time we recognize revenue from a test system's sale, we determine a reserve for the future cost of meeting our obligations under the standard warranties and product performance laws and regulations by

**Table of Contents**

considering our historical experience with the costs of meeting these obligations. If the future costs of meeting these obligations differ from our historical experience, additional reserves for warranty obligations may be required.

*Allowance for Sales Returns and Uncollectibles.* We determine our allowance for sales returns and uncollectibles by making our best estimate considering our historical accounts receivable collection experience, current economic trends, changes in customer payment terms and recent information that we have about the current status of our accounts receivable balances. If future conditions cause our collections experience to change or if we later obtain different information about the status of any or all of our accounts receivable, additional allowances for sales returns and uncollectibles may be required.

*Stock-Based Compensation.* We expense stock options based upon the fair market value on the date of grant. We are amortizing the fair market value of options granted over the vesting service period of the options. Expense recognized for the three and nine months ended June 30, 2007 was \$202,000 and \$380,000, respectively. Expense recognized for the three and nine months ended June 30, 2006 was \$104,000 and \$285,000, respectively.

*Income Taxes.* In June 2006, the FASB issued FIN 48, *Accounting for Uncertainty in Income Taxes* an interpretation of FASB Statement No. 109, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 will become effective for the Company during the first fiscal quarter of 2008. The Company is still evaluating the impact of FIN 48 but does not expect it to have a material impact on its financial condition or results of operations.

**Results of Operations**

The following sets forth certain operating data as a percentage of net revenue for the periods presented:

	<b>Three Months Ended June 30,</b>		<b>Nine Months Ended June 30,</b>	
	<b>2007</b>	<b>2006</b>	<b>2007</b>	<b>2006</b>
Net revenue	100.0%	100.0%	100.0%	100.0%
Cost of goods sold	37.7	33.3	39.5	32.6
Gross profit	62.3	66.7	60.5	67.4
Operating expenses				
Selling, general and administrative	41.3	21.8	37.3	24.2
Research and development	11.9	5.7	10.3	7.5
Operating income	9.1	39.2	12.9	35.7
Interest expense	0.5	0.2	0.5	4.0
Income from marketable securities	(5.5)	(1.6)	(5.4)	(1.2)
Increase in value of warrants				6.2
Income before taxes	14.1	40.6	17.8	26.7
Provision for income taxes	4.0	14.3	6.0	11.5
Net income	10.1%	26.3%	11.8%	15.2%

The following sets forth our net revenue breakdown by geographic region, in thousands and as a percentage of net revenue, during the periods presented. Substantially all of our revenue to date has been denominated in United States dollars.

**Three Months Ended****Nine Months Ended**

Edgar Filing: Eagle Test Systems, Inc. - Form 10-Q

	<b>June 30,</b>		<b>June 30,</b>		<b>June 30,</b>		<b>June 30,</b>	
	<b>2007</b>		<b>2006</b>		<b>2007</b>		<b>2006</b>	
United States	\$ 3,829	19.3%	\$ 14,642	39.8%	\$ 26,438	40.5%	\$ 27,219	31.0%
Malaysia	2,712	13.7	13,490	36.7	10,616	16.3	34,736	39.6
Philippines	3,260	16.4	*	*	*	*	*	*
Thailand	2,399	12.1	*	*	*	*	*	*
Other	7,658	38.5	8,647	23.5	28,148	43.2	25,836	29.4
<b>Total</b>	<b>\$ 19,858</b>	<b>100.0%</b>	<b>\$ 36,779</b>	<b>100.0%</b>	<b>\$ 65,202</b>	<b>100.0%</b>	<b>\$ 87,791</b>	<b>100.0%</b>

\* Less than 10%  
of total revenues



**Table of Contents**

The following customers accounted for 10% or more of our net revenue in one or more of the periods presented:

	<b>Three Months</b>		<b>Nine Months</b>	
	<b>Ended June 30,</b>		<b>Ended June 30,</b>	
	<b>2007</b>	<b>2006</b>	<b>2007</b>	<b>2006</b>
Intersil Corporation	*%	10.4%	*%	*%
National Semiconductor Corporation	*	*	*	10.2
ON Semiconductor Corporation	14.1	*	10.5	*
Texas Instruments Incorporated	29.3	55.0	30.5	51.4

\* Less than 10%.

