

**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 March 31, 2004

Commission file number 0-28191

**eSpeed, Inc.**

[REDACTED]

(Exact Name of Registrant as Specified in Its Charter)

Delaware	13-4063515
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

135 East 57th Street

[REDACTED]

(Address of Principal Executive Offices)

New York, New York 10022

[REDACTED]

(City, State, Zip Code)

(212) 938-5000

[REDACTED]

(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 April 21, 2004, the registrant had 32,252,743 shares of Class A common stock, \$0.01 par value, and 23,889,270 shares of Class B common stock, \$0.01 par value, outstanding.

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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)

	<u>March 31, 2004</u> (Unaudited)	<u>December 31, 2003</u>
<b>Assets</b>		
Cash and cash equivalents	\$232,988	\$228,500
Fixed assets, net	41,638	34,467
Investments	12,317	11,449
Intangible assets, net	18,380	18,927
Receivable from related parties	756	1,518
Other assets	3,119	2,707
Total assets	<u>\$309,198</u>	<u>\$297,568</u>
<b>Liabilities and Stockholders' Equity</b>		
Liabilities:		
Payable to related parties	\$ 2,064	\$ 6,323
Accounts payable and accrued liabilities	21,991	19,560
Total liabilities	<u>24,055</u>	<u>25,883</u>

Commitments and contingencies (Note 11)

Stockholders' Equity:

Preferred stock, par value \$0.01 per share; 50,000,000 shares authorized, 600 and 8,000,600 shares issued and outstanding at March 31, 2004 and December 31, 2003, respectively	—	80
Class A common stock, par value \$.01 per share; 200,000,000 shares authorized; 32,400,724 and 30,953,867 shares issued at March 31, 2004 and December 31, 2003, respectively	324	310
Class B common stock, par value \$.01 per share; 100,000,000 shares authorized; 23,889,270 and 25,139,270 shares issued and outstanding at March 31, 2004 and December 31, 2003, respectively	239	251
Additional paid-in capital	289,988	287,593
Unamortized expense of business partner and non-employee securities	(748)	(1,192)
Treasury stock, at cost: 186,399 shares of Class A common stock at March 31, 2004 and December 31, 2003, respectively	(2,094)	(2,094)
Accumulated deficit	(2,566)	(13,263)
Total stockholders' equity	<u>285,143</u>	<u>271,685</u>
Total liabilities and stockholders' equity	<u>\$309,198</u>	<u>\$297,568</u>

See notes to the condensed consolidated financial statements.

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

	<u>Three Months Ended March 31,</u>	
	<u>2004</u>	<u>2003</u>
Revenues:		
Transaction revenues with related parties		
Fully electronic transactions	\$ 30,527	\$ 22,510
Voice-assisted brokerage transactions	6,026	5,161
Screen-assisted open outcry transactions	<u>231</u>	<u>49</u>
Total transaction revenues with related parties	36,784	27,720
Software Solutions fees from related parties	4,112	3,650
Software Solutions and licensing fees from unrelated parties	2,998	2,131
Interest income	<u>744</u>	<u>542</u>
Total revenues	<u>44,638</u>	<u>34,043</u>
Expenses:		
Compensation and employee benefits	9,315	8,844
Occupancy and equipment	8,482	7,177
Professional and consulting fees	933	1,111
Communications and client networks	1,613	1,594
Marketing	386	334
Administrative fees to related parties	2,957	2,578
Amortization of business partner and non-employee securities	444	705
Other	<u>2,947</u>	<u>2,320</u>
Total expenses	<u>27,077</u>	<u>24,663</u>
Income before income tax provision	17,561	9,380
Income tax provision (benefit)	<u>6,866</u>	<u>(95)</u>
Net income	<u>\$ 10,695</u>	<u>\$ 9,475</u>
Earnings per share:		
Per share data:		
Basic	<u>\$ 0.19</u>	<u>\$ 0.17</u>
Diluted	<u>\$ 0.18</u>	<u>\$ 0.17</u>
Basic weighted average shares of common stock outstanding	<u>56,074</u>	<u>55,096</u>
Diluted weighted average shares of common stock outstanding	<u>58,253</u>	<u>57,372</u>

