

# ESPEED INC

## FORM 10-Q (Quarterly Report)

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Industry	Consumer Financial Services
Sector	Financial
Fiscal Year	12/31

**U.S. 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 September 30, 2003

Commission file number 0-28191

**eSpeed, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**13-4063515**

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

**135 East 57th Street**

(Address of Principal Executive Offices)

**New York, New York 10022**

(City, State, Zip Code)

**(212) 938-5000**

(Registrant's Telephone Number, Including Area Code)

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 an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes ☒ No ☐

As of November 10, 2003, the registrant had 30,322,624 shares of Class A common stock, \$0.01 par value, and 25,362,809 shares of Class B common stock, \$0.01 par value, outstanding.

**eSpeed, Inc. and Subsidiaries**  
**Quarterly report on Form 10-Q**

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**PART I. — FINANCIAL INFORMATION**

**ITEM 1. Financial Statements**

**eSpeed, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL CONDITION**  
**(In thousands, except share data)**

	September 30, 2003 (unaudited)	December 31, 2002
<b>Assets</b>		
Cash and cash equivalents	\$216,985	\$187,999
Fixed assets, net	28,563	26,383
Investments	11,476	11,175
Intangible assets, net	19,288	19,528
Receivable from related parties	2,467	5,266
Other assets	6,776	2,360
Total assets	<u>\$285,555</u>	<u>\$252,711</u>
<b>Liabilities and Stockholders' Equity</b>		
Liabilities:		
Payable to related parties	\$ 3,546	\$ 18,857
Accounts payable and accrued liabilities	26,889	15,399
Total liabilities	<u>30,435</u>	<u>34,256</u>
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, par value \$0.01 per share; 50,000,000 shares authorized; 8,000,750 shares issued and outstanding	80	80
Class A common stock, par value \$0.01 per share; 200,000,000 shares authorized; 30,276,299 and 29,783,682 shares issued	303	298
Class B common stock, par value \$0.01 per share; 100,000,000 shares authorized; 25,362,809 and 25,388,814 shares issued and outstanding	254	254
Additional paid-in capital	280,040	270,656
Unamortized expense of business partner and non-employee securities	(1,643)	(3,252)
Treasury stock, at cost; 186,399 and 24,600 shares of Class A common stock	(2,094)	(222)
Accumulated deficit	(21,820)	(49,359)
Total stockholders' equity	<u>255,120</u>	<u>218,455</u>
Total liabilities and stockholders' equity	<u>\$285,555</u>	<u>\$252,711</u>

See notes to condensed consolidated financial statements

**eSpeed, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME (unaudited)**  
(In thousands, except per share data)

	Three Months Ended September 30,	
	2003	2002
Revenues:		
Transaction revenues with related parties		
Fully electronic transactions	\$32,300	\$22,783
Voice-assisted brokerage transactions	5,153	4,649
Screen-assisted open outcry transactions	128	11
Total transaction revenues with related parties	<u>37,581</u>	<u>27,443</u>
Software Solutions fees from related parties	3,821	3,423

Software Solutions and licensing fees from unrelated parties	2,321	1,333
Interest income	<u>547</u>	<u>780</u>
Total revenues	<u>44,270</u>	<u>32,979</u>
Expenses:		
Compensation and employee benefits	9,790	9,113
Occupancy and equipment	8,191	6,338
Professional and consulting fees	953	1,149
Communications and client networks	1,715	1,465
Marketing	373	1,281
Administrative fees to related parties	2,579	2,292
Amortization of business partner and non-employee securities	648	541
Other	<u>3,706</u>	<u>3,012</u>
Total expenses	<u>27,955</u>	<u>25,191</u>
Income before income tax provision	16,315	7,788
Income tax provision	<u>6,353</u>	<u>123</u>
Net income	<u>\$ 9,962</u>	<u>\$ 7,665</u>
Earnings per share:		
Basic	<u>\$ 0.18</u>	<u>\$ 0.14</u>
Diluted	<u>\$ 0.17</u>	<u>\$ 0.14</u>
Basic weighted average shares of common stock outstanding	<u>55,291</u>	<u>54,980</u>
Diluted weighted average shares of common stock outstanding	<u>57,730</u>	<u>56,499</u>

See notes to condensed consolidated financial statements

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**eSpeed, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME (unaudited)**  
(In thousands, except per share data)

	<b>Nine Months Ended September 30,</b>	
	<b>2003</b>	<b>2002</b>
Revenues:		
Transaction revenues with related parties		
Fully electronic transactions	\$ 82,348	\$ 65,609
Voice-assisted brokerage transactions	14,959	13,479
Screen-assisted open outcry transactions	<u>420</u>	<u>134</u>
Total transaction revenues with related parties	<u>97,727</u>	<u>79,222</u>
Software Solutions fees from related parties	11,351	9,747
Software Solutions and licensing fees from unrelated parties	6,662	2,437
Business interruption insurance proceeds from parent	—	12,833
Interest income	<u>1,652</u>	<u>2,222</u>
Total revenues	<u>117,392</u>	<u>106,461</u>
Expenses:		
Compensation and employee benefits	27,873	27,748
Occupancy and equipment	22,939	18,048
Professional and consulting fees	2,927	4,264
Communications and client networks	5,024	4,516

Marketing	1,115	4,515
Administrative fees to related parties	7,747	6,579
Amortization of business partner and non-employee securities	1,715	1,354
Other	8,855	5,873
Total expenses	<u>78,195</u>	<u>72,897</u>
Income before income tax provision	39,197	33,564
Income tax provision	11,658	351
Net income	<u>\$ 27,539</u>	<u>\$ 33,213</u>
Earnings per share:		
Basic	\$ 0.50	\$ 0.60
Diluted	\$ 0.48	\$ 0.59
Basic weighted average shares of common stock outstanding	55,205	54,979
Diluted weighted average shares of common stock outstanding	<u>57,171</u>	<u>56,683</u>

See notes to condensed consolidated financial statements

**eSpeed, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (unaudited)**  
(In thousands)

	<b>Nine Months Ended September 30,</b>	
	<b>2003</b>	<b>2002</b>
Cash flows from operating activities:		
Net income	\$ 27,539	\$ 33,213
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	13,044	10,037
Amortization of business partner and non-employee securities	1,715	1,354
Equity in net loss of certain unconsolidated investments	80	202
Deferred income tax expense	3,481	—
Tax benefit from employee stock option exercises	3,110	—
Issuance of securities under employee benefit plan	160	55
Changes in operating assets and liabilities:		
Receivable from related parties	2,800	1,694
Other assets	(730)	359
Payable to related parties	(15,311)	(864)
Accounts payable and accrued liabilities	7,884	10,907
Net cash provided by operating activities	<u>43,772</u>	<u>56,957</u>
Cash flows from investing activities:		
Purchase of fixed assets	(4,471)	(6,400)
Sale of fixed assets	2,752	—
Capitalization of software development costs	(9,596)	(5,963)
Capitalization of patents and related legal costs	(3,671)	(10,231)
Net cash used in investing activities	<u>(14,986)</u>	<u>(22,594)</u>
Cash flows from financing activities:		
Repurchase of Class A common stock	(1,872)	—

Proceeds from exercises of stock options	6,137	32
Receivable from broker on exercises of stock options	(4,065)	—
Net cash provided by financing activities	<u>200</u>	<u>32</u>
Net increase in cash and cash equivalents	<u>28,986</u>	<u>34,395</u>
Cash and cash equivalents, beginning of period	<u>187,999</u>	<u>159,899</u>
Cash and cash equivalents, end of period	<u>\$216,985</u>	<u>\$194,294</u>
Supplemental cash flow information:		
Income taxes paid	<u>\$ 3,360</u>	<u>\$ —</u>

See notes to condensed consolidated financial statements

**eSpeed, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (unaudited)**

**1. Organization and Basis of Presentation**

eSpeed, Inc. ("eSpeed" or, together with its wholly owned subsidiaries, the "Company") primarily engages in the business of operating interactive electronic marketplaces designed to enable market participants to trade financial and non-financial products more efficiently and at a lower cost than traditional trading environments permit.

The Company is a subsidiary of Cantor Fitzgerald Securities ("CFS"), which in turn is a 99.5% owned subsidiary of Cantor Fitzgerald, L.P. ("CFLP" or, together with its subsidiaries, "Cantor"). eSpeed commenced operations on March 10, 1999 as a division of CFS. eSpeed is a Delaware corporation that was incorporated on June 3, 1999. In December 1999, the Company completed its initial public offering.

The Company's financial statements and accompanying notes have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). All significant intercompany balances and transactions have been eliminated in consolidation. The financial statements reflect all normal recurring adjustments, which are in the opinion of management, necessary for a fair presentation of the results for the interim periods presented. The preparation of the financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of the assets and liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities in the financial statements. Management believes that the estimates utilized in preparing the financial statements are reasonable and prudent. Estimates, by their nature, are based on judgment and available information. As such, actual results could differ from the estimates included in these financial statements.

Pursuant to the rules and regulations of the Securities and Exchange Commission, certain information and footnote disclosures, which are normally required under U.S. GAAP, have been condensed or omitted. It is recommended that these condensed consolidated financial statements be read in conjunction with the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2002. The consolidated statement of financial condition at December 31, 2002 was derived from the audited financial statements. The results of operations for any interim period are not necessarily indicative of results for the full year. Certain reclassifications and format changes have been made to prior period information to conform to the current period presentation.

**2. Fixed Assets**

Fixed assets consisted of the following:

	<u>September 30, 2003</u>	<u>December 31, 2002</u>
	(In thousands)	
Computer and communication equipment	\$ 16,030	\$ 20,050
Software, including software development costs	38,108	27,659

Leasehold improvements and other fixed assets	<u>2,544</u>	<u>1,128</u>
	56,682	48,837
Less accumulated depreciation & amortization	<u>(28,119)</u>	<u>(22,454)</u>
Fixed assets, net	<u>\$ 28,563</u>	<u>\$ 26,383</u>

In February 2003, the Company sold to Cantor fixed assets with a net book value of approximately \$2.5 million pursuant to a sale-leaseback agreement. The Company retains use of the assets in exchange for a \$95,000 monthly charge under the Administrative Services Agreement (see Note 6, Related Party Transactions).

In accordance with the provisions of Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*, the Company capitalizes qualifying computer software costs incurred during the application development stage. During the nine months ended September 30,

2003 and 2002, software development costs totaling \$9.6 million and \$6.0 million were capitalized, respectively. For the same periods, the Company's condensed consolidated statements of income included \$5.5 million and \$3.9 million, respectively, in relation to the amortization of software development costs.

### 3. Intangible Assets

Intangible assets consisted of the following:

	<u>September 30, 2003</u>	<u>December 31, 2002</u>
	(In thousands)	
Patents, including capitalized legal costs	\$ 27,014	\$ 23,343
Less accumulated amortization	<u>(7,726)</u>	<u>(3,815)</u>
Intangible assets, net	<u>\$ 19,288</u>	<u>\$ 19,528</u>

As of September 30, 2003 and December 31, 2002, intangible assets included the Lawrence patent and the Wagner patent, as well as capitalized costs incurred to establish, perfect and protect the Company's rights under the patents. In addition, in May 2003, Cantor obtained a patent for an Automated Auction Control Processor in relation to certain automated trading systems and methods. The Company is the exclusive licensee of this patent.

Intangible assets are amortized over a period not to exceed 17 years or the remaining life of the patent, whichever is shorter, using the straight-line method. During the nine months ended September 30, 2003 and 2002, the Company recorded amortization expense of \$3.9 million and \$2.4 million, respectively, for these intangible assets. The estimated aggregate amortization expense for each of the next five fiscal years is as follows: \$5.5 million in 2004, \$5.5 million in 2005, \$5.0 million in 2006, \$0.8 million in 2007 and \$0.2 million in 2008.

### 4. Income Taxes

The provision for income taxes consisted of the following:

	<u>Nine Months Ended September 30,</u>	
	<u>2003</u>	<u>2002</u>
	(In thousands)	
Current		
Federal	\$ 6,768	\$ —
State and Local	<u>1,409</u>	<u>351</u>
	8,177	351
Deferred	<u>3,481</u>	<u>—</u>
Provision for income taxes	<u>\$ 11,658</u>	<u>\$ 351</u>



As of March 31, 2003, the Company had net operating loss carryforwards ("NOL") for income tax purposes of \$7.1 million. Effective April 1, 2003, the Company started recording income taxes at an effective tax rate of approximately 39.4% and utilized the \$2.8 million tax benefit of such NOL.

At September 30, 2003, the valuation allowance against deferred tax assets of \$11.7 million primarily related to non-deductible warrant expenses where it appears more likely than not that such item will not be realized in the future.

Additionally, tax benefits associated with employee stock option exercises served to reduce taxes currently payable by \$3.1 million as of September 30, 2003. A corresponding amount was credited to additional paid-in capital.

## 5. Business Partner and Non-Employee Securities

The amortization expense for the issuance of business partner and non-employee securities was as follows:

	Nine Months Ended September 30,	
	2003	2002
	(In thousands)	
Freedom warrants	\$ 897	\$ 897
Deutsche Bank warrants	(178)	321
UBS warrants	896	136
Non-employee stock options	100	—
	<u>\$ 1,715</u>	<u>\$ 1,354</u>

There were no new business partner transactions executed during the nine months ended September 30, 2003.

In connection with an agreement with Deutsche Bank, AG ("Deutsche Bank"), the Company previously sold Series C Redeemable Convertible Preferred Stock ("Series C Preferred") to Deutsche Bank. On July 30th of each year of the five-year agreement in which Deutsche Bank fulfills its liquidity and market making obligations for specified products, one-fifth of such Series C Preferred will automatically convert into warrants to purchase shares of the Company's Class A common stock.

Deutsche Bank was deemed to have fulfilled its obligations under the agreement for the twelve months ended July 30, 2002 and, accordingly, a warrant to purchase 150,000 shares of the Company's Class A common stock was issued by the Company. The Company has informed Deutsche Bank that it was not in compliance with the agreement for the twelve months ended July 30, 2003 and that a warrant will not be issued for such period. As a result, the Company reversed the amortization expense recorded since August 2002 for such warrant.

Based on certain communications and the failure of Deutsche Bank to comply with the agreement since March 28, 2003, the Company has further notified Deutsche Bank that it believes it has terminated its right to receive warrants under the agreement for the remaining commitment periods. The 150 shares of Series C Preferred with respect to the twelve-month period ended July 31, 2003 are redeemable by the Company for 1,500 shares of Class A common stock.

In connection with an agreement between eSpeed, certain Cantor entities and certain UBS entities, the Company previously issued to UBS USA, Inc. a warrant to purchase 300,000 shares of its Class A common stock. The warrant has a term of ten years from August 21, 2002 and has an exercise price equal to \$8.75, the market value of the underlying Class A common stock on the date of issuance. The warrant is fully vested and nonforfeitable, and is exercisable nine years and six months after issuance, subject to acceleration upon the satisfaction by UBS of certain commitment conditions. On August 21, 2002, the Company recorded additional paid in capital and unamortized expense of business partner securities of \$2.2 million, representing the fair value of the warrants.

Effective October 1, 2003, the UBS agreement was amended to revise the list of products for which UBS provides prices and improve the spreads, provide for commission incentives and extend the term of the agreement

until July 31, 2005. In connection with the amendment, the Company agreed to accelerate the exercisability of warrants to purchase 125,000 shares of its Class A common stock, of which warrants to purchase 75,000 shares of Class A common stock were exercised by UBS on October 23, 2003. In addition, pursuant to the amended agreement, the Company may accelerate the exercisability of warrants to purchase 25,000 shares of its Class A common stock at the end of each of the seven quarters in the period from November 1, 2003 through July 31, 2005, upon the satisfaction by UBS of certain commitment conditions. On October 1, 2003, the unamortized expense of such business partner securities was approximately \$0.9 million, which the Company will amortize on a straight-line basis until July 31, 2005.

## **6. Related Party Transactions**

Cash and cash equivalents at September 30, 2003 and December 31, 2002 included \$150.1 million and \$186.7 million, respectively, of reverse repurchase agreements with related parties. All of the Company's reverse repurchase agreements are transacted on an overnight basis with Cantor. Under the terms of these agreements, the securities collateralizing the reverse repurchase agreements are held under a custodial arrangement with a third party bank and are not permitted to be resold or repledged. The fair value of such collateral at September 30, 2003 and December 31, 2002 totaled \$156.4 million and \$189.6 million, respectively.

