

Babcock & Brown Air LTD  
Form F-3  
March 10, 2009

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As filed with the Securities and Exchange Commission on March 10, 2009

Registration No. 333-

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

FORM F-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**Babcock & Brown Air Limited**

(Exact name of registrant as specified in its charter)

**Bermuda**

(State or Other Jurisdiction of  
Incorporation or Organization)

**98-0536376**

(I.R.S. Employer  
Identification Number)

**West Pier**

**Dun Laoghaire**

**County Dublin, Ireland**

**Tel. +353 1 231-1900**

(Address and Telephone Number of Registrant's Principal Executive Offices)

**Puglisi & Associates**

**850 Library Avenue, Suite 204**

**Newark, Delaware 19711**

**Tel. (302) 738-6680**

(Name, Address and Telephone Number of Agent For Service)

*Copies to:*

**Boris Dolgonos, Esq.**  
**Weil, Gotshal & Manges LLP**  
**767 Fifth Avenue**  
**New York, New York 10153**  
**(212) 310-8000**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

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

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

#### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common shares, par value \$0.001 per share <sup>(1)</sup>	4,176,548 <sup>(2)</sup>	\$ 2.68	\$ 11,193,148	\$ 440

(1) American Depositary Shares ( ADSs ) evidenced by American Depositary Receipts issuable upon deposit of the common shares registered hereby have been registered under a separate registration statement on Form F-6. Each American Depositary Share represents one common share.

- (2) Represents the maximum number of ADSs that may be sold from time to time by the selling stockholders named herein.
- (3) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average of the high and low prices for the ADSs on the New York Stock Exchange on March 5, 2009.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED MARCH 10, 2009**

**4,176,548 American Depositary Shares**

**Babcock & Brown Air Limited**

**Representing 4,176,548 Common Shares**

This prospectus relates solely to the resale of up to 4,176,548 common shares of Babcock & Brown Air Limited ( "B&B Air" or the "Company" ) in the form of American Depositary Shares ( "ADSs" ) by the selling shareholders identified in this prospectus. Each ADS represents one common share.

The selling shareholders identified in this prospectus (which term as used herein includes their pledgees, donees, transferees or other successors-in-interest) may offer the shares from time to time as such selling shareholders may determine through public or private transactions or through other means described in the section entitled "Plan of Distribution" beginning on page 26. The prices at which the selling shareholders may sell the ADSs may be determined by the prevailing market price for the ADSs at the time of sale, may be different from such prevailing market price or may be determined through negotiated transactions with third parties. We will not receive any of the proceeds from the sale of these ADSs by the selling shareholders.

Our ADSs are listed on the New York Stock exchange under the symbol "FLY". The last reported sale price of our ADSs on March 9, 2009 was \$2.69 per ADS.

**Investing in our ADSs involves risks. See "Risk Factors" beginning on page 4 of our Annual Report on Form 20-F for the year ended December 31, 2008, which is incorporated by reference herein.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is \_\_\_\_\_, 2009.



**You should rely only on the information contained, or incorporated by reference in this prospectus, or any free writing prospectus prepared by us or on our behalf. We have not authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. We are not making an offer of these securities in any jurisdiction where an offer is not permitted. The information in this prospectus is only accurate on the date of this prospectus. Our business, financial condition, results of operations and prospectus may have changed since then.**

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**SUMMARY**

*This summary highlights selected information contained elsewhere in this prospectus or incorporated herein by reference. This summary may not contain all of the information that you should consider before buying our ADSs from the selling shareholders. You should carefully read this entire prospectus, including each of the documents incorporated herein by reference, before making an investment decision. Unless the context requires otherwise, when used in this prospectus, (1) the terms B&B Air, Company, we, us and our refer to Babcock & Brown Air Limited and its subsidiaries and (2) all references to our shares refer to our common shares held in the form of ADSs.*

**Our Company**

We are a global lessor of modern, fuel-efficient commercial jet aircraft. Our aircraft are leased under long-term to medium-term contracts to a diverse group of airlines throughout the world. As of December 31, 2008, our portfolio consisted of 62 aircraft.