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

	<b>Three months ended March 31,</b>	
	<b>2004</b>	<b>2003</b>
Cash flows from operating activities:		
Net income	\$ 10,695	\$ 9,475
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	5,376	3,963
Amortization of business partner and non-employee securities	444	705
Equity in net loss of unconsolidated investments	(29)	33
Deferred income tax expense	63	—
Tax benefit from stock option and warrant exercises	791	—
Issuance of securities under employee benefit plans	30	100
Changes in operating assets and liabilities:		
Receivable from related parties	762	(4,811)
Other assets	(1,450)	(1,179)
Payable to related parties	(4,259)	(16,129)
Accounts payable and accrued liabilities	2,372	(2,158)
Net cash provided by (used in) operating activities	<u>14,795</u>	<u>(10,001)</u>
Cash flows from investing activities:		
Purchase of fixed assets	(7,226)	(636)
Sale of fixed assets	—	2,752
Capitalization of software development costs	(3,896)	(3,204)
Capitalization of patent defense and registration costs	(877)	(286)
Purchase of investment	(360)	—
Net cash used in investing activities	<u>(12,359)</u>	<u>(1,374)</u>
Cash flows from financing activities:		
Repurchase of Class A common stock	—	(1,872)
Proceeds from exercises of stock options and warrants	1,495	363
Receivable from broker on stock option exercises	557	—
Net cash provided by financing activities	<u>2,052</u>	<u>(1,509)</u>
Net increase (decrease) in cash and cash equivalents	<u>4,488</u>	<u>(12,884)</u>
Cash and cash equivalents, beginning of year	<u>228,500</u>	<u>187,999</u>
Cash and cash equivalents, end of period	<u>\$232,988</u>	<u>\$175,115</u>
Supplemental cash information:		
Cash paid for income taxes	\$ 1,601	—
Cash paid for interest	—	—

See notes to condensed consolidated financial statements.

## 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 99.75% 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. Certain reclassifications and format changes have been made to prior year information to conform to the current year presentation.

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, 2003. The consolidated statement of financial condition at December 31, 2003 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.

## 2. Stock Based Compensation

Pursuant to guidelines contained in APB Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"), 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:

	<b>Three Months Ended March 31,</b>	
	<b>2004</b>	<b>2003</b>
	<b>(In thousands, except per share amounts)</b>	
Net income, as reported	\$10,695	\$ 9,475
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards granted, net of \$1,189 and \$0 of taxes for the three months ended March 31, 2004 and 2003, respectively.	<u>(1,852)</u>	<u>(4,089)</u>
Net income, pro-forma	<u>\$ 8,843</u>	<u>\$ 5,386</u>
Basic weighted average shares of common stock outstanding	56,074	55,096
Diluted weighted average shares of common stock outstanding	58,253	57,372
Earnings per share:		
Basic - as reported	\$ 0.19	\$ 0.17
Basic - pro forma	\$ 0.16	\$ 0.10
Diluted - as reported	\$ 0.18	\$ 0.17
Diluted - pro forma	\$ 0.15	\$ 0.09

Effective April 1, 2003, the Company established a provision for recording income taxes at the statutory federal and state rates adjusted for differences related to the Company's activities (see Note 4, Income Taxes). Prior to this date, 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 respective periods.

## 3. Fixed Assets

Fixed assets consisted of the following:

	<u>March 31, 2004</u>	<u>December 31, 2003</u>
	(in thousands)	
Computer equipment	\$ 28,188	\$ 21,992
Software, including software development costs	46,240	41,914
Leasehold improvements and other fixed assets	<u>3,675</u>	<u>3,071</u>
	78,103	66,977
Less: Accumulated depreciation & amortization	<u>(36,465)</u>	<u>(32,510)</u>
Fixed assets, net	<u>\$ 41,638</u>	<u>\$ 34,467</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 8, Related Party Transactions).

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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 three months ended March 31, 2004 and 2003, software development costs totaling \$3.9 million and \$3.2 million were capitalized, respectively. For the three months ended March 31, 2004 and 2003, the Company's consolidated statements of income included \$2.3 million and \$1.7 million, respectively, in relation to the amortization of software development costs.

#### 4. Intangible Assets

Intangible assets consisted of the following:

As of March 31, 2004 and December 31, 2003, intangible assets included the Lawrence patent, the Wagner patent and the Automated Auction Protocol Processor Patent, as well as capitalized costs incurred to establish, perfect and protect the Company's rights under the patents. In addition, the Company incurred costs in connection with various patent applications.

	<u>March 31, 2004</u>	<u>December 31, 2003</u>
	(In thousands)	
Patents, including capitalized legal costs	\$ 28,929	\$ 28,052
Less: accumulated amortization	<u>(10,549)</u>	<u>(9,125)</u>
Intangible assets, net:	<u>\$ 18,380</u>	<u>\$ 18,927</u>

The cost of acquired patents and the related costs incurred to establish, perfect and protect the Company's rights under the patents 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. Capitalized costs related to the filing of patents are generally amortized on a straight-line basis over a period not to exceed three years. During the three months ended March 31, 2004 and 2003, the Company recorded amortization expense of \$1.4 million and \$1.0 million, respectively, for these intangible assets. The estimated aggregate amortization expense for each of the next five fiscal years is as follows: \$5.8 million in 2005, \$5.4 million in 2006, \$0.9 million in 2007, \$0.3 million in 2008 and \$0.3 million in 2009.