Investments in TradeSpark, L.P. ("Tradespark") and the limited partnership (the "LP") that invested in Freedom International Brokerage ("Freedom") are accounted for using the equity method. The carrying value of such related party investments was \$7.6 million and \$7.7 million at September 30, 2003 and December 31, 2002, respectively, and is included in investments in the condensed consolidated statements of financial condition. For the nine months ended September 30, 2003, the Company's share of the net losses of the LP and TradeSpark was approximately \$80,000 in the aggregate.

Under the Joint Services Agreement between the Company and Cantor and joint services agreements between the Company and TradeSpark, Freedom, Municipal Partners, LLC ("MPLLC") and CO2e, the Company owns and operates the electronic trading system and is responsible for providing electronic brokerage services, and Cantor, TradeSpark, Freedom, MPLLC or CO2e provides voice-assisted brokerage services, fulfillment services, such as clearance and settlement, and related services, such as credit risk management services, oversight of client suitability and regulatory compliance, sales positioning of products and other services customary to marketplace intermediary operations. In general, if a transaction is fully electronic, the Company receives 65% of the aggregate transaction revenues and TradeSpark or Freedom receives 35% of the transaction revenues. If TradeSpark or Freedom provides voice-assisted brokerage services with respect to a transaction, the Company receives 35% of the revenues and TradeSpark or Freedom receives 65% of the revenues. The Company and MPLLC each receive 50% of the fully electronic revenues related to municipal bonds. The Company's agreement with CO2e provides that it receives 50% of CO2e's fully electronic revenues and 15% of CO2e's voice-assisted and open outcry revenues until December 2003, and 20% of voice-assisted and open outcry revenues thereafter. In addition, the Company receives 25% of the net revenues from Cantor's gaming businesses.

Under those services agreements, the Company has agreed to provide Cantor, TradeSpark, Freedom, MPLLC and CO2e technology support services, including systems administration, internal network support, support and procurement for desktops of end-user equipment, operations and disaster recovery services, voice and data communications, support and development of systems for clearance and settlement services, systems support for brokers, electronic applications systems and network support, and provision and/or implementation of existing electronic applications systems, including improvements and upgrades thereto, and use of the related intellectual property rights. In general, the Company charges Cantor, TradeSpark, Freedom and MPLLC the actual direct and indirect costs, including overhead, of providing such services and receives payment on a monthly basis. These services are provided to CO2e at no additional cost other than the revenue sharing arrangement set forth above. In exchange for a 25% share of the net revenues from Cantor's gaming businesses, the Company is obligated to spend and does not get reimbursed for the first \$750,000 each quarter of the costs of providing support and development services for such gaming businesses.

Under an Administrative Services Agreement, Cantor provides various administrative services to the Company, including accounting, tax, legal and facilities management. The Company is required to reimburse Cantor for the cost of providing such services. The costs represent the direct and indirect costs of providing such services and are determined based upon the time incurred by the individual performing such services. Management believes

that this allocation methodology is reasonable. The Administrative Services Agreement has a three-year term, which will renew automatically for successive one-year terms unless cancelled upon six months' prior notice by either the Company or Cantor. The Company incurred administrative fees for such services during the nine-month periods ended September 30, 2003 and 2002 totaling \$7.7 million and \$6.6 million, respectively. The services provided under both the Amended and Restated Joint Services Agreement and the Administrative Services Agreement are not the result of

arm's-length negotiations because Cantor controls the Company. As a result, the amounts charged for services under these agreements may be higher or lower than amounts that would be charged by third parties if the Company did not obtain such services from Cantor.

As a result of the terrorist attacks of September 11, 2001, the Company's offices in the World Trade Center were destroyed and the Company lost 180 of our employees, including many members of senior management (the "September 11 Events"). During the nine months ended September 30, 2003, CFLP received \$21,045,000 of insurance proceeds in settlement for property damage related to the September 11 Events. Under the Administrative Services Agreement, eSpeed is entitled to up to approximately \$20,000,000 of such amount as replacement assets are purchased in the future. Starting in the fourth quarter of 2003, the Company expects to incur significant costs in relation to the replacement of fixed assets lost on September 11, 2001 when they build their permanent infrastructure and move into their new headquarters in 2004.

Amounts due to or from related parties pursuant to the transactions described above are non-interest bearing. As of September 30, 2003, receivables from Tradespark, Freedom and MPLLC amounted to approximately \$0.5 million in the aggregate, and are included in receivable from related parties in the condensed consolidated statement of financial condition.

## 7. Earnings Per Share

The following is a reconciliation of the basic and diluted earnings per share computations:

	<u>Three Months Ended September 30,</u>	
	<u>2003</u>	<u>2002</u>
	<u>(In thousands, except per share data)</u>	
Net income for basic and diluted earnings per share	<u>\$ 9,962</u>	<u>\$ 7,665</u>
Shares of common stock and common stock equivalents:		
Weighted average shares used in basic computation	55,291	54,980
Dilutive effect of:		
Stock options	2,298	1,507
Business partner securities	141	12
Weighted average shares used in diluted computation	<u>57,730</u>	<u>56,499</u>
Earnings per share:		
Basic	<u>\$ 0.18</u>	<u>\$ 0.14</u>
Diluted	<u>\$ 0.17</u>	<u>\$ 0.14</u>

<u>Nine Months Ended September 30,</u>	
<u>2003</u>	<u>2002</u>

	(In thousands, except per share data)	
Net income for basic and diluted earnings per share	<u>\$ 27,539</u>	<u>\$ 33,213</u>
Shares of common stock and common stock equivalents:		
Weighted average shares used in basic computation	55,205	54,979
Dilutive effect of:		
Stock options	1,853	1,664
Business partner securities	<u>113</u>	<u>40</u>
Weighted average shares used in diluted computation	<u>57,171</u>	<u>56,683</u>
Earnings per share:		
Basic	<u>\$ 0.50</u>	<u>\$ 0.60</u>
Diluted	<u>\$ 0.48</u>	<u>\$ 0.59</u>

Effective April 1, 2003, the Company started recording income taxes (see Note 4, Income Taxes). During the 2002 periods, income taxes were minimal due to the benefit of net operating loss carryforwards. As a result, in applying the treasury stock method for the three and nine-month periods ended September 30, 2003, the assumed proceeds of stock option exercises were computed as the sum of (i) the amount the employees paid on exercise and (ii) the amount of tax benefits associated with employee stock options exercised that were credited to additional paid-in capital. Prior to April 1, 2003, the Company excluded such tax benefits in assumed proceeds of stock option exercises, thereby increasing the dilutive effect of securities accordingly.

At September 30, 2003 and 2002, approximately 15.0 million and 14.1 million securities, respectively, were not included in the computation of diluted earnings per share because their effect would have been antidilutive.

## 8. Stock Based Compensation

Pursuant to guidelines contained in APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and as permitted by Statement of Financial Accounting Standards ("SFAS") No. 123, *Accounting for Stock Based Compensation* ("SFAS 123"), the Company records no expense for stock options issued to employees as all options granted had an exercise price equal to the market value of the underlying common stock on the date of grant. The following table represents the effect had the Company accounted for the options in its stock-based compensation plan based on the fair value of awards at grant date in a manner consistent with the methodology of SFAS 123.

	Three Months Ended September 30,	
	2003	2002
	(In thousands, except per share data)	
Net income, as reported	\$ 9,962	\$ 7,665
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards granted, net of \$1,576 and \$0 of taxes for the three months ended September 30, 2003 and 2002, respectively	<u>(2,471)</u>	<u>(4,266)</u>
Net income, pro forma	<u>\$ 7,491</u>	<u>\$ 3,399</u>
Earnings per share:		
Basic – as reported	\$ 0.18	\$ 0.14
Basic – pro forma	\$ 0.14	\$ 0.06
Diluted – as reported	\$ 0.17	\$ 0.14
Diluted – pro forma	\$ 0.13	\$ 0.06

Nine Months Ended September  
30,

	2003	2002
	(In thousands, except per share data)	
Net income, as reported	\$ 27,539	\$ 33,213
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards granted, net of \$3,575 and \$0 of taxes for the nine months ended September 30, 2003 and 2002, respectively	(8,446)	(12,615)
Net income, pro forma	<u>\$ 19,093</u>	<u>\$ 20,598</u>
Earnings per share:		
Basic – as reported	\$ 0.50	\$ 0.60
Basic – pro forma	\$ 0.35	\$ 0.37
Diluted – as reported	\$ 0.48	\$ 0.59
Diluted – pro forma	\$ 0.33	\$ 0.36

Effective April 1, 2003, the Company started recording income taxes (see Note 4, Income Taxes). During the 2002 periods, income taxes were minimal due to the benefit of net operating loss carryforwards. The Company applied these effective tax rates in computing the above pro forma information for the respective periods.

## 9. Regulatory Capital Requirements

Through its subsidiary, eSpeed Government Securities, Inc., the Company is subject to SEC broker-dealer regulation under Section 15C of the Securities Exchange Act of 1934, which requires the maintenance of minimum liquid capital, as defined. At September 30, 2003, eSpeed Government Securities, Inc.'s liquid capital of \$64,490,917 was in excess of minimum requirements by \$64,465,917.

Additionally, the Company's subsidiary, eSpeed Securities, Inc., is subject to SEC broker-dealer regulation under Rule 17a-3 of the Securities Exchange Act of 1934, which requires the maintenance of minimum net capital and requires that the ratio of aggregate indebtedness to net capital, both as defined, shall not exceed 15 to 1. At September 30, 2003, eSpeed Securities, Inc. had net capital of \$94,056,972, which was \$91,863,110 in excess of its required net capital, and eSpeed Securities, Inc.'s net capital ratio was .35 to 1.

The regulatory requirements referred to above may restrict the Company's ability to withdraw capital from its regulated subsidiaries.

## 10. Commitments and Contingencies

There have been no significant changes in commitments and contingencies from the matters described in the notes to the Company's consolidated financial statements for the year ended December 31, 2002.

## 11. Segment and Geographic Data

**Segment information:** The Company currently operates its business in one segment, that of operating interactive electronic business-to-business marketplaces for the trading of financial and non-financial products, licensing software, and providing technology support services to Cantor and other related and unrelated parties.

**Product information:** The Company currently markets its services through the following products: core products, including an integrated network engaged in electronic trading in government securities in multiple marketplaces over the eSpeed<sup>®</sup> system; new product rollouts, including introduction of products in non-equity capital markets; products enhancement software, which enables clients to engage in enhanced electronic trading of core products and future product rollouts; and eSpeed Software Solutions<sup>SM</sup>, which allows customers to use the Company's intellectual property and trading expertise to build electronic marketplaces and exchanges, develop customized trading interfaces and enable real-time auctions and debt issuance. Revenues from core products comprise the majority of the Company's revenues.

**Geographic information:** The Company operates in the Americas (primarily in the United States of America), Europe and Asia. Revenue attribution for purposes of preparing geographic data is principally based upon the marketplace where the financial product is traded, which, as a result of regulatory jurisdiction constraints in most

circumstances, is also representative of the location of the client generating the transaction resulting in commissionable revenue. The information that follows, in management's judgment, provides a reasonable representation of the activities of each region as of and for the periods indicated.

(In thousands)	Three Months Ended September 30,	
	2003	2002
Transaction revenues:		
Europe	\$ 7,324	\$ 6,841
Asia	436	695
Total Non-Americas	7,760	7,536
Americas	29,821	19,907
Total	<u>\$ 37,581</u>	<u>\$ 27,443</u>

(In thousands)	Nine Months Ended September 30,	
	2003	2002
Transaction revenues:		
Europe	\$ 21,214	\$ 18,402
Asia	1,638	2,037
Total Non-Americas	22,852	20,439
Americas	74,875	58,783
Total	<u>\$ 97,727</u>	<u>\$ 79,222</u>

(In thousands)	September 30,	
	2003	2002
Average long-lived assets:		
Europe	\$ 3,662	\$ 5,754
Asia	301	390
Total Non-Americas	3,963	6,144
Americas	23,337	17,065
Total	<u>\$ 27,300</u>	<u>\$ 23,209</u>

## ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The information in this report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are based upon current expectations that involve risks and uncertainties. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. For example, words such as "may," "will," "should," "estimates," "predicts," "potential," "continue," "strategy," "believes," "anticipates," "plans," "expects," "intends" and similar expressions are intended to identify forward-looking statements. Our actual results and the timing of certain events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause or contribute to such a discrepancy include, but are not limited to, the effect of the September 11 Events on our operations, including in particular the loss of hundreds of eSpeed, Cantor and TradeSpark employees, our limited operating history, the possibility of future losses and negative cash flow from operations, the effect of market conditions, including volume and volatility, and the current global recession on our business, our ability to enter into marketing and strategic alliances, to hire new personnel, to expand the use of our electronic system, to induce clients to use our marketplaces and services and to effectively manage any growth we achieve, and other factors that are discussed under "Risk Factors" in

our Annual Report on Form 10-K for the year ended December 31, 2002. The following discussion is qualified in its entirety by, and should be read in conjunction with, the more detailed information set forth in our financial statements and the notes thereto appearing elsewhere in this report.

## Overview

We were incorporated on June 3, 1999 as a Delaware corporation. Prior to our initial public offering, we were a wholly-owned subsidiary of, and we conducted our operations as a division of, Cantor Fitzgerald Securities, which in turn is a 99.5%-owned subsidiary of Cantor Fitzgerald, L.P. (collectively with its affiliates, "Cantor"). We commenced operations as a division of Cantor on March 10, 1999, the date the first fully electronic transaction using our eSpeed<sup>®</sup> system was executed. Cantor has been developing systems to promote fully electronic marketplaces since the early 1990s. Since January 1996, Cantor has used our eSpeed<sup>®</sup> system internally to conduct electronic trading.

Concurrent with our initial public offering in December 1999, Cantor contributed to us, and we acquired from Cantor, certain of our assets. These assets primarily consist of proprietary software, network distribution systems, technologies and other related contractual rights that comprise our eSpeed<sup>®</sup> system.

We operate interactive electronic marketplaces and license customized real-time software solutions to our clients. In general, we receive transaction fees based on a percentage of the face value of products traded through our system. Products may be traded on a fully electronic basis, electronically through a voice broker, or via open outcry with prices displayed on data screens. We receive different fees for these different system utilizations. Additionally, we receive revenues from licensing software and providing technology support.

We continue to pursue our strategy to expand our client base and expand the number and types of products that our clients can trade electronically on our system. Other than Cantor, no client of ours accounted for more than 10% of our revenues from our date of inception through September 30, 2003.

As a result of the terrorist attacks of September 11, 2001, our offices in the World Trade Center were destroyed and we lost 180 of our employees, including many members of our senior management (the "September 11 Events"). The loss of these assets and employees and the need to relocate our surviving employees have negatively impacted our business.

## Critical Accounting Policies

In addition to previously disclosed critical accounting policies (see "Critical Accounting Policies" in our Annual Report on Form 10-K for the year ended December 31, 2002), management has determined that the following accounting estimate met the related standards:

### *Income Taxes*

SFAS No. 109, *Accounting for Income Taxes*, establishes financial accounting and reporting standards for the effect of income taxes. The objectives of accounting for income taxes are to recognize the amount of

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taxes payable or refundable for the current year and deferred tax liabilities and assets for the future tax consequences of events that have been recognized in an entity's financial statements or tax returns. Judgment is required in assessing the future tax consequences of events that have been recognized in our financial statements or tax returns. Fluctuations in the actual outcome of these future tax consequences could materially impact our financial position or results of operations.

## Results of Operations

### **For the Three Months Ended September 30, 2003 Compared to Three Months Ended September 30, 2002**

### *Highlights*

Diluted earnings per share for the three months ended September 30, 2003 and 2002 were \$0.17 and \$0.14, respectively. During the three months ended September 30, 2003, we recorded an income tax provision of \$6.4 million, or approximately \$0.11 per diluted share, corresponding to a 38.9% consolidated effective tax rate. For the same period a year earlier, income taxes were minimal due to the benefit of our net operating loss



carryforwards.

For the three months ended September 30, 2003, transaction revenues with related parties amounted to \$37.6 million, an increase of 37% as compared to transaction revenues with related parties of \$27.4 million for the same period a year ago. Volumes transacted on our system per trading day increased approximately 28%. For the three months ended September 30, 2003, 86% of our transaction revenues were generated from fully electronic transactions.