Our executive offices are located at West Pier, Dun Laoghaire, County Dublin, Ireland, our telephone number at that location is +353-1-231-1900, and our website can be accessed at [www.babcockbrownair.com](http://www.babcockbrownair.com). Information contained in our website does not constitute part of this prospectus.

**The Securities We Are Registering**

We are using this prospectus to register up to 4,176,548 ADSs to be sold by the selling shareholders named herein.

**The Offering**

The summary below describes the principal terms of the securities being offered hereunder.

**Securities Offered by the Selling Shareholders**

4,176,548 common shares in the form of ADSs.

**ADSs Outstanding**

32,488,911 ADSs outstanding as of February 28, 2009. Each ADS represents one common share.

**Depository**

Deutsche Bank Trust Company Americas.

**Use of Proceeds**

We will not receive any proceeds from the sale of our ADSs by the selling shareholders.

**Listing**

Our ADSs are listed on the New York Stock Exchange under the symbol FLY.



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**RISK FACTORS**

An investment in our ADSs involves a high degree of risk. You should carefully consider the risk factors incorporated by reference from our most recent Annual Report on Form 20-F and the other information contained in this prospectus, as updated by our subsequent filings with the Securities and Exchange Commission, or the SEC, pursuant to Sections 13(a), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which are incorporated herein by reference, before buying our ADSs. For more information see [Where You Can Find More Information](#) and [Incorporation of Certain Documents By Reference](#).

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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus and the registration statement of which it forms a part and the documents incorporated by reference into these documents contain forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. We use words such as anticipates, believes, plans, expects, future, intend, foresee and similar expressions to identify these forward-looking statements. In addition, from time to time we or our representatives have made or may make forward-looking statements orally or in writing. Furthermore, such forward-looking statements may be included in various filings that we make with the SEC or press releases or oral statements made by or with the approval of one of our authorized executive officers. These forward-looking statements are subject to certain known and unknown risks and uncertainties, as well as assumptions that could cause actual results to differ materially from those reflected in these forward-looking statements. Factors that might cause actual results to differ include, but are not limited to, those discussed in our most recent Annual Report on Form 20-F, which is incorporated by reference herein. Readers are cautioned not to place undue reliance on any forward-looking statements contained herein, which reflect management's opinions only as of the date hereof. Except as required by law, we undertake no obligation to revise or publicly release the results of any revision to any forward-looking statements. You are advised, however, to consult any additional disclosures we have made or will make in our reports to the SEC on Forms 20-F and 6-K. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained in this prospectus.

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**USE OF PROCEEDS**

We will not receive any proceeds from the resale of our ADSs pursuant to this offering.

**Table of Contents****CAPITALIZATION**

The following table presents our (1) cash and cash equivalents and (2) capitalization as of December 31, 2008.

The information below should be read in conjunction our (1) consolidated financial statements and notes thereto and (2) Management's Discussion and Analysis of Financial Condition and Results of Operations section of the annual report on Form 20-F that we have filed with the SEC.

	<b>(Dollars in thousands)</b>
Cash and cash equivalents <sup>(1)</sup>	\$ 170,421
Debt	
Notes payable, net	826,301
Aircraft acquisition facility	597,471
Total debt	\$ 1,423,772
Shareholders' equity	389,413
Total capitalization	\$ 1,813,185

(1) Includes restricted cash of \$113.7 million.

**Table of Contents****PRICE RANGE OF OUR SHARES**

Our ADSs, each representing one common share, are traded on the New York Stock Exchange under the symbol FLY. The following table sets forth, for the periods indicated, the reported high and low market prices of our ADSs on the New York Stock Exchange since September 26, 2007, the date of listing. On March 9, 2009, the last reported sale price of our ADSs was \$2.69 per ADS.