#### 5. Income Taxes

The provision for income taxes consisted of the following:

	<u>Three Months Ended March 31,</u>	
	<u>2004</u>	<u>2003</u>
	(In thousands)	
Current:		
Federal	\$ 5,600	\$ —
State & local	<u>1,203</u>	<u>141</u>
	6,803	141
Deferred	<u>63</u>	<u>(236)</u>
Provision for income taxes	<u>\$ 6,866</u>	<u>\$ (95)</u>

As of March 31, 2003, the Company had net operating loss carryforwards ("NOLs") 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 39.1% and utilized the \$2.8 million tax benefit of such NOLs.

At March 31, 2004, the valuation allowance against the deferred tax assets of \$11.7 million primarily related to non-deductible warrant expense 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 and warrant exercises served to reduce taxes currently payable by \$5.7 million as of March 31, 2004. A corresponding amount was credited to additional paid-in capital.

## 6. Business Partner and Non-Employee Securities

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

	<u>Three Months Ended March 31,</u>	
	<u>2004</u>	<u>2003</u>
	<u>(In thousands)</u>	
Freedom warrants	\$ 299	\$ 299
Deutsche Bank warrants	—	107
UBS warrants	117	299
Non-employee stock options	28	—
	<u>\$ 444</u>	<u>\$ 705</u>

There were no new business partner transactions executed during the three months ended March 31, 2004.

In connection with an agreement between eSpeed, certain Cantor entities and certain UBS entities, the Company previously issued to UBS Americas Inc. (successor by merger to UBS USA Inc.) ("UBS") a warrant to purchase 300,000 shares of its Class A common stock (the "Warrant Shares"). The warrant has a term of 10 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 Warrant Shares.

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 125,000 Warrant Shares, of which 75,000 and 50,000 shares were exercised by UBS on October 23, 2003 and March 26, 2004, respectively. In addition, pursuant to the amended agreement, the Company may accelerate the exercisability of 25,000 Warrant 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. The Company has informed UBS that it has not met the commitment conditions for the quarter ended January 31, 2004, and that, accordingly, the exercisability of 25,000 Warrants Shares will not be accelerated. On April 1, 2004, the unamortized expense of such business partner securities was approximately \$0.6 million, which the Company will amortize on a straight-line basis until July 31, 2005.

## 7. Investment in TradeSpark

On September 22, 2000, the Company made a cash investment in TradeSpark, L.P. ("TradeSpark") of \$2.0 million in exchange for a 5% interest in TradeSpark, and Cantor made a cash investment of \$4.3 million in TradeSpark and agreed to contribute to TradeSpark certain assets relating to its voice brokerage business in certain energy products in exchange for a 28.33% interest in TradeSpark. The Company and Cantor also executed an amendment to the Joint Services Agreement in order to enable each of us to engage in this business transaction. The remaining 66.67% interest in TradeSpark was purchased by energy industry market participants ("EIPs"). In connection with such investment, the Company entered into a perpetual technology services agreement with TradeSpark pursuant to which the Company provides the technology infrastructure for the transactional and technology related elements of the TradeSpark marketplace as well as certain other services to TradeSpark in exchange for specified percentages of transaction revenues from the marketplace. If a transaction is fully electronic, the Company receives 65% of the aggregate transaction revenues and

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TradeSpark receives 35% of the transaction revenues. In general, if TradeSpark provides voice-assisted brokerage services with respect to a transaction, then the Company receives 35% of the revenues and TradeSpark receives 65% of the revenues. Cantor also entered into an administrative services agreement with TradeSpark pursuant to which it provides administrative services to TradeSpark at cost. The Company and Cantor each received representation rights on the management committee of TradeSpark in proportion to their ownership interests in TradeSpark.

In order to provide incentives to the EIPs to trade on the TradeSpark electronic marketplace, which would have resulted in commissions to the Company under the TradeSpark technology services agreement, in 2000, the Company issued 5,500,000 shares of its Series A preferred stock and 2,500,000 shares of its Series B preferred stock to a limited liability company, EIP Holdings, LLC ("EIP Holdings"), newly-formed by the EIPs to hold their investments in TradeSpark and the Series A and B preferred stock. Beginning in mid-2002, several of the TradeSpark EIP investors changed their focus from energy merchant trading to asset management and a traditional utility model, requiring an adjustment to the TradeSpark business model and a reduced focus on the TradeSpark investment by such energy partners.