## Revenues

(In thousands)	Three Months Ended September 30,	
	2003	2002
Transaction revenues with related parties		
Fully electronic transactions	\$32,300	\$22,783
Voice-assisted brokerage transactions	5,153	4,649
Screen-assisted open outcry transactions	128	11
Total transaction revenues with related parties	37,581	27,443
Software Solutions fees from related parties	3,821	3,423
Software Solutions and licensing fees from unrelated parties	2,321	1,333
Interest income	547	780
Total revenues	<u>\$44,270</u>	<u>\$32,979</u>

### Transaction revenues with related parties

For the three months ended September 30, 2003, we earned transaction revenues with related parties of \$37.6 million, an increase of 37% as compared to transaction revenues with related parties of \$27.4 million for the three months ended September 30, 2002. There were 64 trading days in both the three-month period ended September 30, 2003 and the same period a year ago. Transaction revenues per trading day increased by \$158,000, or 37%, from \$429,000 for the three months ended September 30, 2002 to \$587,000 for the three months ended September 30, 2003. Total volumes transacted on our system increased by \$2,752 billion (approximately \$2.7 trillion), or 28%, from \$9,683 billion (approximately 9.7 trillion) for the three months ended September 30, 2002 to \$12,435 billion (approximately \$12.4 trillion) for the three months ended September 30, 2003. Per trading day, volumes transacted on our system increased 28%. This increase resulted primarily from favorable market conditions in the United States of America, where market fluctuations drove increases in our product volumes and transactions counts, as well as continued adoption of our new software enhancements. For the three months ended September 30, 2003, 86% of our transaction revenues were generated from fully electronic transactions as compared to 83% for the same period a year ago.

Our revenues are currently highly dependent on transaction volume in the global financial product markets. Accordingly, among other things, equity market volatility, economic and political conditions in the United States of America and elsewhere in the world, concerns over inflation, institutional and consumer confidence levels, the availability of cash for investment by mutual funds and other wholesale and retail investors, fluctuating interest and exchange rates and legislative and regulatory changes and currency values may have an impact on our volume of transactions. In addition, a significant amount of our revenues is currently received in connection with our relationship with Cantor. Consequently, our revenues have been negatively affected by the effect of the September 11 Events on Cantor and may continue to be negatively affected in the future if Cantor's business continues to suffer due to the September 11 Events or otherwise.

### Software Solutions fees from related parties

Software Solutions fees from related parties for the three months ended September 30, 2003 were \$3.8 million. This compares with Software Solutions fees from related parties for the three months ended September 30, 2002 of \$3.4 million, an increase of 12%. This increase resulted from an increase in demand for our support services



from Cantor.

#### *Software Solutions and licensing fees from unrelated parties*

Certain of our clients provide online access to their customers through use of our electronic trading platform for which we receive fees. Such fees are deferred and recognized as revenues ratably over the term of the licensing agreement. We also receive software solutions fees from unrelated parties by charging our clients for additional connections to our system to help protect them from possible business interruptions.

Software Solutions and licensing fees from unrelated parties for the three months ended September 30, 2003 were \$2.3 million as compared to Software Solutions and licensing fees from unrelated parties of \$1.3 million for the three months ended September 30, 2002, a 77% increase, due primarily to licensing fees earned from IntercontinentalExchange for use of the Wagner Patent and licensing fees earned as part of the Wagner Patent Settlement Agreement.

#### *Interest income*

For the three months ended September 30, 2003, the blended weighted average interest rate on overnight reverse repurchase agreements and tax-free municipal bonds was 0.95% as compared to a 1.6% weighted average interest rate on overnight reverse repurchase agreements for the three months ended September 30, 2002. As a result of the decrease in the average interest rate, partially offset by an increase in average balances between periods, we generated interest income of \$547,000 for the three months ended September 30, 2003 as compared to \$780,000 for the three months ended September 30, 2002, a decrease of 30%.

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#### *Expenses*

(In thousands)	Three Months Ended September 30,	
	2003	2002
Compensation and employee benefits	\$ 9,790	\$ 9,113
Occupancy and equipment	8,191	6,338
Professional and consulting fees	953	1,149
Communications and client networks	1,715	1,465
Marketing	373	1,281
Administrative fees to related parties	2,579	2,292
Amortization of business partner and non-employee securities	648	541
Other	3,706	3,012
Total expenses	<u>\$27,955</u>	<u>\$25,191</u>

#### *Compensation and employee benefits*

At September 30, 2003, we had 334 employees, which was an increase from the 317 employees we had at September 30, 2002. However, prior to the September 11 Events, we had 492 employees. For the three months ended September 30, 2003, our compensation costs were \$9.8 million as compared to compensation costs of \$9.1 million for the three months ended September 30, 2002. This \$0.7 million increase, or 8%, resulted mainly from the additional headcount, partially offset by an increase in the percentage of time spent by certain employees on software application development. The costs associated with such development are capitalized and amortized over the associated application's estimated useful life of three years.

Substantially all of our employees are full-time employees located predominately in the New York metropolitan area and in London. Compensation costs include salaries, bonuses, payroll taxes and costs of employer-provided benefits for our employees. We expect that our future compensation costs will increase depending, in part, upon a variety of factors, including our incremental revenue growth.

#### *Occupancy and equipment*

Occupancy and equipment costs were \$8.2 million for the three months ended September 30, 2003, a \$1.9 million increase, or 30%, as compared to occupancy and equipment costs of \$6.3 million for the three months ended September 30, 2002. The increase was primarily caused by the build-out of our temporary corporate headquarters in New York City, where we moved in the second quarter of 2002.

Occupancy expenditures primarily consist of the rent and facilities costs of our offices in the New York metropolitan area and our offices in London and Tokyo. We moved into our temporary corporate headquarters in New York City during the second quarter of 2002. The lease for our temporary headquarters will expire in February 2004, and, at this time, management is evaluating various location alternatives. Starting in the fourth quarter of 2003, we expect to incur significant costs in relation to the replacement of fixed assets lost as a result of the September 11 Events when we build our permanent infrastructure and move into our new headquarters. We are entitled to up to approximately \$20.0 million of insurance proceeds in settlement for property damage as replacement assets are purchased in the future.

#### *Professional and consulting fees*

Professional and consulting fees were \$1.0 million for the three months ended September 30, 2003 as compared to \$1.1 million for the three months ended September 30, 2002, a decrease of 9%, primarily due to decreased reliance on consultants.

#### *Communications and client networks*

Communications costs were \$1.7 million for the three months ended September 30, 2003 as compared to \$1.5 million for the three months ended September 30, 2002, a \$0.2 million or 13% increase. Cost controls

resulted in reductions in communications rates and usage charges, which were offset by additional client network charges as we processed increased volumes of transactions and continued to add new clients.

Communications costs include the costs of local and wide area network infrastructure, the cost of establishing the network linking clients to us, data and telephone lines, data and telephone usage, and other related costs. We anticipate expenditures for communications and client networks will continue to increase in the near future as we continue to connect additional customers to our network.

#### *Marketing*

We incurred marketing expenses of \$0.4 million for the three months ended September 30, 2003 as compared to marketing expenses during the three months ended September 30, 2002 of \$1.3 million, a decrease of 69%, resulting from a planned reduction in marketing costs. Marketing expenses in the third quarter of 2002 were higher primarily as the result of the development of a major advertising campaign.

#### *Administrative fees to related parties*

Cantor provides various administrative services to us, including accounting, tax, legal and facilities management, for which we reimburse Cantor for the direct and indirect costs of providing such services. Administrative fees to related parties amounted to \$2.6 million for the three months ended September 30, 2003, a 13% increase over the \$2.3 million of such fees for the three months ended September 30, 2002.

Administrative fees to related parties are dependent upon both the costs incurred by Cantor and the portion of Cantor's administrative services that are utilized by us. Administrative fees to related parties are, therefore, partially correlated to our business growth. We do not expect a significant change in the level of future administrative fees to related parties in the fourth quarter of 2003.

#### *Amortization of business partner and non-employee securities*

We enter into strategic alliances with other industry participants in order to expand our business and to enter into new marketplaces. As part of these strategic alliances, we have issued warrants and convertible preferred stock. In addition, we have granted stock options to certain non-employees. These securities do not require cash outlays and do not represent a use of our assets. The expense related to these issuances is based on the value of the securities being issued and the structure of the transaction. Generally, this expense is amortized over the term of the related agreement.

Charges in relation to the amortization of such securities were approximately \$0.6 million for the three months ended September 30, 2003 as compared to \$0.5 million for the three months ended September 30, 2002. This \$0.1 million increase resulted primarily from a full quarter of amortization in the 2003 period on warrants that were issued under an agreement executed with a business partner in August 2002. We believe period-to-period comparisons are not meaningful, as these transactions do not recur on a regular basis. Note 5 of our condensed consolidated financial statements in this Report on Form 10-Q contains further details regarding the amortization of business partner and non-employee securities.

#### *Other expenses*

Other expenses consist primarily of amortization of intangible assets, business-related insurance expense, recruitment fees, travel, and promotional and entertainment expenditures. For the three months ended September 30, 2003, other expenses were \$3.7 million, an increase of 23% as compared to other expenses of \$3.0 million for the three months ended September 30, 2002, principally due to increases in business-related insurance costs and an increase in the amortization of intangible assets as we continue to devote significant resources to the establishment, perfection and protection of our intellectual property portfolio. Other expenses are expected to increase primarily due to an increase in the amortization of capitalized fees associated with the establishment, perfection and defense of our patents.

#### *Income Taxes*

During the three months ended September 30, 2003, we recorded an income tax provision of \$6.4 million corresponding to a 38.9% consolidated effective tax rate. During the same period a year earlier, income

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taxes were minimal due to the benefit of our net operating loss carryforwards. Our consolidated effective tax rate can vary from period to period depending on, among other factors, the geographic and business mix of our earnings.

### **Results of Operations**

#### **For the Nine Months Ended September 30, 2003 Compared to Nine Months Ended September 30, 2002**

##### *Highlights*

Diluted earnings per share decreased \$0.11 from \$0.59 to \$0.48. During the nine months ended September 30, 2002, we recognized a \$12.8 million gain, or approximately \$0.23 per diluted share, relating to business interruption insurance proceeds following the September 11 Events. During the nine months ended September 30, 2003, we recorded an income tax provision of \$11.7 million, or approximately \$0.20 per diluted share, corresponding to a 39.4% consolidated effective tax rate adjusted to reflect certain benefit from net operating loss carryforwards. For the same period a year earlier, income taxes were minimal due to the benefit of our net operating loss carryforwards.

For the nine months ended September 30, 2003, transaction revenues with related parties amounted to \$97.7 million, an increase of 23% as compared to transaction revenues with related parties of \$79.2 million for the same period a year ago. Volumes transacted on our system per trading day increased 25%. For the nine months ended September 30, 2003, 84% of our transaction revenues were generated from fully electronic transactions.

##### *Revenues*

(In thousands)	Nine Months Ended September 30,	
	2003	2002
Transaction revenues with related parties		
Fully electronic transactions	\$ 82,348	\$ 65,609
Voice-assisted brokerage transactions	14,959	13,479
Screen-assisted open outcry transactions	420	134

Total transaction revenues with related parties	97,727	79,222
Software Solutions fees from related parties	11,351	9,747
Software Solutions and licensing fees from unrelated parties	6,662	2,437
Business interruption insurance proceeds from parent	—	12,833
Interest income	1,652	2,222
Total revenues	<u>\$117,392</u>	<u>\$106,461</u>

#### *Transaction revenues with related parties*

For the nine months ended September 30, 2003, we earned transaction revenues with related parties of \$97.7 million, an increase of 23% as compared to transaction revenues with related parties of \$79.2 million for the nine months ended September 30, 2002. There were 188 trading days in both the nine-month period ended September 30, 2003 and the same period a year ago. Transaction revenues per trading day increased by \$99,000, or 24%, from \$421,000 for the nine months ended September 30, 2002 to \$520,000 for the nine months ended September 30, 2003. Volumes transacted on our system increased by \$6,483 billion (approximately \$6.5 trillion), or 25%, from \$25,765 billion (approximately \$25.8 trillion) for the nine months ended September 30, 2002 to \$32,248 billion (approximately \$32.2 trillion) for the nine months ended September 30, 2003. This increase resulted primarily from favorable market conditions in the United States of America and in Europe, where market fluctuations drove increases in our product volumes and transactions counts, as well as continued adoption of our new software enhancements. For the nine months ended September 30, 2003, 84% of our transaction revenues were generated from fully electronic transactions as compared to 83% for the same period a year ago.

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#### *Software Solutions fees from related parties*

Software Solutions fees from related parties for the nine months ended September 30, 2003 were \$11.4 million. This compares with Software Solutions fees from related parties for the nine months ended September 30, 2002 of \$9.7 million, an increase of 18%. This increase resulted from an increase in demand for our support services from Cantor.

#### *Software Solutions and licensing fees from unrelated parties*

Software Solutions and licensing fees from unrelated parties for the nine months ended September 30, 2003 were \$6.7 million as compared to Software Solutions and licensing fees from unrelated parties of \$2.4 million for the nine months ended September 30, 2002, a three-fold increase, due primarily to licensing fees earned from IntercontinentalExchange for use of the Wagner Patent and licensing fees earned as part of the Wagner Patent Settlement Agreement.

#### *Business interruption insurance proceeds from parent*

During the nine months ended September 30, 2002, we recognized \$12.8 million as our portion of the \$40.0 million business interruption insurance recovery received by Cantor following the September 11 Events. Such amount was received in August 2002. There was no such revenue in the 2003 period.

#### *Interest income*

For the nine months ended September 30, 2003, the blended weighted average interest rate on overnight reverse repurchase agreements and tax-free municipal bonds was 1.0% as compared to a 1.6% weighted average interest rate on overnight reverse repurchase agreements for the nine months ended September 30, 2002. As a result of the decrease in the average interest rate, partially offset by an increase in average balances between periods, we generated interest income of \$1.7 million for the three months ended September 30, 2003 as compared to \$2.2 million for the three months ended September 30, 2002, a decrease of 23%.

#### *Expenses*

(In thousands)	2003	2002
Compensation and employee benefits	\$27,873	\$27,748
Occupancy and equipment	22,939	18,048
Professional and consulting fees	2,927	4,264
Communications and client networks	5,024	4,516
Marketing	1,115	4,515
Administrative fees to related parties	7,747	6,579
Amortization of business partner and non-employee securities	1,715	1,354
Other	8,855	5,873
Total expenses	<u>\$78,195</u>	<u>\$72,897</u>

#### *Compensation and employee benefits*

At September 30, 2003, we had 334 employees, which was an increase from the 317 employees we had at September 30, 2002. However, prior to the September 11 Events, we had 492 employees. For the nine months ended September 30, 2003, our compensation costs were \$27.9 million as compared to compensation costs of \$27.7 million for the six months ended September 30, 2002. This \$0.2 million decrease, or 1%, in compensation costs resulted mainly from the additional headcount, more than offset by an increase in the percentage of time spent by certain employees on software application development. The costs associated with such development are capitalized and amortized over the associated application's estimated useful life of three years.

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#### *Occupancy and equipment*

Occupancy and equipment costs were \$22.9 million for the nine months ended September 30, 2003, a \$4.9 million increase, or 27%, as compared to occupancy and equipment costs of \$18.0 million for the nine months ended September 30, 2002. The increase was primarily caused by the occupancy and build-out of our temporary corporate headquarters in New York City, where we moved in the second quarter of 2002.

#### *Professional and consulting fees*

Professional and consulting fees were \$2.9 million for the nine months ended September 30, 2003 as compared to \$4.3 million for the nine months ended September 30, 2002, a decrease of 33%, primarily due to a decrease in legal and contract employee personnel costs.

#### *Communications and client networks*

Communications costs were \$5.0 million for the nine months ended September 30, 2003 as compared to \$4.5 million for the nine months ended September 30, 2002, a \$0.5 million or 11% increase. Cost controls resulted in reductions in communications rates and usage charges, which were more than offset by additional client networks charges as we processed increased volumes of transactions and continued to add new clients.

#### *Marketing*

We incurred marketing expenses of \$1.1 million for the nine months ended September 30, 2003 as compared to marketing expenses during the nine months ended September 30, 2002 of \$4.5 million, a \$3.4 million decrease, resulting from a planned reduction in marketing costs. Marketing expenses in the first nine months of 2002 were higher primarily as the result of the development of a major advertising campaign.

#### *Administrative fees to related parties*

Administrative fees to related parties amounted to \$7.7 million for the nine months ended September 30, 2003, a 17% increase over the \$6.6 million of such fees for the nine months ended September 30, 2002.