**Comparison of Three and Nine Months Ended June 30, 2007 and 2006**

*Net Revenue.* Net revenue decreased to \$19.9 million in the three months ended June 30, 2007, a decrease of \$16.9 million or 46.0% over the comparable period in the preceding year. This decrease was primarily due to a \$14.4 million decrease in test system sales to one of our largest customers.

Net revenue decreased to \$65.2 million in the nine months ended June 30, 2007, a decrease of \$22.6 million or 25.7% over the comparable period in the preceding year. This decrease was primarily due to a \$25.2 million decrease in test system sales to one of our largest customers, offset in part by a general increase in tester shipments to other semiconductor manufacturers who use our automated test equipment.

*Gross Profit.* Gross profit was \$12.4 million, or 62.3% of net revenue, in the three months ended June 30, 2007 and \$24.5 million, or 66.7% of net revenue, in the same period in the prior fiscal year. The decrease in gross profit as a percentage of net revenue was primarily due to decreased sales and lower utilization of overhead costs and manufacturing personnel due to lower volume production as compared to the comparable period in the preceding year.

For the nine months ended June 30, 2007, gross profit was \$39.4 million, or 60.5% of net revenue as compared to \$59.2 million or 67.4% of net revenue in the same period in the prior fiscal year. The decrease in gross profit as a percentage of net revenue was primarily due to decreased sales and lower utilization of overhead costs and manufacturing personnel due to lower volume production as compared to the comparable period in the preceding year. Additionally, the decrease in gross profit as a percentage of net revenue was also impacted by an increase in inventory reserves of \$0.6 million in the current period as compared to a net reversal of \$0.5 million of reserves in the same period in the prior fiscal year. The reversal of inventory reserves in fiscal 2006 was due to usage during this period of inventory previously reserved for as a result of lower visibility of demand for our products.

*Selling, General and Administrative.* SG&A expenses were \$8.2 million, or 41.3% of net revenue, in the three months ended June 30, 2007, and \$8.0 million, or 21.8% of net revenue, in the same period in the prior fiscal year, an increase of \$0.2 million. The increase in SG&A expenses in the current quarter compared to the same period in the prior year was primarily due to \$0.9 million in increased personnel cost related to sales and application engineers hired during the past year to support new customer initiatives, both domestically and internationally and \$0.4 million in increased warranty cost associated with support of newer generation product for updates to enhance performance, offset in part by a \$1.0 million decrease in commission and incentive compensation accruals as a result of decreased system sales and operating performance.

For the nine months ended June 30, 2007, SG&A expenses were \$24.3 million, or 37.3% of net revenue, and \$21.3 million, or 24.2% of net revenue, in the same period in the prior fiscal year, an increase of \$3.0 million. The increase was primarily due to \$2.3 million in increased personnel costs related to sales and application engineers hired during the past year to support new customer initiatives, both domestically and internationally, \$0.6 million in expenses recorded in connection with defense and settlement of employment claims, \$0.8 million of additional expenses related to operating as a public company and \$0.8 million in increased warranty cost associated with support of newer generation product for updates to enhance performance. These increases were offset in part by a \$1.6 million decrease in commission and incentive compensation accruals as a result of decreased system sales and operating performance.

*Research and Development.* R&D expenses were \$2.4 million, or 11.9% of net revenue, in the three months ended June 30, 2007, and \$2.1 million, or 5.7% of net revenue, in the same period in the prior fiscal year, an increase of \$0.3 million. The increase in R&D expenses in the current quarter compared to the same period in the prior year was primarily due to a \$0.2 million increase in materials used in the product development process, resulting primarily from the timing of prototype expenditures.