In the first quarter of 2004, Cantor and eSpeed purchased 100% of EIP Holdings, the holding company formed by the EIPs that owned 66.66% of TradeSpark. The purchase price of \$2.4 million was paid through EIP Holdings Acquisition, LLC ("EIP Holdings Acquisition"), a Delaware limited liability company owned by the Company and Cantor. In connection with this purchase, the Company contributed to EIP Holdings Acquisition a 4.75% interest in TradeSpark and Cantor contributed its existing 28.34 % interest in TradeSpark along with their respective interests in TradeSpark's general partner. The Company retained a .25% interest in TradeSpark. The Company also contributed \$360,000, or 15%, of the \$2.4 million of the cash consideration. The Company serves as the Managing Member of EIP Holdings Acquisition and will receive 15%, and Cantor will receive 85%, of all profits and losses and liquidation value of EIP Holdings Acquisition. In addition, the Company received all right, title and interest in and to all shares of the Company's Series A and Series B Preferred Stock owned by the EIPs directly or indirectly through their interest in EIP Holdings. The 5,500,000 shares of Series A preferred stock and 2,500,000 shares of Series B preferred stock which were owned by EIP Holdings had been convertible into (i) an aggregate of 80,000 shares of Class A Common Stock at any time or (ii) warrants to purchase up to 8,000,000 shares of eSpeed's Class A Common Stock at \$27.94 per share upon certain conditions, including the achievement of thresholds and minimum trading thresholds that were unlikely to be satisfied. These 8,000,000 shares of Series A and Series B Preferred Stock were distributed to eSpeed by EIP Holdings Acquisition in March 2004 and retired by the Company's board of directors. Currently, EIP Holdings Acquisition owns 99.75% of TradeSpark and eSpeed owns .25% of TradeSpark.

The Company's net earnings from its investment in TradeSpark, through both its direct investment in TradeSpark and its indirect interest through EIP Holdings Acquisition, totaled \$31,049 for the three months ended March 31, 2004. This amount included the Company's \$110,462 share of the gain recognized for the negative goodwill recorded on the acquisition of EIP Holdings by EIP Holdings Acquisition. The Company's share of the net losses of TradeSpark was \$64,903 for the same period in 2003. The carrying value of the Company's investment in TradeSpark, through both its direct investment in TradeSpark and its indirect interest through EIP Holdings Acquisition, totaled \$795,792 and \$404,743 at March 31, 2004 and December 31, 2003, respectively.

## **8. Related Party Transactions**

Cash and cash equivalents at March 31, 2004 and December 31, 2003 included \$180.5 million and \$173.2 million, respectively, of reverse repurchase agreements, which 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 replugged. The fair value of such collateral at March 31, 2004 and December 31, 2003 totaled \$181.7 million and \$175.0 million, respectively.

Investments in TradeSpark, both direct and indirect, and the limited partnership (the "LP") that invested in Freedom International Brokerage ("Freedom") are accounted for using the equity method

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(see Note 7, Investment in TradeSpark). The carrying value of such related party investments was \$7.9 million and \$7.5 million at March 31, 2004 and December 31, 2003, respectively. For the three months ended March 31, 2004, the Company's share of the net income of the LP and Tradespark was approximately \$29,000 in the aggregate.

Under the Amended and Restated Joint Services Agreement between the Company and Cantor and joint services agreements between the Company and TradeSpark, Freedom, Municipal Partners, LLC ("MPLLC") and CO2.com, LLC ("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. With respect to the eSpeed equity order routing business conducted for Cantor, the Company and Cantor each receive 50% of the revenues, after deduction of specified marketing, sales and other costs and fees. In addition, any eSpeed equity order routing business that is not conducted for Cantor will be treated generally as a fully electronic transaction, and the Company will receive 65% of the revenues of any such business and Cantor will receive 35% of such revenues.

In February 2003, we agreed with Cantor that with respect to (i) certain network access facilities services agreements and (ii) other circumstances in which Cantor refers network access facility services business to us, 60% of net revenues from such business would be paid to Cantor and 40% of such revenues would be paid to us. This revenue sharing arrangement will be made after deduction of all sales commissions, marketing, helpdesk, clearing and direct third-party costs, including circuits and maintenance.

Under an Administrative Services Agreement, Cantor provides various administrative services to the Company, including accounting, tax, legal, human resources 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 three months ended March 31, 2004 and 2003 totaling \$3.0 million and \$2.6 million, respectively. The

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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.