Administrative fees to related parties are dependent upon both the costs incurred by Cantor and the portion of Cantor's administrative services that are utilized by us. Administrative fees to related parties are therefore partially correlated to our business growth.

### *Amortization of business partner and non-employee securities*

Charges in relation to the amortization of such securities were \$1.7 million for the nine months ended September 30, 2003, an increase of 21% as compared to charges of \$1.4 million for the nine months ended September 30, 2002. This increase resulted primarily from the amortization of the value of warrants issued under an agreement executed with a business partner in August 2002, offset by the termination of another warrant agreement in July 2003, for which amortization was recorded in the 2002 period. We believe period-to-period comparisons are not meaningful, as these transactions do not recur on a regular basis. Note 5 of our condensed consolidated financial statements in this Report on Form 10-Q contains further details regarding the amortization of business partner and non-employee securities.

### *Other expenses*

For the nine months ended September 30, 2003, other expenses were \$8.9 million, an increase of 51% as compared to other expenses of \$5.9 million for the six months ended September 30, 2002, principally due to increases in business-related insurance costs and an increase in the amortization of intangible assets as we continue to devote significant resources to the establishment, perfection and protection of our intellectual property portfolio.

### **Income Taxes**

During the nine months ended September 30, 2003, we recorded an income tax provision of \$11.7 million corresponding to a 39.4% effective tax rate adjusted to reflect our recognition of the benefit from net

operating loss carryforwards in the first quarter of 2003. During the same period a year earlier, income taxes were minimal due to the benefit of our net operating loss carryforwards. Our consolidated effective tax rate can vary from period to period depending on, among other factors, the geographic and business mix of our earnings.

### **Liquidity and Capital Resources**

At September 30, 2003, we had cash and cash equivalents of \$217.0 million, an increase of \$29.0 million as compared to December 31, 2002. During the nine months ended September 30, 2003, we provided cash of \$43.8 million from our operating activities, consisting of net income of \$27.5 million and working capital management of \$16.3 million. We also used net cash of \$15.0 million resulting from purchases of fixed assets and intangible assets, capitalization of software development costs, patent registration and defense costs, partially offset by proceeds from fixed asset sales. In addition, we used \$1.9 million to repurchase shares of our Class A common stock and realized \$6.1 million from exercises of employee stock options, \$4.1 million of which was receivable at September 30, 2003 and was received in the subsequent month.

Our operating cash flows consist of transaction revenues with related parties and Software Solutions fees from related and unrelated parties, various fees paid to or costs reimbursed to Cantor, other costs paid directly by us and interest income. In its capacity as a fulfillment service provider, Cantor processes and settles transactions and, as such, collects and pays the funds necessary to clear transactions with the counterparty. In doing so, Cantor receives our portion of the transaction fee and, in accordance with the Joint Services Agreement, remits the amount owed to us. In addition, we have entered into similar services agreements with TradeSpark, Freedom, MPLLC and CO2e. Under the Administrative Services Agreement, the Amended and Restated Joint Services Agreement and the services agreements with TradeSpark, Freedom, MPLLC and CO2e, any net receivable or payable is settled at the discretion of the parties.

As of September 30, 2003, we had repurchased 186,399 shares of our Class A common stock for a total of \$2.1 million under our repurchase plan. Our Board of Directors has authorized the repurchase of up to an additional \$40.0 million of our outstanding Class A common stock.

We anticipate that we will experience an increase in our capital expenditures and lease commitments consistent with our anticipated growth in operations, infrastructure, personnel and our anticipated move into new headquarters. Our property and casualty insurance coverage may mitigate our capital expenditures for the near term. We currently anticipate that we will continue to experience growth in our operating expenses for the foreseeable future and that our operating expenses will be a material use of our cash resources.



Under the current operating structure, our cash flows from operations and our existing cash resources should be sufficient to fund our current working capital and current capital expenditure requirements for at least the next 12 months. However, we believe that there are a significant number of capital intensive opportunities for us to maximize our growth and strategic position, including, among other things, strategic alliances and joint ventures potentially involving all types and combinations of equity, debt, acquisition, recapitalization and reorganization alternatives. We are continually considering such options, including the possibility of additional repurchases of our Class A common stock, and their effect on our liquidity and capital resources.

### **Recent Accounting Pronouncements**

In January 2003, the Financial Accounting Standards Board (the "FASB") issued Interpretation No. 46, *Consolidation of Variable Interest Entities*. Interpretation No. 46 requires the identification of variable interest entities and the assessment of interests in a variable interest entity to decide whether to consolidate that entity. Variable interest entities are identified by reviewing our equity investments at risk, our ability to make decisions about an entity's activities and the obligation to absorb an entity's losses or right to receive expected residual results. In October 2003, the FASB clarified and modified certain of the provisions of Interpretation No. 46. The proposed clarifications and modifications would apply in financial statements for the first period ending after December 15, 2003. We do not expect the adoption of Interpretation No. 46 on December 31, 2003 to have a material effect on our results of operations, financial position or cash flows.

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In May 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*, which establishes standards on the classification and measurement of financial instruments with characteristics of both liabilities and equity. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003 and otherwise is effective for the first interim period beginning after June 15, 2003. The adoption of SFAS No. 150 on July 1, 2003 did not have a material effect on our results of operations, financial position or cash flows.

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### **ITEM 3. Quantitative and Qualitative Disclosures about Market Risk**

At September 30, 2003, we had invested \$150.1 million of our cash in securities purchased under reverse repurchase agreements, which are fully collateralized by U.S. Government securities held in a custodial account at JP Morgan Chase. These reverse repurchase agreements have an overnight maturity and, as such, are highly liquid. Additionally, at September 30, 2003, we had invested \$50.0 million in a tax-free municipal bond fund held at one-week durations. This fund solely invests in the highest rated short-term municipal fixed income products.

We generally do not use derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions. Accordingly, we believe that we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive instruments. Our policy is to invest our cash in a manner that provides us with the appropriate level of liquidity.

### **ITEM 4. Controls and Procedures**

#### **(a) Evaluation of Disclosure Controls and Procedures**

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures as of the end of the period covered by this report were designed and were functioning effectively to provide reasonable assurance that the information required to be disclosed by the Company in reports filed under the Securities Exchange Act of 1934 is recorded,

processed, summarized and reported within the time periods specified in the SEC's rules and forms. The Company believes that a controls system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the controls system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

(b) Change in Internal Control over Financial Reporting

No change in the Company's internal control over financial reporting occurred during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. — OTHER INFORMATION

ITEM 1. Legal Proceedings

On June 30, 2003, we, together with Cantor Fitzgerald, L.P. and CFPB, L.L.C., filed a patent infringement suit against BrokerTec USA, LLC, BrokerTec Global, LLC, its parent ICAP, PLC, Garban, LLC, its technology provider OM Technology and its parent company, OM AB (collectively, "BrokerTec") in the United States District Court for the District of Delaware (the "Court"). The suit centers on BrokerTec's infringement of U.S. Patent No. 6,560,580 issued on May 6, 2003, which expires in December 2016, with respect to which we are the exclusive licensee. The patent protects some of our proprietary systems and methods of electronic trading. The parties have asked the Court, among other things, to preliminarily enjoin BrokerTec from continuing its infringement during the pendency of the lawsuit, for a permanent injunction and for damages. The parties are engaged in discovery. A preliminary injunction hearing was held on October 30, 2003. The parties are to submit to the Court findings of fact and conclusions of law on the preliminary injunction issue by December 4, 2003 and will thereafter await the Court's decision. A trial on the merits is scheduled for February 2005.

ITEM 2. Changes in Securities and Use of Proceeds

The effective date of our registration statement (Registration No. 333-87475) filed on Form S-1 relating to our initial public offering of Class A common stock was December 9, 1999. In our initial public offering, we sold 7,000,000 shares of Class A common stock at a price of \$22.00 per share and Cantor Fitzgerald

Securities, the selling stockholder, sold 3,350,000 shares of Class A common stock at a price of \$22.00 per share. Our initial public offering was managed on behalf of the underwriters by Warburg Dillon Read LLC, Hambrecht & Quist, Thomas Weisel Partners LLC and Cantor Fitzgerald & Co. The offering commenced on December 10, 1999 and closed on December 15, 1999. Proceeds to us from our initial public offering, after deduction of the underwriting discounts and commissions of approximately \$10.0 million and offering costs of \$4.4 million, totaled approximately \$139.6 million. Of the \$139.6 million raised, approximately \$8.9 million has been used to fund investments in various entities, approximately \$73.8 million has been used to acquire fixed assets and to pay for the development of capitalized software, approximately \$26.3 million has been used to purchase intangible assets and pay for the defense of patents, \$2.1 million has been used to repurchase shares of Class A common stock, and approximately \$2.0 million has been used for other working capital purposes. The remaining \$26.5 million has been invested in reverse repurchase agreements.

Of the amount of proceeds spent through September 30, 2003, approximately \$34.9 million has been paid to Cantor under the Administrative Services Agreement between Cantor and us.

ITEM 4. Submission of Matters to a Vote of Security Holders

On October 22, 2003, we held our annual meeting of stockholders. At the meeting, the following directors were elected by the stockholders to hold office until the next annual meeting of stockholders or until their successors have been duly elected and qualified: Howard W. Lutnick, Lee M. Amaitis, Joseph C. Noviello, Stephen M. Merkel, John H. Dalton, William J. Moran, Albert M. Weis, and Henry Morris.

The votes with respect to the election of directors were cast in the following manner:



	<u>(Number of Votes)</u>	
Howard W. Lutnick	268,830,061	10,867,921
Lee M. Amaitis	267,734,369	11,963,613
Joseph C. Noviello	269,782,476	9,915,506
Stephen M. Merkel	267,668,436	12,029,546
John H. Dalton	277,280,145	2,417,837
William J. Moran	277,280,145	2,417,837
Albert M. Weis	277,280,145	2,417,837
Henry Morris	277,940,406	1,757,576

At the meeting, stockholders approved our 2003 Incentive Bonus Compensation Plan and votes were cast in the following manner:

	<u>Number of Votes</u>
For	273,993,156
Against	1,433,108
Abstain	93,324
Broker non-votes	4,178,394

At the meeting, stockholders approved our Amended and Restated 1999 Long-Term Incentive Plan and votes were cast in the following manner:

	<u>Number of Votes</u>
For	260,119,137
Against	15,309,459
Abstain	90,992
Broker non-votes	4,178,394

## ITEM 5. Other Information

Our Audit Committee approved all of the non-audit services performed by Deloitte & Touche LLP, our independent auditors, during the period covered by this Report on Form 10-Q.

## ITEM 6. Exhibits and Reports on Form 8-K

(a) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.27	Amended and Restated Warrant Agreement, dated as of October 23, 2003, between eSpeed, Inc. and UBS USA Inc.
10.28	eSpeed 2003 Incentive Bonus Compensation Plan, dated as of October 22, 2003
10.29	Amended and Restated eSpeed, Inc. 1999 Long Term Incentive Plan, dated as of October 22, 2003
31.1	Certification by the Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification by the Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

## (b) Reports on Form 8-K.

We filed a Current Report on Form 8-K on August 12, 2003 under Item 7. "Financial Statements and Exhibits" and "Item 12. Results of Operations and Financial Condition" of Form 8-K, in which we announced our preliminary operating statistics for the quarter ended June 30, 2003.

We filed a Current Report on Form 8-K on November 13, 2003 under Item 7. "Financial Statements and Exhibits" and "Item 12. Results of Operations and Financial Condition" of Form 8-K, in which we announced our preliminary operating statistics for the quarter ended September 30, 2003.

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**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.

eSpeed, Inc.  
(Registrant)

/s/ Howard W. Lutnick



Howard W. Lutnick  
Chairman, Chief Executive Officer and President

/s/ Jeffrey M. Chertoff



Jeffrey M. Chertoff  
Senior Vice President and Chief Financial Officer

Date: November 13, 2003

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
10.27	Amended and Restated Warrant Agreement, dated as of October 23, 2003, between eSpeed, Inc.

and UBS USA Inc.

- 10.28 eSpeed 2003 Incentive Bonus Compensation Plan, dated as of October 22, 2003
- 10.29 Amended and Restated eSpeed, Inc. 1999 Long Term Incentive Plan, dated as of October 22, 2003
- 31.1 Certification by the Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification by the Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32 Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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EXHIBIT 10.27

NEITHER THIS WARRANT NOR THE SHARES OF CLASS A COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND NEITHER THIS WARRANT NOR SUCH SHARES MAY BE SOLD, ENCUMBERED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT, AND, IF AN EXEMPTION SHALL BE APPLICABLE, THE HOLDER SHALL HAVE DELIVERED AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Void after 5:00 p.m. Eastern Standard Time, on August 21, 2012.

WARRANT TO PURCHASE CLASS A COMMON STOCK

OF

eESPEED, INC.

FOR VALUE RECEIVED, eSPEED, INC. (the "Company"), a Delaware corporation, hereby certifies that UBS AMERICAS INC. (successor by merger to UBS USA Inc.) (the "Initial Holder"), or its permitted assigns (together with the Initial Holder, the "Holder"), is entitled to purchase from the Company, at any time or from time to time commencing on the Exercise Date set forth in Section 4 hereof (as the same may be accelerated pursuant to Section 4(b) hereof) and prior to 5:00 P.M., Eastern Standard Time, on August 21, 2012 a total of 225,000 fully paid and non-assessable shares of Class A Common Stock, par value \$.01 per share, of the Company for a purchase price of \$8.75 per share. (Hereinafter, (i) said Class A Common Stock, together with any other equity securities which may be issued by the Company with respect thereto or in substitution therefor, is referred to as the "Class A Stock," (ii) the shares of the Class A Stock purchasable hereunder are referred to as the "Warrant Shares," (iii) the aggregate purchase price payable hereunder for the Warrant Shares is referred to as the "Aggregate Warrant Price," (iv) the price payable hereunder for each of the Warrant Shares is referred to as the "Per Share Warrant Price," (v) this Warrant, and all warrants hereafter issued in exchange or substitution for this Warrant are referred to as the "Warrant" and (vi) the holder of this Warrant is referred to as the "Holder.") The number of Warrant Shares and the securities (if applicable) for which this Warrant is exercisable and the Per Share Warrant

Price are subject to adjustment as hereinafter provided under Section 3.

1. EXERCISE OF WARRANT. This Warrant may be exercised, in whole at any time or in part from time to time, commencing on the Exercise Date set forth in Section 4 hereof (as the same may be accelerated pursuant to Section 4(b) hereof) and prior to 5:00 P.M., Eastern Standard Time, on August 21, 2012 by the Holder of this Warrant by the surrender of this Warrant (with the subscription form at the end hereof duly executed) at the address set forth in Section 9(a) hereof, together with proper payment of the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part. The Aggregate Warrant Price or Per Share Warrant Price shall be paid in cash, via wire transfer to an account designated by the Company, or by certified or official bank check payable to the order of the Company.

If this Warrant is exercised in part, the Holder shall be entitled to receive a new Warrant covering the number of Warrant Shares in respect of which this Warrant has not been exercised and setting forth the proportionate part of the Aggregate Warrant Price applicable to such Warrant Shares. Upon the surrender of this Warrant, for an exercise of this Warrant in part, the Company will (a) issue and

deliver a certificate or certificates in the name of the Holder for the shares of the Class A Stock to which the Holder shall be entitled for such partial exercise, and (b) issue and deliver a Warrant in the name of the Holder for the remaining number of Warrant Shares in respect of which this Warrant has not been exercised, pursuant to the provisions of this Warrant.

If this Warrant is exercised in whole, upon surrender of this Warrant, the Company will issue a certificate or certificates in the name of the Holder for the shares of the Class A Stock to which the Holder shall be entitled, pursuant to the provisions of this Warrant.

No fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the fair market value of a share as reasonably determined by the Company's Board of Directors.

2. RESERVATION OF WARRANT SHARES. The Company agrees that, prior to the expiration of this Warrant, the Company from and as of the date hereof, will have authorized and in reserve, and will keep available, solely for issuance or delivery upon the exercise of this Warrant, the shares of the Class A Stock as from time to time shall be receivable upon the exercise of this Warrant.