For the nine months ended June 30, 2007, R&D expenses were \$6.7 million, or 10.3% of net revenue, and \$6.6 million, or 7.5% of net revenue, in the same period in the prior fiscal year, an increase of \$0.1 million. The increase in R&D expenses was primarily due to a \$0.4 million increase in additional personnel and related facility costs for headcount, offset in part by a \$0.3 million decrease in materials used in the product development process, resulting primarily from the timing of prototype expenditures.

**Table of Contents**

*Interest Expense.* Interest expense was \$0.1 million for the three months ended June 30, 2007 and 2006. Interest expense for these periods was primarily related to interest due on amended income tax returns.

Interest expense was \$0.3 million and \$3.5 million for the nine months ended June 30, 2007 and 2006, respectively. The decrease in interest expense was related to the repurchase and retirement of the senior convertible notes with the proceeds of our initial public offering on March 14, 2006.

*Income from Marketable Securities.* Income from marketable securities increased to \$1.1 million for the three months ended June 30, 2007, compared to \$0.6 million for the same period in the prior fiscal year, primarily due to having more cash available for investment after completion of our additional public offering closed on October 3, 2006.

Income from marketable securities increased to \$3.6 million for the nine months ended June 30, 2007, compared to \$1.1 million for the same period in the prior fiscal year, due to having more cash available for investment after completion of our initial public offering in the March 2006 quarter, and our additional public offering closed on October 3, 2006.

*Increase in Value of Warrants.* The warrant valuation adjustment was due to the change in the fair market value of the common stock warrants because under certain circumstances we could have been required to purchase these after September 30, 2008 at fair market value. These warrants were exercised and redeemed at the time of completion of our initial public offering in the March 2006 quarter. Since the warrants are no longer outstanding, there will be no further charges for changes in the value of this instrument in future periods.

*Provision for Income Taxes.* Our income tax expense was \$0.8 million, a 28.3% effective tax rate, in the three months ended June 30, 2007 and \$5.3 million, a 35.2% effective tax rate, in the same period in the prior fiscal year. The primary reason for the difference in the effective tax rates for these periods is the increase in tax exempt investment income relative to total taxable income during the three months ended June 30, 2007.

Income tax expense was \$3.9 million and \$10.2 million, and the effective tax rate was 33.7% and 43.3%, in the nine months ended June 30, 2007 and 2006, respectively. The primary reason for the difference in the effective tax rates for these periods is due to the increase in value of warrants of \$5,466 in the nine months ended June 30, 2006, which is not tax deductible. Since the warrants were exercised on March 14, 2006 in connection with the Company's initial public offering, there was no warrant charge in the nine months ended June 30, 2007.

**Table of Contents**

**Liquidity and Capital Resources**

Since our inception and prior to our initial public offering, which closed on March 14, 2006, we had financed our operations primarily through cash generated from operations. On October 3, 2006, we closed an additional public offering to sell 2,000,000 shares of common stock, generating net proceeds of \$30.6 million. Since the shares were sold on September 27, 2006, the transaction was included in stockholders' equity and the gross proceeds of \$31.2 million were recorded as a receivable from sale of common stock as of September 30, 2006. On October 11, 2006, the underwriters exercised their option to purchase an additional 200,000 shares, generating net proceeds of \$3.1 million.

Our balance in cash, cash equivalents and marketable securities increased from \$75.9 million as of September 30, 2006 to \$112.7 million as of June 30, 2007. Operating activities during the nine months ended June 30, 2007 provided cash of \$3.9 million, due to income of \$7.7 million resulting primarily from sales of test systems, depreciation expense of \$2.6 million that did not require cash and \$3.0 million from a decrease in inventory due to improved management of inventory requirements. These increases in working capital were offset in part by a change in deferred taxes of \$1.2 million primarily due to an Internal Revenue Service review of a deferred revenue tax method change, a decrease in accounts receivable (net of deferred revenue) of \$3.9 million due to a decrease in sales activity, a decrease in accounts payable of \$2.0 million due to lower operating levels and a \$2.5 million decrease in accrued compensation from the payment of incentive compensation related to our fiscal year 2006 operating performance. Financing activities generated cash of \$35.1 million primarily from our public offering closed in October 2006.