Amounts due to or from related parties pursuant to the transactions described above are non-interest bearing. As of March 31, 2004 and December 31, 2003, receivables from TradeSpark, Freedom and MPLLC totaled approximately \$0.5 million and \$1.4 million, respectively, and are included in receivable from related parties in the consolidated statements of financial condition.

On September 11, 2001, the Company had property and casualty insurance coverage in the amount of \$40.0 million. As a result of the September 11 Events, fixed assets with a book value of approximately \$17.8 million were destroyed. The Company has recovered these losses through \$20.5 million of property insurance proceeds and, as such, has not recorded a net loss related to the destruction of its fixed assets.

During the year ended December 31, 2003, Cantor received an additional \$21.0 million of insurance proceeds in settlement for property damage related to the September 11 Events. The Company will be entitled to up to \$19.5 million of these proceeds as replacement assets are purchased in the future, depending on the ultimate replacement value of the assets destroyed. A gain may be recorded based on the amount allocated to the Company. However, the Company cannot currently estimate the amount or timing of any such gain, and accordingly, no gains on replacement of fixed assets have been recorded during the period.

As of March 31, 2004, the Company estimates that it had replaced assets with an aggregate value of approximately \$13.0 million. The Company expects to incur significant costs in relation to the replacement of fixed assets lost on September 11, 2001 when it builds its permanent infrastructure and moves into its new headquarters.

## **9. Earnings Per Share**

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

	Three Months Ended March 31,	
	2004	2003
	(In thousands, except per share amounts)	
Net income for basic and diluted earnings per share	\$ 10,695	\$ 9,475
Shares of common stock and common stock equivalents		
Weighted avg shares used in basic computation:	56,074	55,096
Dilutive effect of:		
Stock options	2,086	2,165
Business partner securities	93	111
Weighted average shares used in diluted computation	58,253	57,372
Earnings per share:		
Basic	\$ 0.19	\$ 0.17
Diluted	\$ 0.18	\$ 0.17

Effective April 1, 2003, the Company began recording income taxes (see Note 4, Income Taxes). During the three months ended March 31, 2003, 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 months periods ended March 31, 2004 and 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 March 31, 2004 and 2003, approximately 11.0 million and 13.7 million securities, respectively, were not included in the computation of diluted earnings per share because their effect would have been anti-dilutive.

#### 10. 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 March 31, 2004, eSpeed Government Securities, Inc.'s liquid capital of \$94,645,750 was in excess of minimum requirements by \$94,620,750.

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 March 31, 2004, eSpeed Securities, Inc. had net capital of \$94,408,550, which was \$93,599,011 in excess of its required net capital, and eSpeed Securities, Inc.'s net capital ratio was .13 to 1.

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

#### 11. 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, 2003.

#### 12. Segment and Geographic Data

**Segment information:** The Company currently operates its business in one segment, that of operating interactive electronic 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), 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.

	<u>Three Months Ended March 31,</u>	
	<u>2004</u>	<u>2003</u>
	<u>(In thousands)</u>	
Transaction revenues:		
Europe	\$ 8,807	\$ 7,036
Asia	<u>537</u>	<u>608</u>
Total Non-Americas	9,344	7,644
Americas	<u>27,440</u>	<u>20,076</u>
Total	<u>\$36,784</u>	<u>\$27,720</u>

	<u>March 31, 2004</u>	<u>December 31, 2003</u>
	<u>(In thousands)</u>	
Average long-lived assets:		
Europe	\$11,555	\$ 4,777
Asia	<u>388</u>	<u>328</u>
Total Non-Americas	11,943	5,105
Americas	<u>26,110</u>	<u>23,301</u>
Total	<u>\$38,053</u>	<u>\$28,406</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, 2003. 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 99.75%-owned subsidiary of Cantor Fitzgerald, L.P. 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 consisted of proprietary software, network distribution systems, technologies and other related contractual rights that comprise our eSpeed<sup>®</sup> system.

As of March 31, 2004, we had an accumulated deficit of \$2.6 million. This deficit primarily resulted from expenditures on our technology and infrastructure incurred in building our revenue base and from non-cash charges incurred in connection with the issuance of business partner securities, partially offset by net income generated during the three months ended March 31, 2004, and the years ended December 31, 2003 and 2002.

We expect that we will continue to generate net income. However, in light of the rapidly changing nature of

our business and the impact of the September 11 Events, we believe that period-to-period comparisons of our previously reported operating results will not necessarily be meaningful and should not be relied upon as an indication of future performance.