3. ADJUSTMENTS FOR CORPORATE EVENTS. The number and kind of securities issuable upon the exercise of this Warrant, the Per Share Warrant Price and the number of Warrant Shares for which this Warrant may be exercised shall be subject to adjustment from time to time in accordance with the following provisions:

(a) Reorganization, Reclassification. In the event of a reorganization, share exchange, or reclassification, other than a change in par value, or from par value to no par value, or from no par value to par value or a transaction described in subsection (b) or (c) below, this Warrant shall, after such reorganization, share exchange or reclassification, be exercisable into the kind and number of shares of stock or other securities or other property of the Company which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such reorganization, share exchange, or reclassification. The provision of this Section 3(a) shall similarly apply to successive reorganizations and reclassifications.

(b) Merger, Consolidation or Sale of All or Substantially All Assets. In the event of a merger or consolidation to which the Company is a party or the

sale of all or substantially all of the assets of the Company, this Warrant shall, after such merger, consolidation or sale, be exercisable for the kind and number of shares of stock and/or other securities, cash or other property which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such merger, consolidation or sale. Any such merger, consolidation or sale shall require, as a condition thereto, that such other party to such merger, consolidation or sale agree in writing to assume this Warrant. The provision of this Section 3(b) shall similarly apply to successive mergers and transfers.

(c) Subdivision or Combination of Shares. In case outstanding shares of Class A Stock shall be subdivided, the Per Share Warrant Price shall be proportionately reduced as of the effective date of such subdivision, or as of the date a record is taken of the holders of Class A Stock for the purpose of so subdividing, whichever is earlier. In case outstanding shares of Class A Stock shall be combined, the Per Share Warrant Price shall be proportionately increased as of the effective date of such combination, or as of the date a record is taken of the holders of Class A Stock for the purpose of so combining, whichever is earlier.

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(d) Stock Dividends. In case shares of Class A Stock are issued as a dividend or other distribution on the Class A Stock, then the Per Share Warrant Price shall be adjusted, as of the date a record is taken of the holders of Class A Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the earliest of the date of such declaration, payment or other distribution), to that price determined by multiplying the Per Share Warrant Price in effect immediately prior to such declaration, payment or other distribution by a fraction (i) the numerator of which shall be the number of shares of Class A Stock outstanding immediately prior to the declaration or payment of such dividend or other distribution, and (ii) the denominator of which shall be the total number of shares of Class A Stock outstanding immediately after the declaration or payment of such dividend or other distribution. In the event that the Company shall declare or pay any dividend on the Class A Stock payable in any right to acquire Class A Stock for no consideration, then, for purposes of calculating such adjustment, the Company shall be deemed to have made a dividend payable in Class A Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Class A Stock.

(e) Adjustment of Aggregate Number of Warrant Shares Issuable. Upon each adjustment of the Per Share Warrant Price under the provisions of this Section 3, the aggregate number of Warrant Shares issuable upon exercise of this Warrant shall be adjusted to an amount determined by multiplying the Warrant Shares issuable prior to such adjustment by a fraction (x) the numerator of which is the Per Share Warrant Price in effect immediately prior to the event causing such adjustment (y) the denominator of which is the adjusted Per Share Warrant Price.

(f) Minimum Adjustment. No adjustment of the Per Share Warrant Price shall be made if the amount of any such adjustment would be an amount less than 1% of the Per Share Warrant Price then in effect, but any such amount shall be carried forward and an adjustment in respect thereof shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate an increase or decrease of 1% or more.

(g) Treasury Shares. The number of shares of Class A Stock at any time outstanding shall not include any shares thereof then directly or indirectly owned or held by or for the account of the Company.

(h) Notices. If at any time, (x) the Company shall declare a stock dividend (or any other distribution except for cash dividends) on its Class A Stock; (y) there shall be any capital reorganization or reclassification of the

Class A Stock, or any consolidation or merger to which the Company is a party, or any sale or transfer of all of substantially all of the assets of the Company; or (z) there shall be a voluntary or involuntary dissolution, liquidation or winding-up of the Company; then, in any one or more of such cases, the Company shall give written notice to the Holder, not less than 10 days before any record date or other date set for definitive action, or of the date on which such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the current Per Share Warrant Price and the kind and amount of Class A Stock and other securities and property deliverable upon exercise of this Warrant. Such notice shall also specify the date (to the extent known) as of which the holders of the Class A Stock of record shall be entitled to exchange their Class A Stock for securities or other property deliverable upon such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be. In addition, whenever the aggregate number of Warrant Shares issuable upon exercise of this Warrant and Per Share Warrant Price is adjusted as herein provided, the Chief Financial Officer of the Company shall compute the adjusted number of Warrant Shares and Per Share Warrant Price in accordance with the foregoing provisions and shall prepare a written certificate

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setting forth such adjusted number of Warrant Shares and Per Share Warrant Price, and such written instrument shall promptly be delivered to the recordholder of this Warrant.

4. EXERCISE OF WARRANT.

(a) Exercise Date. This Warrant shall be vested immediately and shall be exercisable as to all Warrant Shares commencing May 21, 2011 (the "Exercise Date"), subject to acceleration as set forth in subsection (b) below.

(b) Acceleration of Exercisability. This Warrant shall become exercisable as to (i) 50,000 of the Warrant Shares on October 1, 2003 and (ii) the remaining 175,000 Warrant Shares, in seven lots of 25,000 Warrant Shares each, if the Price Feed Condition (as defined in paragraph (x) below), is satisfied for each of the First Commitment Period through the Seventh Commitment Period (as defined in paragraph (y) below). Satisfaction of the Price Feed Condition shall be evidenced by a Determination pursuant to paragraph (x) below. For the avoidance of doubt, it is understood that each Commitment Period is independent and the failure to satisfy the Price Feed Condition for one or more Commitment Periods shall not preclude satisfaction of the Price Feed Condition and acceleration of the related Warrant Shares in any other Commitment Period.

(x) Definition of Price Feed Condition. A "Price Feed Condition" shall be deemed satisfied if, during the applicable Commitment Period (as defined in paragraph (y) below), the Subscriber shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required thereby to be performed, satisfied or complied with by the Bank (as defined in that certain Global Fixed Income Transaction Fee Agreement, dated 21 August 2002 between the Company and the Initial Holder, as amended by the Amendment to Global Fixed Income Transaction Fee Agreement dated as of September 18, 2003 (the "Amendment") (as so amended, the "Agreement")) in accordance with Annex II of the Agreement, as the same may be further amended from time to time. Within 21 days of the end of each Commitment Period, the Company shall notify the Holder in writing as to whether the Price Feed Condition has been satisfied for such Commitment Period, together with an explanation for such determination in reasonable detail (the "Determination"). If the Holder notifies the Company in writing, within fifteen (15) days of receipt of

the Determination of its objection to the Determination, then no determination shall be made until the Company and the Holder shall agree upon an appropriate determination or a court of competent jurisdiction shall make a determination by a non-appealable order.

(y) Definition of Commitment Period. A "Commitment Period" shall mean each of the following Quarterly periods (i) November 1, 2003 through January 31, 2004 (the "First Commitment Period"), (ii) February 1, 2004 through April 30, 2004 (the "Second Commitment Period"), (iii) May 1, 2004 through July 31, 2004 (the "Third Commitment Period"), (iv) August 1, 2004 through October 31, 2004 (the "Fourth Commitment Period"), (v) November 1, 2004 through January 31, 2005 (the "Fifth Commitment Period"), (vi) February 1, 2005 through April 30, 2005 (the "Sixth Commitment Period") and (vii) May 1, 2005 through July 31, 2005 (the "Seventh Commitment Period"). The failure to satisfy the Price Feed Condition for any Commitment Period shall result in the relevant Warrant Shares exercisability commencing on the Exercise Date, without acceleration.

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5. FULLY PAID STOCK; TAXES. The Company agrees that the shares of the Class A Stock represented by each and every certificate for Warrant Shares delivered on the proper exercise of this Warrant shall, at the time of such delivery, be validly issued and outstanding, fully paid and non-assessable, and not subject to preemptive rights, and the Company will take all such actions as may be necessary to assure that the par value or stated value, if any, per share of the Class A Stock is at all times equal to or less than the then Per Share Warrant Price. The Company further covenants and agrees that it will pay, when due and payable, any and all federal and state stamp, original issue or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor. The Holder covenants and agrees that it shall pay, when due and payable, all of its federal, state and local income or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor, if any.

6. TRANSFER

(a) Securities Laws. Neither this Warrant nor the Warrant Shares issuable upon the exercise hereof have been registered under the Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws and unless so registered may not be transferred, sold, pledged, hypothecated or otherwise disposed of unless an exemption from such registration is available. In the event the Holder desires to transfer this Warrant or any of the Warrant Shares issued in accordance with the terms hereof, the Holder must give the Company prior written notice of such proposed transfer including the name and address of the proposed transferee, unless such transfer is a transfer of the Warrant Shares pursuant to an effective registration statement. Such transfer may be made only either (i) upon publication by the Securities and Exchange Commission (the "Commission") of a ruling, interpretation, opinion or "no action letter" based upon facts presented to said Commission, or (ii) upon receipt by the Company of an opinion of counsel acceptable to the Company to the effect that the proposed transfer will not violate the provisions of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the rules and regulations promulgated under either such act, or to the effect that the Warrant or Warrant Shares to be sold or transferred have been registered under the Securities Act of 1933, as amended, and that there is in effect a current prospectus meeting the requirements of Subsection 10(a) of the Securities Act, which is being or will be delivered to the purchaser or transferee at or prior to the time of delivery of the certificates evidencing the Warrant or Warrant Shares to be sold or transferred.

(b) Swap or Hedging Transactions. Without the prior written consent of

the Company, the Holder may not enter into any swap or other hedging transaction relating to this Warrant, the Warrant Shares (prior to the issuance thereof), or any interest therein. In no event shall the restrictions contained in this paragraph apply to any Warrant Shares that have been issued.

(c) Transfer. Without the prior written consent of the Company, neither this Warrant, nor any interest herein, may be sold, assigned, transferred, pledged, encumbered or otherwise disposed of. Any sale, assignment, transfer, pledge, encumbrance or other disposition of this Warrant attempted contrary to the provisions of this Warrant, or any levy of execution, attachment or other process attempted upon the Warrant, shall be null and void and without effect. The provision of this Section 6(c) shall not be applicable to the Warrant Shares.

(d) Legend and Stop Transfer Orders. Unless the Warrant Shares have been registered under the Securities Act or eligible for resale pursuant to Rule 144(k) under the Securities Act, upon exercise of any part of the Warrant and the issuance of any of the Warrant Shares, the Company shall instruct its transfer agent to enter stop transfer orders with respect to such shares, and all certificates representing Warrant Shares shall bear on the face thereof substantially the following legend, insofar as is consistent with Delaware law:

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"The shares of Class A Common Stock represented by this certificate have not been registered under the Securities Act of 1933, as amended, and may not be sold, offered for sale, assigned, transferred or otherwise disposed of unless registered pursuant to the provisions of that Act or an opinion of counsel to the Company is obtained stating that such disposition is in compliance with an available exemption from such registration."

7. LOSS, ETC. OF WARRANT. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and of indemnity reasonably satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Warrant if mutilated, the Company shall execute and deliver to the Holder a new Warrant of like date, tenor and denomination.

8. WARRANT HOLDER NOT SHAREHOLDER. Except as otherwise provided herein, this Warrant does not confer upon the Holder any right to vote or to consent to or receive notice as a shareholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a shareholder, prior to the exercise hereof.

9. COMMUNICATION. No notice or other communication under this Warrant shall be effective unless the same is in writing and is sent by overnight courier, delivered in person or mailed by first-class mail, postage prepaid, addressed to:

(a) the Company at 135 East 57th Street, 3rd Floor, New York, New York 10022, Attention: General Counsel, or such other address as the Company has designated in writing to the Holder, or

(b) the Holder at 299 Park Avenue, New York, New York 10171, or such other address as the Holder has designated in writing to the Company.

10. HEADINGS. The headings of this Warrant have been inserted as a matter of convenience and shall not affect the construction hereof.

11. APPLICABLE LAW. This Warrant shall be governed by and construed in accordance with the law of the State of New York without giving effect to the principles of conflict of laws thereof.

12. COMPLIANCE WITH OTHER INSTRUMENTS. Company represents and warrants to



Holder that the execution and delivery of this Warrant are not, and the issuance of the Warrant Shares upon exercise of this Warrant in accordance with the terms hereof will not be, inconsistent with the Company's charter or bylaws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Company, and do not and will not conflict with or contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument of which the Company is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration or filing with or the taking of any action in respect of or by, any Federal, state or local government authority or agency or other person, except for the filing of notices pursuant to federal and state securities laws, which filings will be effected by the time required thereby.

13. REPRESENTATIONS AND WARRANTIES OF THE INITIAL HOLDER. The Initial Holder, by acceptance hereof, represents and warrants to the Company that:

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(a) Knowledge and Experience. The Initial Holder has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an unregistered, non-liquid investment such as an investment in the Company and has evaluated the merits and risks of such an investment. The Initial Holder understands that the offer and sale of the Warrant and the Warrant Shares have not been approved or disapproved by the Commission or any other governmental entity.

(b) No other Representations or Warranties. No representations or warranties have been made to the Initial Holder by the Company or any director, officer, employee, agent or affiliate of the Company, other than the representations of the Company set forth herein, and the decision of the Initial Holder to acquire this Warrant is based on the information contained herein and the Initial Holder's own independent investigation of the Company. The Initial Holder acknowledges and agrees that the Company may now, or in the future, be in negotiations with respect to, or enter into, arrangements, agreements or understandings relating to other business opportunities and that the Company does not have now, nor will it have at any time after execution of this Warrant, any obligation to provide the Initial Holder with any information, other than that which is contained in this Warrant and that which is disclosed in reports, schedules, forms, registration statements, proxy statements and other documents filed by the Company with the Commission.

(c) Ability to Withstand Loss of Investment. The Initial Holder understands that a total loss of the value of this Warrant is possible. The Initial Holder acknowledges that it is capable of bearing a complete loss of the value of this Warrant.

(d) No Public Solicitation. The Initial Holder acknowledges that neither the Company nor any person or entity acting on its behalf has offered to sell any of the Warrants or the Warrant Shares to the Initial Holder by means of any form of general solicitation or advertising, including without limitation (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media, or broadcast over television or radio, and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(e) Accredited Investor Status. The Initial Holder is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act.

(f) Acquiring for Investment Purposes. The Initial Holder is acquiring this Warrant solely for its own account, for investment purposes only, and not with a view towards their resale or distribution.

(g) No Brokers, Finders, etc. The Initial Holder has not employed any broker, financial advisor or finder, or incurred any liability for any brokerage

fees, commissions, finder's or other similar fees or expenses in connection with the transactions contemplated by this Warrant.

(h) No Action Taken to Invalidate Private Placement. The Initial Holder has not taken any action that would result in the offering of this Warrant and the Warrant Shares pursuant to this Warrant being treated as a public offering and not a valid private offering under the law.

14. MODIFICATION AND WAIVER. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the Company and the holder of this Warrant.

15. BINDING EFFECT ON SUCCESSORS. This Warrant shall be binding upon any entity succeeding the Company by merger, consolidation or acquisition of all or substantially all of the

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Company's assets, and all of the obligations of the Company relating to the Warrant Shares issuable upon the exercise of this Warrant shall survive the exercise and termination of this Warrant and all of the covenants and agreements of the Company shall inure to the benefit of the successors and permitted assigns of the holder hereof.

16. CANCELLATION OF EXISTING WARRANT. This Warrant supercedes and replaces that certain Amended and Restated Warrant to Purchase Class A Common Stock of eSpeed, Inc. in favor of the Initial Holder dated as of October 10, 2003, which the Holder exercised for 75,000 shares on October 20, 2003 and the parties agree is of no further force or effect and is hereby deemed cancelled.

IN WITNESS WHEREOF, the Company has caused this Amended and Restated Warrant to be signed by a duly authorized officer as of this 23rd day of October, 2003.

ESPEED, INC.

By: /s/ Howard W. Lutnick  
-----  
Name: Howard W. Lutnick  
Title: President

ACCEPTED AND AGREED to:

UBS AMERICAS INC. (SUCCESSOR BY MERGER  
TO UBS USA INC.)

By: /s/ James Petrie  
-----  
Name: James Petrie  
Title: Executive Director

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SUBSCRIPTION

The undersigned, \_\_\_\_\_, pursuant to

the provisions of the foregoing Warrant, hereby agrees to subscribe for the purchase of \_\_\_\_\_ shares of the Class A Common Stock of eSPEED, INC. covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated \_\_\_\_\_ Signature \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

ASSIGNMENT

FOR VALUE RECEIVED \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Warrant on the books of eSPEED, INC.