We believe our existing cash balance and marketable securities will be adequate to meet our anticipated cash needs for at least the next twelve months. Our future capital requirements will depend on many factors, including our rate of revenue growth, the timing and extent of spending to support product development efforts, the expansion of sales and marketing activities, the timing of introductions of new products and enhancements to existing products, the costs to ensure access to adequate manufacturing capacity, and the continuing market acceptance of our products. To the extent that our existing cash, cash equivalents and short-term investments balances and any cash from operations are insufficient to fund our future activities, we may need to raise additional funds through bank lines of credit or public or private equity or debt financing. Although we are currently not a party to any agreement or letter of intent with respect to potential investments in, or acquisitions of, complementary businesses, products or technologies, we may enter into these types of arrangements in the future, which could also require us to seek additional equity or debt financing. Additional funds may not be available on terms favorable to us, or at all.

**Table of Contents**

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

As of June 30, 2007, most of our investments represent investment-grade securities focused on preservation of principal, with interest rates that are reset every 7 to 28 days, and have a put option to convert to cash within 2 to 5 days.

Our revenues and expenses are denominated in U.S. dollars. In addition, our sales contracts are also denominated in U.S. dollars. As a result, we have little exposure to currency exchange risks. We do not currently enter into forward exchange contracts to hedge exposure denominated in foreign currencies or any other derivative financial instruments for trading or speculative purposes. In the future, if we feel our foreign currency exposure has increased, we may consider entering into hedging transactions to help mitigate that risk.

**Item 4. Controls and Procedures**

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2007. The term disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (Exchange Act), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of June 30, 2007, our chief executive officer and chief financial officer concluded that, as of such date, the Company's disclosure controls and procedures were effective at the reasonable assurance level.

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended June 30, 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**Table of Contents**

**Part II OTHER INFORMATION**

**Item 1. Legal Proceedings**

From time to time, we may be a party to various claims, suits and complaints. Currently, there are no such claims, suits or complaints that, in our opinion, would have a material adverse effect on our business, results of operations and financial condition.

**Item 1A. Risk Factors**

Not applicable.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

(a) Not applicable.

(b) On March 8, 2006, our registration statement on Form S-1 (Registration No. 333-130521) was declared effective for our initial public offering, pursuant to which we offered and sold 6,130,000 shares of common stock and received net proceeds of approximately \$88.7 million. We used these proceeds to repurchase all of our senior subordinated notes and to redeem all outstanding shares of our redeemable preferred stock, and to pay offering related expenses. As of June 30, 2007, we retained approximately \$23.6 million of these net proceeds, none of which were used during the three-month period ended June 30, 2007. We intend to use the remaining \$23.6 million of the net proceeds from our initial public offering for general corporate purposes, including working capital and possible acquisitions and investments. We currently have no agreements or commitments with respect to any acquisitions or investments and we do not currently have any acquisitions or investments planned. Pending specific application of our net proceeds, we plan to invest our net proceeds in government securities and other short-term, investment-grade, marketable securities.

(c) Not applicable

**Table of Contents**

**Item 3. Defaults Upon Senior Securities**

Not applicable.

**Item 4. Submission of Matters to a Vote of Security Holders**

Not applicable.

**Item 5. Other Information**

Not applicable

**Item 6. Exhibits**

The exhibits listed in the Exhibit Index immediately preceding the exhibits are filed as part of this Quarterly Report on Form 10-Q and such Exhibit Index is incorporated herein by reference.

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**EAGLE TEST SYSTEMS, INC.**

Date: August 02, 2007

By: /s/ Leonard A. Foxman  
Leonard A. Foxman  
*Chief Executive Officer and President*



**Table of Contents**

**EXHIBIT INDEX**

Listed and indexed below are all Exhibits filed as part of this report.

<b>Exhibit No.</b>	<b>Description</b>
31.1	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 by Chief Executive Officer.
31.2	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 by Chief Financial Officer.
32.1 *	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by Chief Executive Officer and Chief Financial Officer.

\* This certification shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that Section, nor shall it be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.