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 have pursued an aggressive strategy to convert most of Cantor's financial marketplace products to our eSpeed<sup>®</sup> system and, with the assistance of Cantor, to continue to create new markets and convert new clients to our eSpeed<sup>®</sup> system. The process of converting these marketplaces includes

modifying existing trading systems to allow for transactions to be entered directly from a client location, signing an agreement with the client, installing the hardware and software at the client location and establishing communication lines between us and the client. Other than Cantor, no client of ours accounted for more than 10% of our transaction revenues from our date of inception through March 31, 2004. As a result of the September 11 Events and the resulting loss of voice brokers, Cantor's U.S. operations were reduced, including the trading by it of certain U.S. financial products. Cantor also sold the assets of its municipal bond business in the first quarter of 2002 after that business ceased operations on September 11, 2001, but acquired a special interest in MPLLC, the entity that acquired the assets. Cantor has not yet fully determined which financial product marketplaces it will re-enter. In addition, Cantor's business product development activity continues to be reduced due to the September 11 Events. If Cantor determines not to re-enter its affected businesses, exits additional businesses or does not continue to develop new products or enter into new businesses, we will likely be adversely affected.

#### Critical Accounting Policies

For a discussion of the Company's critical accounting policies, see "Critical Accounting Policies" in our Annual Report on Form 10-K.

#### Results of Operations

##### For the Three Months Ended March 31, 2004 Compared to the Three Months Ended March 31, 2003

#### Highlights

Diluted earnings per share for the three months ended March 31, 2004 and 2003 were \$0.18 and \$0.17, respectively. During the three months ended March 31, 2004, we recorded an income tax provision of \$6.9 million, or approximately \$0.12 per diluted share, corresponding to a 39.1% consolidated effective tax rate. For the same period a year earlier, income taxes were minimal due to our NOLs.

For the three months ended March 31, 2004, transaction revenues with related parties amounted to \$36.8 million, an increase of 33% as compared to transaction revenues with related parties of \$27.7 million for the same period a year ago. Volumes transacted on our system per trading day increased approximately 25%. For the three months ended March 31, 2004, 83% of our transaction revenues were generated from fully electronic transactions.

#### Revenues

	<u>Three Months Ended March 31,</u>	
	<u>2004</u>	<u>2003</u>
	<u>(In thousands)</u>	
Transaction revenues with related parties		
Fully electronic transactions	\$30,527	\$22,510
Voice-assisted brokerage transactions	6,026	5,161
Screen-assisted open outcry transactions	231	49
Total transaction revenues with related parties	36,784	27,720
Software Solutions fees from related parties	4,112	3,650
Software Solutions and licensing fees from unrelated parties	2,998	2,131
Interest income	744	542
Total revenues	<u>\$44,638</u>	<u>\$34,043</u>

#### Transaction revenues with related parties

For the three months ended March 31, 2004, we earned transaction revenues with related parties of \$36.8 million, an increase of 33% as compared to transaction revenues with related parties of \$27.7

million for the three month period ended March 31, 2003. There were 62 and 61 trading days in the three-month periods ended March 31, 2004 and 2003, respectively. Transaction revenues per trading day increased by \$139 thousand, or 31%, from \$454 thousand for the three months ended March 31, 2003 to \$593 thousand for the three months ended March 31, 2004. Volumes transacted on our system increased by \$2,559 billion (approximately \$2.6 trillion), or 27%, from \$9,369 billion (approximately \$9.4 trillion) for the three months ended March 31, 2003 to \$11,928 billion (approximately \$11.9 trillion) for the three months ended March 31, 2004. This increase resulted primarily from favorable market conditions in the United States 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 three months ended March 31, 2004, 83% of our transaction revenues were generated from fully electronic transactions as compared to 81% for the same period in 2003.

Our revenues are 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 March 31, 2004 were \$4.1 million. This compares with Software Solutions fees from related parties for the three months ended March 31, 2003 of \$3.7 million, an increase of 11%. 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 three months ended March 31, 2004 were \$3.0 million as compared to Software Solutions and licensing fees from unrelated parties of \$2.1 million for the same period a year ago, a 43% increase, due primarily to licensing fees earned as part of the Wagner Patent settlement agreement with NYMEX. We anticipate that as we license our software and patents to additional market participants, our revenues from Software Solutions and licensing fees from unrelated parties will continue to grow.

#### *Interest income*

For the three months ended March 31, 2004, the blended weighted average interest rate on overnight reverse repurchase agreements, tax-free municipal bonds and U.S government fixed income securities was 1.3% as compared to a 1.2% weighted average interest rate on overnight reverse repurchase agreements for the three months ended March 31, 2003. As a result of the increase in the average balances and interest rates between periods, we generated interest income of \$744 thousand for the three months ended March 31, 2004 as compared to \$542 thousand for the three months ended March 31, 2003, an increase of 37%.