Dated \_\_\_\_\_ Signature \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

PARTIAL ASSIGNMENT

FOR VALUE RECEIVED \_\_\_\_\_ hereby assigns and transfers unto \_\_\_\_\_ the right to purchase \_\_\_\_\_ shares of the Class A Common Stock of eSPEED, INC. by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced hereby, and does irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer that part of said Warrant on the books of eSPEED, INC.

Dated \_\_\_\_\_ Signature \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

eSPEED, INC.

2003 INCENTIVE BONUS COMPENSATION PLAN

1. Purpose. The purpose of this 2003 Incentive Bonus Compensation Plan (the "Plan") of eSpeed, Inc. (the "Company") is (i) to retain key employees of the Company by providing them with the opportunity to earn bonus awards

that are based on the achievement of specified performance goals; and (ii) to structure such bonus opportunities in a way that will qualify the awards made as "performance-based" for purposes of Section 162(m) of the Code so that the Company will be entitled to a tax deduction for the payment of such incentive awards to such employees.

2. Definitions. As used in the Plan, the following terms shall have the meanings set forth below:

- (a) "Applicable Period" shall mean, with respect to any Performance Period, a period commencing on or before the first day of such Performance Period and ending no later than the earlier of (i) the 90th day of such Performance Period, or (ii) the date on which 25% of such Performance Period has been completed. Any action required under the Plan to be taken within the period specified in the preceding sentence may be taken at a later date if, but only if, the regulations under Section 162(m) of the Code are hereafter amended, or interpreted by the Internal Revenue Service, to permit such later date, in which case the term "Applicable Period" shall be deemed amended accordingly.
- (b) "Board" shall mean the Board of Directors of the Company as constituted from time to time.
- (c) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- (d) "Committee" shall mean the committee for the Board consisting solely of two or more non-employee directors (each of whom is intended to qualify as an "outside director" within the meaning of Section 162(m) of the Code) designated by the Board as the committee responsible for administering and interpreting the Plan.
- (e) "Company" shall mean eSpeed, Inc., a corporation organized under the laws of the State of Delaware, and any successor thereto.
- (f) "Individual Award Opportunity" shall mean the performance-based award opportunity for a given Participant for a given Performance Period as specified by the Committee within the Applicable Period, which may be expressed in dollars or on a formula basis that is consistent with the provisions of the Plan.
- (g) "Negative Discretion" shall mean the discretion authorized by the Plan to be applied by the Committee to eliminate, or reduce the size of, a bonus award otherwise payable to a Participant for a given Performance Period, provided that the exercise of such discretion would not cause the award to fail to qualify as "performance-based compensation" under Section 162(m) of the Code. By way of example and not by way of limitation, in no event shall any discretionary authority granted to the Committee by the Plan including, but not limited to, Negative Discretion, be used (i) to provide for an award under the Plan in excess of the amount payable based on actual performance versus the applicable performance goals for the Performance Period in question, or in excess of the maximum individual award limit specified in Section 6(b) below, or (ii) to increase the amount otherwise payable to any other Participant.
- (h) "Participant" shall mean, for any given Performance Period with respect to which the Plan is in effect, each key employee of the Company (including any subsidiary, operating unit or division) and who is designated as a Participant in the Plan for such Performance Period by the Committee pursuant to Section 4 below.
- (i) "Performance Period" shall mean any period commencing on or after

January 1, 2003 for which performance goals are set under Section 5 and during which performance shall be measured to determine whether such goals have been met for purposes of determining whether a Participant is entitled to payment of a bonus under the Plan. A Performance Period may be coincident with one or more fiscal years of the Company, or a portion thereof.

- (j) "Plan" or "Section 162(m) Plan" shall mean the eSpeed, Inc. 2003 Incentive Bonus Compensation Plan as set forth in this document, and as amended from time to time.

### 3. Administration.

- (a) General. The Plan shall be administered by the Committee. Subject to the terms of the Plan and applicable law (including, but not limited to, Section 162(m) of the Code), and in addition to any other express powers and authorizations conferred on the Committee by the Plan, the Committee shall have the full power and authority, after taking into account, in its sole and absolute discretion, the recommendations of the Company's senior management:
  - (i) to designate (within the Applicable Period) the Participants in the Plan and the individual award opportunities and/or, if applicable, bonus pool award opportunities for such Performance Period;
  - (ii) to designate (within the Applicable Period) and thereafter administer the performance goals and other award terms and conditions that are to apply under the Plan for such Performance Period;
  - (iii) to determine and certify the bonus amounts earned for any given Performance Period, based on actual performance versus the performance goals for such Performance Period, after making any permitted Negative Discretion adjustments;
  - (iv) to decide whether, under what circumstances and subject to what terms bonus payouts are to be paid on a deferred basis, including automatic deferrals at the Committee's election as well as elective deferrals at the election of Participants;
  - (v) to adopt, revise, suspend, waive or repeal, when and as appropriate, in its sole and absolute discretion, such administrative rules, guidelines and procedures for the Plan as it deems necessary or advisable to implement the terms and conditions of the Plan;
  - (vi) to interpret and administer the terms and provisions of the Plan and any award issued under the Plan (including reconciling any inconsistencies, correcting any defaults and addressing any omissions in the Plan or any related instrument or agreement); and
  - (vii) to otherwise supervise the administration of the Plan.

It is intended that all amounts payable to Participants under the Plan who are "covered employees" within the meaning of Treas. Reg. Sec. 1.162-27(c)(2) (as amended from time to time) shall constitute "qualified performance-based compensation" within the meaning of Section 162(m) of the Code and Treas. Reg. Sec. 1.162-27(e) (as amended from time to time), and, to the maximum extent possible, the Plan and the terms of any awards under the Plan shall be so interpreted and construed.

- (b) Binding Nature of Committee Decisions. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations and other decisions made under or with respect to the Plan or any award under the Plan shall be within the sole and absolute discretion of the Committee, and shall be final, conclusive and binding on all persons, including the Company, any Participant, and any award beneficiary or other person having, or claiming, any rights under the Plan.
- (c) Other. No member of the Committee shall be liable for any action or determination (including, but limited to, any decision not to act) made in good faith with respect to the Plan or any award under the Plan. If a Committee member intended to qualify as an "outside director" under Section 162(m) of the Code does not in fact so qualify, the mere fact of such non-qualification shall not invalidate any award or other action made by the Committee under the Plan which otherwise was validly made under the Plan.

#### 4. Plan Participation.

- (a) Participant Designations By The Committee. For any given Performance Period, the Committee, in its sole and absolute discretion, shall, within the Applicable Period, designate those key employees of the Company (including its subsidiaries, operating units and divisions) who shall be Participants in the Plan for such Performance Period.
- (b) Impact Of Plan Participation. An individual who is a designated Participant in the Section 162(m) Plan for any given Performance Period shall not also participate in the Company's general bonus plans for such Performance Period (to the extent such plans exist), if such participation would cause any award hereunder to fail to qualify as "performance-based" under Section 162(m).

#### 5. Performance Goals.

- (a) Setting Of Performance Goals. For a given Performance Period, the Committee shall, within the Applicable Period, set one or more objective performance goals for each Participant and/or each group of Participants and/or each bonus pool (if any). Such goals shall be based exclusively on one or more of the following corporate-wide or subsidiary, division or operating unit financial measures:
  - (1) pre-tax or after-tax net income,
  - (2) pre-tax or after-tax operating income,
  - (3) gross revenue,
  - (4) profit margin,
  - (5) stock price,
  - (6) cash flow(s),
  - (7) market share,
  - (8) pre-tax or after-tax earnings per share,
  - (9) pre-tax or after-tax operating earnings per share,
  - (10) expenses,
  - (11) return on equity,
  - (12) strategic business criteria, consisting of one or more

objectives based on meeting specified revenue, market penetration, geographic business expansion goals, cost targets, and goals relating to acquisitions or divestitures,

or any combination thereof (in each case before or after such objective income and expense allocations or adjustments as the Committee may specify within the Applicable Period). Each such goal may be expressed on an absolute and/or relative basis, may be based on or otherwise employ comparisons based on current internal targets, the past performance of the Company (including the performance of one or more subsidiaries, divisions and/or operating units) and/or the past or current performance of other companies, and in the case of earnings-based measures, may use or employ comparisons relating to capital (including, but limited to, the cost of capital), shareholders' equity and/or shares outstanding, or to assets or net assets. In all cases, the performance goals shall be such that they satisfy any applicable requirements under Treas. Reg. Sec. 1.162-27(e)(2) (as amended from time to time) that the achievement of such goals be "substantially uncertain" at the time that they are established, and that the award opportunity be defined in such a way that a third party with knowledge of the relevant facts could determine whether and to what extent the performance goal has been met, and, subject to the Committee's right to apply Negative Discretion, the amount of the award payable as a result of such performance.

- (b) Impact Of Extraordinary Items Or Changes In Accounting. To the extent applicable, the measures used in setting performance goals set under the Plan for any given Performance Period shall be determined in accordance with GAAP and a manner consistent with the methods used in the Company's audited financial statements, without regard to (i) extraordinary items as determined by the Company's independent public accountants in accordance with GAAP, (ii) changes in accounting, unless, in each case, the Committee decides otherwise within the Applicable Period or (iii) non-recurring acquisition expenses and restructuring charges. Notwithstanding the foregoing, in calculating operating earnings or operating income (including on a per share basis), the Committee may, within the Applicable Period for a given Performance Period, provide

that such calculation shall be made on the same basis as reflected in a release of the Company's earnings for a previously completed period as specified by the Committee.

## 6. Bonus Pools, Award Opportunities And Awards.

- (a) Setting Of Individual Award Opportunities. At the time that annual performance goals are set for Participants for a given Performance Period (within the Applicable Period), the Committee shall also establish each Individual Award Opportunity for such Performance Period, which shall be based on the achievement of stated target performance goals, and may be stated in dollars or on a formula basis (including, but not limited to, a designated share of a bonus pool or a multiple of Annual Base Salary), provided:
  - (i) that the designated shares of any bonus pool shall not exceed 100% of such pool; and
  - (ii) that the Committee, in all cases, shall have the sole and absolute discretion, based on such factors as it deems appropriate, to apply Negative Discretion to reduce (but not increase) the actual bonus awards that would otherwise actually be payable to any Participant on the basis of the achievement of the applicable performance goals.

- (b) Maximum Individual Bonus Award. Notwithstanding any other provision of this Plan, the maximum bonus payable under the Plan to any one individual in any one calendar year shall be \$5 million.
- (c) Bonus Payments. Subject to the following, bonus awards determined under the Plan for given Performance Period shall be paid to Participants in cash, or, shares of Company stock or other stock-based awards pursuant to the Company's Long-Term Incentive Plan, as soon as practicable following the end of the Performance Period to which they apply, provided:
  - (i) that no such payment shall be made unless and until the Committee, based on the Company's audited financial results for such Performance Period (as prepared and reviewed by the Company's independent public accountants), has certified (in the manner prescribed under applicable regulations) the extent to which the applicable performance goals for such Performance Period have been satisfied, and has made its decisions regarding the extent of any Negative Discretion adjustment of awards (to the extent permitted under the Plan);
  - (ii) that the Committee may specify that a portion of the actual bonus award for any given Performance Period shall be paid on a deferred basis, based on such award payment rules as the Committee may establish and announce for such Performance Period;
  - (iii) that the Committee may require (if established and announced within the Applicable Period), as a condition of bonus eligibility (and subject to such exceptions as the Committee may specify within the Applicable Period) that Participants for such Performance Period must still be employed as of end of such Performance Period and/or as of such later date as determined by the Committee; and
  - (iv) that the Committee may adopt such forfeiture, pro-ratio or other rules as it deems appropriate, in its sole and absolute discretion, regarding the impact on bonus award rights in the event of a Participant's termination of employment.

## 7. General Provisions.

- (a) Plan Amendment Or Termination. The Board may at any time amend or terminate the Plan, provided that (i) without the Participant's written consent, no such amendment or termination shall adversely affect the bonus rights (if any) of any already designated Participant for a given Performance Period once the Participant designations and performance goals for such Performance Period have been announced, (ii) the Board shall be authorized to make any amendments necessary to comply with applicable regulatory requirements (including, without limitation, Section 162(m) of the Code), and (iii) the Board shall submit any Plan amendment to the Company's stockholders for their approval if and to the extent such approval is required under Section 162(m) of the Code, or other applicable laws. Nothing herein shall be considered as preventing the Committee from making adjustments to the performance goals or to an Individual Award Opportunity to reflect unusual or non-recurring events, to the extent that such adjustment will not adversely affect the bonus award from qualifying as performance-based compensation under Section 162(m) of the Code.



- (b) Applicable Law. All issues arising under the Plan shall be governed by, and construed in accordance with, the laws of the State of New York, applied without regard to conflict of law principles.
- (c) Tax Withholding. The Company (and its subsidiaries) shall have right to make such provisions and take such action as it may deem necessary or appropriate for the withholding of any and all Federal, state and local taxes that the Company (or any of its subsidiaries) may be required to withhold.
- (d) No Employment Right Conferred. Participation in the Plan shall not confer on any Participant the right to remain employed by the Company or any of its subsidiaries, and the Company and its subsidiaries specifically reserve the right to terminate any Participant's employment at any time with or without cause or notice.
- (e) Impact of Plan Awards on Other Plans. Neither the adoption of the Plan nor the submission of the Plan to the Company's stockholders for their approval shall be construed as limiting the power of the Board or the Committee to adopt such other incentive arrangements as it may otherwise deem appropriate.

8. Effective Date.

The Plan shall be effective for Performance Periods commencing on and after January 1, 2003 and shall remain effective until terminated by the Board; provided, however, that the continued effectiveness of the Plan shall be subject to the approval of the Company's stockholders at such times and in such manner as may be required pursuant to Section 162(m).

EXHIBIT 10.29

eSPEED, INC.

1999 LONG TERM INCENTIVE PLAN

(INCLUDING AMENDMENTS THROUGH SEPTEMBER 17, 2003)

1. Purpose. The purpose of this 1999 Long-Term Incentive Plan (the "Plan") of eSpeed, Inc., a Delaware corporation (the "Company"), is to advance the interests of the Company and its stockholders by providing a means to attract, retain, motivate and reward directors, officers, employees and consultants of and service providers to the Company and its affiliates and to enable such persons to acquire or increase a proprietary interest in the Company, thereby promoting a closer identity of interests between such persons and the Company's stockholders.

2. Definitions. The definitions of awards under the Plan, including Options, SARs (including Limited SARs), Restricted Stock, Deferred Stock, Stock granted as a bonus or in lieu of other awards, Dividend Equivalents and Other Stock-Based Awards as are set forth in Section 6 of the Plan. Such awards, together with any other right or interest granted to a Participant under the Plan, are termed "Awards." For purposes of the Plan, the following additional terms shall be defined as set forth below.

- (a) "Award Agreement" means any written agreement, contract, notice or

other instrument or document evidencing an Award.

(b) "Beneficiary" shall mean the person, persons, trust or trusts which have been designated by a Participant in his or her most recent written beneficiary designation filed with the Committee to receive the benefits specified under the Plan upon such Participant's death or, if there is no designated Beneficiary or surviving designated Beneficiary, then the person, persons, trust or trusts entitled by will or the laws of descent and distribution to receive such benefits.

(c) "Board" means the Board of Directors of the Company.

(d) A "Change in Control" shall be deemed to have occurred if:

(i) the date of the acquisition by any "person" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act), excluding the Company, its Parent or any Subsidiary or any employee benefit plan sponsored by any of the foregoing, of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of shares of common stock of the Company representing 30% of either (x) the total number of the then outstanding shares of common stock, or (y) the total voting power with respect to the election of directors; or

(ii) the date the individuals who constitute the Board upon the completion of the Initial Public Offering (the "Incumbent Board") cease for any reason to constitute at least a majority of the members of the Board, provided that any individual becoming a director subsequent to the effective date of this Agreement whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than any individual whose nomination for election to Board membership was not endorsed by the Company's management prior to, or at the time of, such individual's initial nomination for election) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board; or

(iii) the consummation of a merger, consolidation, recapitalization, reorganization, sale or disposition of all or a substantial portion of the Company's assets, a reverse stock split of

outstanding voting securities, the issuance of shares of stock of the Company in connection with the acquisition of the stock or assets of another entity, provided, however, that a Change in Control shall not occur under this clause (iii) if consummation of the transaction would result in at least 70% of the total voting power represented by the voting securities of the Company (or, if not the Company, the entity that succeeds to all or substantially all of the Company's business) outstanding immediately after such transaction being beneficially owned (within the meaning of Rule 13d-3 promulgated pursuant to the Exchange Act) by at least 75% of the holders of outstanding voting securities of the Company immediately prior to the transaction, with the voting power of each such continuing holder relative to other such continuing holders not substantially altered in the transaction.

(e) "Code" means the Internal Revenue Code of 1986, as amended from time to time. References to any provision of the Code shall be deemed to include regulations thereunder and successor provisions and regulations thereto.

(f) "Committee" means the committee appointed by the Board to administer the Plan, or if no committee is appointed, the Board.

(g) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time. References to any provision of the Exchange Act shall be deemed to include rules thereunder and successor provisions and rules thereto.

(h) "Fair Market Value" means, with respect to Stock, Awards, or other property, the fair market value of such Stock, Awards, or other property determined by such methods or procedures as shall be established from time to time by the Committee, provided, however, that (i) if the Stock is listed on a national securities exchange or quoted in an interdealer quotation system, the Fair Market Value of such Stock on a given date shall be based upon the last sales price or, if unavailable, the average of the closing bid and asked prices per share of the Stock at the end of regular trading on such date (or, if there was no trading or quotation in the Stock on such date, on the next preceding date on which there was trading or quotation) as provided by one of such organizations, (ii) the "fair market value" of Stock on the date on which shares of Stock are first issued and sold pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission shall be the Initial Public Offering price of the shares so issued and sold, as set forth in the first final prospectus used in such offering and (iii) the "fair market value" of Stock prior to the date of the Initial Public Offering shall be as determined by the Board.

(i) "Initial Public Offering" shall mean an initial public offering of shares of Stock in a firm commitment underwriting registered with the Securities and Exchange Commission in compliance with the provisions of the 1933 Act.

(j) "ISO" means any Option intended to be and designated as an incentive stock option within the meaning of Section 422 of the Code.

(k) "Parent" means any "person" (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) that controls the Company, either directly or indirectly through one or more intermediaries.

(l) "Participant" means a person who, at a time when eligible under Section 5 hereof, has been granted an Award under the Plan.

(m) "Rule 16b-3" means Rule 16b-3, as from time to time in effect and applicable to the Plan and Participants, promulgated by the Securities and Exchange Commission under Section 16 of the Exchange Act.

(n) "Stock" means the Company's Class A Common Stock, and such other securities as may be substituted for Stock pursuant to Section 4.

(o) "Subsidiary" means each entity that is controlled by the Company or a Parent, either directly or indirectly through one or more intermediaries

### 3. Administration.

(a) Authority of the Committee. Except as otherwise provided below, the Plan shall be administered by the Committee. The Committee shall have full and final authority to take the following actions, in each case subject to and consistent with the provisions of the Plan:

(i) to select persons to whom Awards may be granted;

(ii) to determine the type or types of Awards to be granted to each such person;

(iii) to determine the number of Awards to be granted, the number of shares of Stock to which an Award will relate, the terms and conditions of any Award granted under the Plan (including, but not limited to, any exercise price, grant price or purchase price, any restriction or condition, any schedule for lapse of restrictions or conditions relating to transferability or forfeiture, exercisability or settlement of an Award, and waivers or accelerations thereof, performance conditions relating to an Award (including performance conditions relating to Awards not intended to be governed by Section 7(f) and waivers and modifications thereof), based

in each case on such considerations as the Committee shall determine), and all other matters to be determined in connection with an Award;

(iv) to determine whether, to what extent and under what circumstances an Award may be settled, or the exercise price of an Award may be paid, in cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(v) to determine whether, to what extent and under what circumstances cash, Stock, other Awards or other property payable with respect to an Award will be deferred either automatically, at the election of the Committee or at the election of the Participant;

(vi) to determine the restrictions, if any, to which Stock received upon exercise or settlement of an Award shall be subject (including lock-ups and other transfer restrictions), may condition the delivery of such Stock upon the execution by the Participant of any agreement providing for such restrictions;

(vii) to prescribe the form of each Award Agreement, which need not be identical for each Participant;

(viii) to adopt, amend, suspend, waive and rescind such rules and regulations and appoint such agents as the Committee may deem necessary or advisable to administer the Plan;

(ix) to correct any defect or supply any omission or reconcile any inconsistency in the Plan and to construe and interpret the Plan and any Award, rules and regulations, Award Agreement or other instrument hereunder; and

(x) to make all other decisions and determinations as may be required under the terms of the Plan or as the Committee may deem necessary or advisable for the administration of the Plan.

Other provisions of the Plan notwithstanding, the Board shall perform the functions of the Committee for purposes of granting awards to directors who serve on the Committee, and the Board may perform any function of the Committee under the Plan for any other purpose, including without limitation for the purpose of ensuring that transactions under the Plan by Participants who are then subject to Section 16 of the Exchange Act in respect of the Company are exempt under Rule 16b-3. In any case in which the Board

is performing a function of the Committee under the Plan, each reference to the Committee herein shall be deemed to refer to the Board, except where the context otherwise requires.

(b) Manner of Exercise of Committee Authority. Any action of the Committee with respect to the Plan shall be final, conclusive and binding on all persons, including the Company, its Parent and Subsidiaries, Participants, any person claiming any rights under the Plan from or through any Participant and stockholders, except to the extent the Committee may subsequently modify, or take further action not consistent with, its prior action. If not specified in the Plan, the time at which the Committee must or may make any determination shall be determined by the Committee, and any such determination may thereafter be modified by the Committee (subject to Section 8(e)). The express grant of any specific power to the Committee, and the taking of any action by the Committee, shall not be construed as limiting any power or authority of the Committee. Except as provided under Section 7(f), the Committee may delegate to officers or managers of the Company, its Parent or Subsidiaries the authority, subject to such terms as the Committee shall determine, to perform such functions as the Committee may determine, to the extent permitted under applicable law.

(c) Limitation of Liability; Indemnification. Each member of the Committee

shall be entitled to, in good faith, rely or act upon any report or other information furnished to him by any officer or other employee of the Company, its Parent or Subsidiaries, the Company's independent certified public accountants or any executive compensation consultant, legal counsel or other professional retained by the Company to assist in the administration of the Plan. No member of the Committee, or any officer or employee of the Company acting on behalf of the Committee, shall be personally liable for any action, determination or interpretation taken or made in good faith with respect to the Plan, and all members of the Committee and any officer or employee of the Company acting on its behalf shall, to the extent permitted by law, be fully indemnified and protected by the Company with respect to any such action, determination or interpretation.

#### 4. Stock Subject to Plan.

(a) Amount of Stock Reserved. The total number of shares of Stock that may be subject to outstanding Awards, determined immediately after the grant of any Award, shall not exceed the greater of 18.5 million shares, or such number that equals 30% of the total number of shares of all classes of the Company's common stock outstanding at the effective time of such grant, in each case excluding those shares held by the families and estates of deceased employees and provided that the aggregate number of shares of Stock delivered pursuant to the exercise or settlement of Awards granted under this Plan shall not exceed 30 million. If an Award valued by reference to Stock may only be settled in cash, the number of shares to which such Award relates shall be deemed to be Stock subject to such Award for purposes of this Section 4(a). Any shares of Stock delivered pursuant to an Award may consist, in whole or in part, of authorized and unissued shares, treasury shares or shares acquired in the market on a Participant's behalf.

(b) Annual Per-Participant Limitations. During any calendar year, no Participant may be granted Awards that may be settled by delivery of more than 5 million shares of Stock, subject to adjustment as provided in Section 4(c). In addition, with respect to Awards that may be settled in cash (in whole or in part), no Participant may be paid during any calendar year cash amounts relating to such Awards that exceed the greater of the fair market value of the number of shares of Stock set forth in the preceding sentence at the date of grant or the date of settlement of Award. This provision sets forth two separate limitations, so that Awards that may be settled solely by delivery of Stock will not operate to reduce the amount of cash-only Awards, and vice versa; nevertheless, Awards that may be settled in Stock or cash must not exceed either limitation.

(c) Adjustments. In the event that the Committee shall determine that any recapitalization, forward or reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase or exchange of Stock or other securities, Stock dividend or other special, large and non-recurring dividend or distribution (whether in the form of cash, securities or other property), liquidation, dissolution, or other similar corporate transaction or event, affects the Stock such that an adjustment is appropriate in order to prevent dilution or enlargement of the rights of Participants under the Plan, then the Committee shall, in

such manner as it may deem equitable, adjust any or all of (i) the number and kind of shares of Stock reserved and available for Awards under Section 4(a), including shares reserved for ISOs, (ii) the number and kind of shares of Stock specified in the Annual Per-Participant Limitations under Section 4(b), (iii) the number and kind of shares of outstanding Restricted Stock or other outstanding Awards in connection with which shares have been issued, (iv) the number and kind of shares that may be issued in respect of other outstanding Awards and (v) the exercise price, grant price or purchase price relating to any Award. (or, if deemed appropriate, the Committee may make provision for a cash payment with respect to any outstanding Award). In addition, the Committee is authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards (including, without limitation, cancellation of unexercised or outstanding Awards, or substitution of Awards using stock of a successor or

other entity) in recognition of unusual or nonrecurring events (including, without limitation, events described in the preceding sentence and events constituting a Change in Control) affecting the Company, its Parent or any Subsidiary or the financial statements of the Company, its Parent or any Subsidiary, or in response to changes in applicable laws, regulations, or accounting principles.

5. Eligibility. Directors, officers and employees of the Company or its Parent or any Subsidiary, and persons who provide consulting or other services to the Company, its Parent or any Subsidiary deemed by the Committee to be of substantial value to the Company or its Parent and Subsidiaries, are eligible to be granted Awards under the Plan. In addition, persons who have been offered employment by, or agreed to become a director of, the Company, its Parent or any Subsidiary, and persons employed by an entity that the Committee reasonably expects to become a Subsidiary of the Company, are eligible to be granted an Award under the Plan.

6. Specific Terms of Awards.

(a) General. Awards may be granted on the terms and conditions set forth in this Section 6. In addition, the Committee may impose on any Award or the exercise thereof such additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall determine, including terms requiring forfeiture of Awards in the event of termination of employment or service of the Participant. Except as expressly provided by the Committee (including for purposes of complying with the requirements of the Delaware General Corporation Law relating to lawful consideration for the issuance of shares), no consideration other than services will be required as consideration for the grant (but not the exercise) of any Award.

(b) Options. The Committee is authorized to grant options to purchase Stock (including "reload" options automatically granted to offset specified exercises of Options) on the following terms and conditions ("Options"):

(i) Exercise Price. The exercise price per share of Stock purchasable under an Option shall be determined by the Committee.

(ii) Time and Method of Exercise. The Committee shall determine the time or times at which an Option may be exercised in whole or in part, the methods by which such exercise price may be paid or deemed to be paid, the form of such payment, including, without limitation, cash, Stock, other Awards or awards granted under other Company plans or other property (including notes or other contractual obligations of Participants to make payment on a deferred basis, such as through "cashless exercise" arrangements, to the extent permitted by applicable law), and the methods by which Stock will be delivered or deemed to be delivered to Participants.

(iii) Termination of Employment. The Committee shall determine the period, if any, during which Options shall be exercisable following a Participant's termination of his employment relationship with the Company, its Parent or any Subsidiary. For this purpose, any sale of a Subsidiary of the Company pursuant to which it ceases to be a Subsidiary of the Company shall be deemed to be a termination of employment by any Participant employed by such Subsidiary. Unless otherwise determined by the Committee, (i) during any period that an Option is exercisable following termination of employment, it shall be exercisable only to the

extent it was exercisable upon such termination of employment, and (ii) if such termination of employment is for cause, as determined in the discretion of the Committee, all Options held by the Participant shall immediately terminate.

(iv) Sale of the Company. Upon the consummation of any transaction whereby the Company (or any successor to the Company or substantially all

of its business) becomes a wholly-owned Subsidiary of any corporation, all Options outstanding under the Plan shall terminate (after taking into account any accelerated vesting pursuant to Section 7(g)), unless such other corporation shall continue or assume the Plan as it relates to Options then outstanding (in which case such other corporation shall be treated as the Company for all purposes hereunder, and, pursuant to Section 4(c), the Committee of such other corporation shall make appropriate adjustment in the number and kind of shares of Stock subject thereto and the exercise price per share thereof to reflect consummation of such transaction). If the Plan is not to be so assumed, the Company shall notify the Participant of consummation of such transaction at least ten days in advance thereof.

(v) Options Providing Favorable Tax Treatment. The Committee may grant Options that may afford a Participant with favorable treatment under the tax laws applicable to such Participant, including, but not limited to ISOs. If Stock acquired by exercise of an ISO is sold or otherwise disposed of within two years after the date of grant of the ISO or within one year after the transfer of such Stock to the Participant, the holder of the Stock immediately prior to the disposition shall promptly notify the Company in writing of the date and terms of the disposition and shall provide such other information regarding the disposition as the Company may reasonably require in order to secure any deduction then available against the Company's or any other corporation's taxable income. The Company may impose such procedures as it determines may be necessary to ensure that such notification is made. Each Option granted as an ISO shall be designated as such in the Award Agreement relating to such Option.

(c) Stock Appreciation Rights. The Committee is authorized to grant stock appreciation rights on the following terms and conditions ("SARs"):

(i) Right to Payment. An SAR shall confer on the Participant to whom it is granted a right to receive, upon exercise thereof, the excess of (A) the Fair Market Value of one share of Stock on the date of exercise (or, if the Committee shall so determine in the case of any such right other than one related to an ISO, the Fair Market Value of one share at any time during a specified period before or after the date of exercise), over (B) the grant price of the SAR as determined by the Committee as of the date of grant of the SAR, which, except as provided in Section 7(a), shall be not less than the Fair Market Value of one share of Stock on the date of grant.

(ii) Other Terms. The Committee shall determine the time or times at which an SAR may be exercised in whole or in part, the method of exercise, method of settlement, form of consideration payable in settlement, method by which Stock will be delivered or deemed to be delivered to Participants, whether or not an SAR shall be in tandem with any other Award, and any other terms and conditions of any SAR. Limited SARs that may only be exercised upon the occurrence of a Change in Control may be granted on such terms, not inconsistent with this Section 6(c), as the Committee may determine. Limited SARs may be either freestanding or in tandem with other Awards.

(d) Restricted Stock. The Committee is authorized to grant Stock that is subject to restrictions based on continued employment on the following terms and conditions ("Restricted Stock"):

(i) Grant and Restrictions. Restricted Stock shall be subject to such restrictions on transferability and other restrictions, if any, as the Committee may impose, which restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, or otherwise, as the Committee may determine. Except to the extent restricted under the terms of the Plan and any Award Agreement relating to the Restricted Stock, a Participant granted

Restricted Stock shall have all of the rights of a stockholder including, without limitation, the right to vote Restricted Stock or the right to receive dividends thereon.

(ii) Forfeiture. Except as otherwise determined by the Committee, upon termination of employment or service (as determined under criteria established by the Committee) during the applicable restriction period, Restricted Stock that is at that time subject to restrictions shall be forfeited and reacquired by the Company; provided, however, that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Restricted Stock will be waived in whole or in part in the event of termination resulting from specified causes.

(iii) Certificates for Stock. Restricted Stock granted under the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing Restricted Stock are registered in the name of the Participant, such certificates may bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, the Company may retain physical possession of the certificate, in which case the Participant shall be required to have delivered a stock power to the Company, endorsed in blank, relating to the Restricted Stock.

(iv) Dividends. Dividends paid on Restricted Stock shall be either paid at the dividend payment date in cash or in shares of unrestricted Stock having a Fair Market Value equal to the amount of such dividends, or the payment of such dividends shall be deferred and/or the amount or value thereof automatically reinvested in additional Restricted Stock, other Awards, or other investment vehicles, as the Committee shall determine or permit the Participant to elect. Stock distributed in connection with a Stock split or Stock dividend, and other property distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the Restricted Stock with respect to which such Stock or other property has been distributed, unless otherwise determined by the Committee.

(e) Deferred Stock. The Committee is authorized to grant units representing the right to receive Stock at a future date subject to the following terms and conditions ("Deferred Stock"):

(i) Award and Restrictions. Delivery of Stock will occur upon expiration of the deferral period specified for an Award of Deferred Stock by the Committee (or, if permitted by the Committee, as elected by the Participant). In addition, Deferred Stock shall be subject to such restrictions as the Committee may impose, if any, which restrictions may lapse at the expiration of the deferral period or at earlier specified times, separately or in combination, in installments or otherwise, as the Committee may determine.