#### *Expenses*

	<u>Three Months Ended March 31,</u>	
	<u>2004</u>	<u>2003</u>
	<u>(In thousands)</u>	
Compensation and employee benefits	\$ 9,315	\$ 8,844
Occupancy and equipment	8,482	7,177
Professional and consulting fees	933	1,111
Communications and client networks	1,613	1,594
Marketing	386	334
Administrative fees to related parties	2,957	2,578
Amortization of business partner and non-employee securities	444	705
Other	2,947	2,320
Total expense	<u>\$27,077</u>	<u>\$24,663</u>

#### *Compensation and employee benefits*

At March 31, 2004, we had 342 employees, which was an increase from the 322 employees we had at March 31, 2003. For the three months ended March 31, 2004, our compensation costs were \$9.3 million as compared to compensation costs of \$8.8 million for the same period a year earlier. This \$0.5 million increase, or 6%, in compensation costs resulted mainly from additional headcount. Compensation and employee benefits, as a percentage of revenue, were 21% and 26% for the three months ended March 31, 2004 and 2003, respectively. With a significant portion of employee compensation being discretionary and performance-based, compensation can vary from quarter to quarter.

Substantially all of our employees are full-time employees located predominately in the New York metropolitan area and 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 \$8.5 million for the three months ended March 31, 2004, a \$1.3 million increase, or 18%, as compared to occupancy and equipment costs of \$7.2 million for the three months ended March 31, 2003. The increase was primarily caused by the occupancy and build-out of our temporary corporate headquarters in New York City.

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 on December 31, 2004, and at this time management is evaluating various alternative locations. Although we believe that equipment costs will increase in the future as we replace lost equipment, we anticipate that such equipment costs will remain below those incurred prior to the September 11 Events. We expect a portion of our capital expenditures to be covered by insurance proceeds from our property and casualty insurance coverage.

#### *Professional and consulting fees*

Professional and consulting fees were \$0.9 million for the three months ended March 31, 2004 as compared to \$1.1 million for the three months ended March 31, 2003, a decrease of 18%, primarily due to a decrease in legal fees and contract employee personnel costs.

#### *Communications and client networks*

Communications costs were \$1.6 million for both the three months ended March 31, 2004 and March 31, 2003. 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.

Communication costs include the costs of local and wide area network infrastructure, the cost of establishing the client 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 increase in the near future as we continue to connect additional customers to our network.

#### *Marketing*

Marketing expenses were \$0.4 million for the three months ended March 31, 2004 as compared to \$0.3 million for the three months ended March 31, 2003, an increase of 33%, primarily due to an increase in advertising expense and printing costs.

#### *Administrative fees to related parties*

Administrative fees to related parties amounted to \$3.0 million for the three months ended March 31, 2004, a 15% increase over the \$2.6 million of such fees for the three months ended March 31, 2003.

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*

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 \$0.4 million for the three



months ended March 31, 2004 as compared to \$0.7 million for the three months ended March 31, 2003. This \$0.3 million decrease resulted primarily from the amendment of a warrant agreement that had the effect of extending the term over which the related warrant value is amortized. The termination of another warrant agreement in July 2003, for which amortization was recorded in the three months ended March 31, 2003, further contributed to this decrease. We believe period-to-period comparisons are not meaningful, as these transactions do not recur on a regular basis. Note 6 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, which totaled \$1.4 million for the three months ended March 31, 2004, insurance costs and travel, promotional and entertainment expenditures. For the three months ended March 31, 2004, other expenses were \$2.9 million, an increase of \$0.6 million, or 26%, as compared to other expenses of \$2.3 million for the three months ended March 31, 2004, principally due to increases in business-related insurance costs and a \$0.4 million 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 three months ended March 31, 2004, we recorded an income tax provision of \$6.9 million corresponding to a 39.1% consolidated effective tax rate. During the same period a year earlier, income taxes were minimal due to the benefit of our NOLs. 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 March 31, 2004, we had cash and cash equivalents of \$233.0 million, an increase of \$4.5 million as compared to December 31, 2003. During the three months ended March 31, 2004, our operating activities provided cash of \$14.8 million. We also used net cash of \$12.4 million resulting from purchases of fixed assets, and the capitalization of software development costs and patent registration and defense costs. In addition, we realized \$1.5 million from exercises of employee stock, \$0.6 million of which was receivable at March 31, 2004 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 March 31, 2004, 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 and personnel with our anticipated move into new headquarters. Our property and casualty insurance coverage may mitigate our capital expenditures for the near term. During the year ended December 31, 2003, Cantor received an additional \$21.0 million of insurance proceeds in settlement for property damage related to the September 11 Events. We will be entitled to up to \$19.5 million of these proceeds as replacement assets are purchased in the future, depending on the ultimate replacement value of the assets destroyed. 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.