(ii) Forfeiture. Except as otherwise determined by the Committee, upon termination of employment or service (as determined under criteria established by the Committee) during the applicable deferral period or portion thereof to which forfeiture conditions apply (as provided in the Award Agreement evidencing the Deferred Stock), all Deferred Stock that is at that time subject to such forfeiture conditions shall be forfeited; provided, however, that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Deferred Stock will be waived in whole or in part in the event of termination resulting from specified causes.

(f) Bonus Stock and Awards in Lieu of Cash Obligations. The Committee is authorized to grant Stock as a bonus, or to grant Stock or other Awards in lieu of Company obligations to pay cash under other plans or compensatory arrangements.



(g) Dividend Equivalents. The Committee is authorized to grant awards entitling the Participant to receive cash, Stock, other Awards or other property equal in value to dividends paid with respect to a specified number of shares of Stock ("Dividend Equivalents"). Dividend Equivalents may be awarded on a free-standing basis or in connection with another Award. The Committee may provide that

Dividend Equivalents shall be paid or distributed when accrued or shall be deemed to have been reinvested in additional Stock, Awards or other investment vehicles, and subject to such restrictions on transferability and risks of forfeiture, as the Committee may specify.

(h) Other Stock-Based Awards. The Committee is authorized, subject to limitations under applicable law, to grant such other Awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Stock and factors that may influence the value of Stock, as deemed by the Committee to be consistent with the purposes of the Plan, including, without limitation, convertible or exchangeable debt securities, other rights convertible or exchangeable into Stock, purchase rights for Stock, Awards with value and payment contingent upon performance of the Company or any other factors designated by the Committee and Awards valued by reference to the book value of Stock or the value of securities of or the performance of specified Subsidiaries ("Other Stock Based Awards"). The Committee shall determine the terms and conditions of such Awards. Stock issued pursuant to an Award in the nature of a purchase right granted under this Section 6(h) shall be purchased for such consideration, paid for at such times, by such methods, and in such forms, including, without limitation, cash, Stock, other Awards, or other property, as the Committee shall determine. Cash awards, as an element of or supplement to any other Award under the Plan, may be granted pursuant to this Section 6(h).

#### 7. Certain Provisions Applicable to Awards.

(a) Stand-Alone, Additional, Tandem, and Substitute Awards. Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with or in substitution for any other Award granted under the Plan or any award granted under any other plan of the Company, its Parent or Subsidiaries or any business entity to be acquired by the Company or a Subsidiary, or any other right of a Participant to receive payment from the Company its Parent or Subsidiaries. Awards granted in addition to or in tandem with other Awards or awards may be granted either as of the same time as or a different time from the grant of such other Awards or awards.

(b) Term of Awards. The term of each Award shall be for such period as may be determined by the Committee; provided, however, that (i) in no event shall the term of any ISO or an SAR granted in tandem therewith exceed a period of ten years from the date of its grant (or such shorter period as may be applicable under Section 422 of the Code), and (ii) the term of any Option granted to a resident of the United Kingdom shall not exceed a period of ten years from the date of its grant.

(c) Form of Payment Under Awards. Subject to the terms of the Plan and any applicable Award Agreement, payments to be made by the Company, its Parent or Subsidiaries upon the grant, exercise or settlement of an Award may be made in such forms as the Committee shall determine, including, without limitation, cash, Stock, other Awards or other property, and may be made in a single payment or transfer, in installments or on a deferred basis. Such payments may include, without limitation, provisions for the payment or crediting of reasonable interest on installment or deferred payments or the grant or crediting of Dividend Equivalents in respect of installment or deferred payments denominated in Stock.

(d) Rule 16b-3 Compliance.

(i) Six-Month Holding Period. Unless a Participant could otherwise dispose of equity securities, including derivative securities, acquired under the Plan without incurring liability under Section 16(b) of the Exchange Act, equity securities acquired under the Plan must be held for a period of six months following the date of such acquisition, provided that this condition shall be satisfied with respect to a derivative security if at least six months elapse from the date of acquisition of the derivative security to the date of disposition of the derivative security (other than upon exercise or conversion) or its underlying equity security.

(ii) Other Compliance Provisions. With respect to a Participant who is then subject to Section 16 of the Exchange Act in respect of the Company, the Committee shall implement

transactions under the Plan and administer the Plan in a manner that will ensure that each transaction by such a Participant is exempt from liability under Rule 16b-3, except that such a Participant may be permitted to engage in a non-exempt transaction under the Plan if written notice has been given to the Participant regarding the non-exempt nature of such transaction. The Committee may authorize the Company to repurchase any Award or shares of Stock resulting from any Award in order to prevent a Participant who is subject to Section 16 of the Exchange Act from incurring liability under Section 16(b). Unless otherwise specified by the Participant, equity securities, including derivative securities, acquired under the Plan which are disposed of by a Participant shall be deemed to be disposed of in the order acquired by the Participant.

(e) Loan Provisions. With the consent of the Committee, and subject at all times to, and only to the extent, if any, permitted under and in accordance with, laws and regulations and other binding obligations or provisions applicable to the Company, the Company may make, guarantee or arrange for a loan or loans to a Participant with respect to the exercise of any Option or other payment in connection with any Award, including the payment by a Participant of any or all federal, state or local income or other taxes due in connection with any Award. Subject to such limitations, the Committee shall have full authority to decide whether to make a loan or loans hereunder and to determine the amount, terms and provisions of any such loan or loans, including the interest rate to be charged in respect of any such loan or loans, whether the loan or loans are to be with or without recourse against the borrower, the terms on which the loan is to be repaid and conditions, if any, under which the loan or loans may be forgiven.

(f) Performance-Based Awards.

(i) Setting of Performance Objectives. The Committee may, in its discretion, designate any Award the exercisability or settlement of which is subject to the achievement of performance conditions as a performance-based Award subject to this Section 7(f), in order to qualify such Award as "qualified performance-based compensation" within the meaning of Code Section 162(m) and regulations thereunder. The performance objectives for an Award subject to this Section 7(f) shall consist of one or more business criteria and a targeted level or levels of performance with respect to such criteria, as specified by the Committee but subject to this Section 7(f). Performance objectives shall be objective and shall otherwise meet the requirements of Section 162(m)(4)(C) of the Code. Business criteria used by the Committee in establishing performance objectives for Awards subject to this Section 7(f) shall be based exclusively on one or more of the following corporate-wide or subsidiary, division or operating unit financial measures:

- (i) pre-tax or after-tax net income,
- (ii) pre-tax or after-tax operating income,

- (iii) gross revenue,
- (iv) profit margin,
- (v) stock price,
- (vi) cash flow(s),
- (vii) market share,
- (viii) pre-tax or after-tax earnings per share,
- (ix) pre-tax or after-tax operating earnings per share,
  
- (x) expenses,
- (xi) return on equity,
- (xii) strategic business criteria, consisting of one or more objectives based on meeting specified revenue, market penetration, geographic business expansion goals, cost targets, and goals relating to acquisitions or divestitures.

The levels of performance required with respect to such business criteria may be expressed on an absolute and/or relative basis, may be based on or otherwise employ comparisons based on current internal targets, the past performance of the Company (including the performance of one or more subsidiaries, divisions and/or operating units) and/or the past or current performance of other companies, and in the case of earnings-based measures, may use or employ comparisons relating to capital (including, but limited to, the cost of capital), shareholders' equity and/or shares outstanding, or to assets or net assets. Performance objectives may differ for such Awards to different Participants. The Committee shall specify the weighting to be given to each performance objective for purposes of determining the final amount payable with respect to any such Award. The Committee may, in its discretion, reduce the amount of a payout otherwise to be made in connection with an Award subject to this Section 7(f), but may not exercise discretion to increase such amount, and the Committee may consider other performance criteria in exercising such discretion. All determinations by the Committee as to the achievement of performance objectives shall be in writing. The Committee may not delegate any responsibility with respect to an Award subject to this Section 7(f).

(ii) Impact of Extraordinary Items or Changes in Accounting. To the extent applicable, the measures used in setting performance objectives for any given performance period shall be determined in accordance with generally accepted accounting principles ("GAAP") and a manner consistent with the methods used in the Company's audited financial statements, without regard to (i) extraordinary items as determined by the Company's independent public accountants in accordance with GAAP, (ii) changes in accounting, unless, in each case, the Committee decides otherwise within the period described in Treas. Reg. Sec. 1.162-27(e)(2) (as may be amended from time to time) or (iii) non-recurring acquisition expenses and restructuring charges. Notwithstanding the foregoing, in calculating operating earnings or operating income (including on a per share basis), the Committee may, within the period described in Treas. Reg. Sect. 1.162-27(e)(2) (as may be amended from time to time) for a given performance period, provide that such calculation shall be made on the same basis as reflected in a release of the Company's earnings for a previously completed period as specified by the Committee.

(g) Acceleration upon a Change of Control. Notwithstanding anything contained herein to the contrary, except as set forth in an Award Agreement, all

conditions and/or restrictions relating to the continued performance of services and/or the achievement of performance objectives with respect to the exercisability or full enjoyment of an Award shall lapse immediately prior to a Change in Control.

#### 8. General Provisions.

(a) Compliance With Laws and Obligations. The Company shall not be obligated to issue or deliver Stock in connection with any Award or take any other action under the Plan in a transaction subject to the requirements of any applicable securities law, any requirement under any listing agreement between the Company and any national securities exchange or automated quotation system or any other law, regulation or contractual obligation of the Company until the Company is satisfied that such laws,

regulations, and other obligations of the Company have been complied with in full. Certificates representing shares of Stock issued under the Plan will be subject to such stop-transfer orders and other restrictions as may be applicable under such laws, regulations and other obligations of the Company, including any requirement that a legend or legends be placed thereon.

(b) Limitations on Transferability. Awards and other rights under the Plan will not be transferable by a Participant except by will or the laws of descent and distribution or to a Beneficiary in the event of the Participant's death, shall not be pledged, mortgaged, hypothecated or otherwise encumbered, or otherwise subject to the claims of creditors, and, in the case of ISOs and SARs in tandem therewith, shall be exercisable during the lifetime of a Participant only by such Participant or his guardian or legal representative; provided, however, that such Awards and other rights (other than ISOs and SARs in tandem therewith) may be transferred to one or more transferees during the lifetime of the Participant to the extent and on such terms as then may be permitted by the Committee.

(c) No Right to Continued Employment or Service. Neither the Plan nor any action taken hereunder shall be construed as giving any employee, director or other person the right to be retained in the employ or service of the Company, its Parent or any Subsidiary, nor shall it interfere in any way with the right of the Company, its Parent or any Subsidiary to terminate any employee's employment or other person's service at any time or with the right of the Board or stockholders to remove any director.

(d) Taxes. The Company, its Parent and Subsidiaries are authorized to withhold from any Award granted or to be settled, any delivery of Stock in connection with an Award, any other payment relating to an Award or any payroll or other payment to a Participant amounts of withholding and other taxes due or potentially payable in connection with any transaction involving an Award, and to take such other action as the Committee may deem advisable to enable the Company, its Parent and Subsidiaries and Participants to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award. This authority shall include authority to withhold or receive Stock or other property and to make cash payments in respect thereof in satisfaction of a Participant's tax obligations.

(e) Changes to the Plan and Awards. The Board may amend, alter, suspend, discontinue or terminate the Plan or the Committee's authority to grant Awards under the Plan without the consent of stockholders or Participants, except that any such action shall be subject to the approval of the Company's stockholders at or before the next annual meeting of stockholders for which the record date is after such Board action if such stockholder approval is required by any federal or state law or regulation or the rules of any stock exchange or automated quotation system on which the Stock may then be listed or quoted, and the Board may otherwise, in its discretion, determine to submit other such changes to the Plan to stockholders for approval; provided, however, that, without the consent of an affected Participant, no such action may materially

impair the rights of such Participant under any Award theretofore granted to him (as such rights are set forth in the Plan and the Award Agreement). The Committee may waive any conditions or rights under, or amend, alter, suspend, discontinue, or terminate, any Award theretofore granted and any Award Agreement relating thereto; provided, however, that, without the consent of an affected Participant, no such action may materially impair the rights of such Participant under such Award (as such rights are set forth in the Plan and the Award Agreement). Notwithstanding the foregoing, the Board or the Committee may take any action (including actions affecting or terminating outstanding Awards): (i) permitted by Section 4(c), (ii) to avoid limitations related to the availability of a tax deduction in respect of Awards (e.g., pursuant to, sections Code 280G or 162(m)), or (iii) to the extent necessary for a business combination in which the Company is a party to be accounted for under the pooling-of-interests method of accounting under Accounting Principles Board Opinion No. 16 (or any successor thereto). The Board or the Committee shall also have the authority to establish separate sub-plans under the Plan with respect to Participants resident in a particular jurisdiction (the terms of which shall not be inconsistent with those of the Plan) if necessary or desirable to comply with the applicable laws of such jurisdiction.

(f) No Rights to Awards; No Stockholder Rights. No person shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Participants and employees. No Award shall confer on any Participant any of the rights of a stockholder of the Company

unless and until Stock is duly issued or transferred and delivered to the Participant in accordance with the terms of the Award or, in the case of an Option, the Option is duly exercised.

(g) Unfunded Status of Awards; Creation of Trusts. The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award shall give any such Participant any rights that are greater than those of a general creditor of the Company; provided, however, that the Committee may authorize the creation of trusts or make other arrangements to meet the Company's obligations under the Plan to deliver cash, Stock, other Awards, or other property pursuant to any Award, which trusts or other arrangements shall be consistent with the "unfunded" status of the Plan unless the Committee otherwise determines with the consent of each affected Participant.

(h) Nonexclusivity of the Plan. Neither the adoption of the Plan by the Board nor any submission of the Plan or amendments thereto to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other compensatory arrangements as it may deem desirable, including, without limitation, the granting of stock options otherwise than under the Plan, and such arrangements may be either applicable generally or only in specific cases.

(i) No Fractional Shares. No fractional shares of Stock shall be issued or delivered pursuant to the Plan or any Award. The Committee shall determine whether cash, other Awards, or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

(j) Compliance with Code Section 162(m). It is the intent of the Company that employee Options, SARs and other Awards designated as Awards subject to Section 7(f) shall constitute "qualified performance-based compensation" within the meaning of Code Section 162(m). Accordingly, if any provision of the Plan or any Award Agreement relating to such an Award does not comply or is inconsistent with the requirements of Code Section 162(m), such provision shall be construed or deemed amended to the extent necessary to conform to such requirements, and no provision shall be deemed to confer upon the Committee or any other person

discretion to increase the amount of compensation otherwise payable in connection with any such Award upon attainment of the performance objectives.

(k) Governing Law. The validity, construction and effect of the Plan, any rules and regulations relating to the Plan and any Award Agreement shall be determined in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of laws, and applicable federal law.

(l) Effective Date; Plan Termination. The Plan shall become effective as of the date of its adoption by the Board, and shall continue in effect until terminated by the Board.

EXHIBIT 31.1

I, Howard W. Lutnick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of eSpeed, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of this disclosure controls and procedures as of the end of the period covered by this quarterly report based on such evaluation; and
  - c. Disclosed in this quarterly report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of

registrant's board of directors:

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2003

/s/ Howard W. Lutnick

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Howard W. Lutnick  
Chairman of the Board, Chief Executive Officer and President

EXHIBIT 31.2

I, Jeffrey M. Chertoff, certify that:

1. I have reviewed this quarterly report on Form 10-Q of eSpeed, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of this disclosure controls and procedures as of the end of the period covered by this quarterly report based on such evaluation; and
  - c. Disclosed in this quarterly report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2003

/s/ Jeffrey M. Chertoff

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Jeffrey M. Chertoff  
Senior Vice President and Chief Financial Officer

EXHIBIT 32

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of eSpeed, Inc., a Delaware corporation (the "Company") on Form 10-Q for the period ended September 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Form 10-Q"), each of Howard W. Lutnick, Chief Executive Officer of the Company, and Jeffrey M. Chertoff, Chief Financial Officer of the Company, certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Form 10-Q fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Howard W. Lutnick

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Name: Howard W. Lutnick  
Title: Chairman of the Board,  
Chief Executive Officer and President  
Date: November 13, 2003

/s/ Jeffrey M. Chertoff

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Name: Jeffrey M. Chertoff  
Title: Senior Vice President and  
Chief Financial Officer  
Date: November 13, 2003



**End of Filing**

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