### **Aggregate Contractual Obligations**

There have been no significant changes to our significant contractual obligations, as detailed in our Annual Report on Form 10-K for the year ended December 31, 2003.

### **Off-Balance Sheet Arrangements**

As of March 31, 2004, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K.

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

At March 31, 2004, we had invested \$180.5 million of our cash in securities purchased under reverse repurchase agreements, \$76.7 million of which is fully collateralized by U.S. government securities and \$103.8 million of which is fully collateralized by eligible equity securities, both of which are 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 March 31, 2004, we had invested \$41.9 million in a money market fund held at overnight durations. This fund solely invests in short-term U.S. government fixed income securities.

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 an appropriate level of liquidity.

There have been no repurchases or sales of our equity securities by us during the three months ended March 31, 2004.

### **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 2. Changes in Securities and Use of Proceeds and Issuer Purchases of Equity Securities**

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 \$9.3 million has been used to fund investments in various entities, approximately \$95.6 million has been used to acquire fixed assets and to pay for the

development of capitalized software, approximately \$28.3 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 \$2.4 million has been invested in reverse repurchase agreements.

Of the amount of proceeds spent through March 31, 2004, approximately \$40.1 million has been paid to



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

(a) Exhibits.

Exhibit No.	Description
10.30	Amended and Restated Warrant Agreement, dated as of April 29, 2004 between eSpeed, Inc. and UBS Americas Inc. (successor by merger to UBS USA Inc.)
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

(b) Reports on Form 8-K.

- (i) On April 26, 2004, we filed a report on Form 8-K under Item 5. "Other Events and Required FD Disclosure" with respect to the appointment of Kevin Foley as President, and the promotion of Lee Amaitis to Vice Chairman, of the Registrant.
- (ii) On May 3, 2004, we filed a report on Form 8-K under Item 7. "Financial Statements and Exhibits" and "Item 12. Results of Operations and Financials Condition" of Form 8-K, in which we announced our preliminary operating statistics for the quarter ended March 31, 2004.
- (iii) On May 5, 2004, we filed a report on Form 8-K under Item 5. "Other Events and Required FD Disclosure" with respect to the appointment of Paul Saltzman as Chief Operating Officer of the Registrant.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report on Form 10-Q for the quarter ended March 31, 2004 to be signed on its behalf by the undersigned thereunto duly authorized.

eSpeed, Inc.  
(Registrant)

/s/ Howard W. Lutnick



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

/s/ Jeffrey M. Chertoff



Jeffrey M. Chertoff  
Senior Vice President and Chief Financial Officer

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**EXHIBIT INDEX**

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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.

**AMENDED AND RESTATED WARRANT TO PURCHASE CLASS A COMMON STOCK  
OF  
eSPEED, 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 175,000 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.

(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

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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 or 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 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 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

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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.

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

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"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:

"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 57<sup>th</sup> Street, 3<sup>rd</sup> 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.

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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:

(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.

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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 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 23, 2003, which the Holder exercised for 50,000 shares on March 18, 2004 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 29<sup>th</sup> day of April, 2004.

eSPEED, INC.  
(Registrant)

By: /s/ Howard W. Lutnick  
Name: Howard W. Lutnick  
Title: Chairman of the Board,  
Chief Executive Officer and President

ACCEPTED AND AGREED to:

UBS AMERICAS INC. (successor by  
merger to UBS USA INC.)

By: /s/ Jane E. Nutson  
Name: Jane E. Nutson  
Title: Associate/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 therefore 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 \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_



I, Howard W. Lutnick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of eSpeed, Inc. for the quarter ended March 31, 2004;
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: May 7, 2004

/s/ Howard W. Lutnick

Howard W. Lutnick

Chairman of the Board and Chief Executive Officer

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I, Jeffrey M. Chertoff, certify that:

1. I have reviewed this quarterly report on Form 10-Q of eSpeed, Inc. for the quarter ended March 31, 2004;
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: May 7, 2004

/s/ Jeffrey M. Chertoff



Jeffrey M. Chertoff  
Senior Vice President and Chief Financial Officer

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**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 March 31, 2004 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

\_\_\_\_\_  
Name: Howard W. Lutnick  
Title: Chairman of the Board and  
Chief Executive Officer  
Date: May 7, 2004

/s/ Jeffrey M. Chertoff

\_\_\_\_\_  
Name: Jeffrey M. Chertoff  
Title: Senior Vice President and  
Chief Financial Officer  
Date: May 7, 2004

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