<b>Period</b>	<b>High</b>	<b>Low</b>
	<b>(U.S. dollars)</b>	
Financial Quarters:		
Financial Quarter Ended December 31, 2008	10.25	4.70
Financial Quarter Ended September 30, 2008	14.00	8.03
Financial Quarter Ended June, 30, 2008	16.94	8.73
Financial Quarter Ended March 31, 2008	18.85	13.40
Financial Quarter Ended December 31, 2007	23.90	16.56
Most Recent Six Months:		
February 2009	5.70	2.52
January 2009	7.79	4.81
December 2008	6.96	4.70
November 2008	7.95	4.90
October 2008	10.25	5.75
September 2008	12.50	8.03

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**DESCRIPTION OF SHARE CAPITAL**

*The following description of our share capital reflects our memorandum of association and our bye-laws. Holders of ADSs will be able to exercise their rights with respect to the common shares underlying the ADSs only in accordance with the terms of the deposit agreement. See Description of American Depositary Shares for more information.*

**Share Capital**

Our authorized share capital consists of US\$500,000 divided into 499,999,900 common shares and 100 manager shares par value US\$0.001 each. Pursuant to our bye-laws, subject to any resolution of the shareholders to the contrary, our board of directors is authorized to issue any of our authorized but unissued shares. As of February 28, 2009, 32,488,911 common shares were outstanding.

**Common Shares**

Holders of common shares have no pre-emptive, redemption, conversion or sinking fund rights. Holders of common shares are entitled to one vote per share on all matters submitted to a vote of holders of common shares. Unless a different majority is required by law or by our bye-laws, resolutions to be approved by holders of common shares require approval by a simple majority of votes cast at a meeting at which a quorum is present. There are no limitations on the right of non-Bermudians or non-residents of Bermuda to hold or vote our shares except as described herein.

In the event of our liquidation, dissolution or winding up, the holders of common shares are entitled to share equally and ratably in our assets, if any, remaining after the payment of all of our debts and liabilities, subject to any liquidation preference on any issued and outstanding preference shares.

**Preference Shares**

Pursuant to Bermuda law and our bye-laws, our board of directors by resolution may establish one or more series of preference shares having such number of shares, designations, dividend rates, relative voting rights, conversion or exchange rights, redemption rights, liquidation rights and other relative participation, optional or other special rights, qualifications, limitations or restrictions as may be fixed by the board without any further shareholder approval. The rights with respect to a series of preference shares may be greater than the rights attached to our common shares. It is not possible to state the actual effect of the issuance of any preference shares on the rights of holders of our common shares until our board of directors determines the specific rights attached to those preference shares. The effect of issuing preference shares could include one or more of the following:

restricting dividends in respect of our common shares;

diluting the voting power of our common shares or providing that holders of preference shares have the right to vote on matters as a class;

impairing the liquidation rights of our common shares; or

delaying or preventing a change of control of our company.

As of the date of this prospectus, there are no preference shares outstanding.

## **Manager Shares**

Our manager, Babcock & Brown Air Management Co. Limited, or the Manager, owns 100 manager shares that are entitled to director appointment rights and the right to vote on amendments to the provision of our bye-laws relating to termination of our management agreement with the Manager. Manager shares does not convert into common shares. Upon a termination of our management agreement, the manager shares will cease to have any appointment and voting rights and, to the extent permitted under Section 42 of Companies Act 1981 (Bermuda), will be automatically redeemed for

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their par value. Manager shares are not entitled to receive any dividends and, other than with respect to director appointment rights, holder of manager shares have no voting rights.

## **Dividend Rights**

Pursuant to Bermuda law, we are restricted from declaring or paying a dividend if there are reasonable grounds for believing that (1) we are, or would after the payment be, unable to pay our liabilities as they become due, or (2) the realizable value of our assets would thereby be less than the aggregate of our liabilities and our issued share capital (the aggregate par value of our issued and outstanding common shares). As a result, if the realizable value of our assets decreases, our ability to make or maintain dividend payments may depend on our ability to transfer balances to our contributed surplus account (to which we can allocate shareholder contributions that are unrelated to any share subscription).

There are no restrictions on our ability to transfer funds (other than funds denominated in Bermuda dollars) in and out of Bermuda or to pay dividends to U.S. residents who are holders of our common shares.

## **Variation of Rights**

If at any time we have more than one class of shares, the rights attaching to any class, unless otherwise provided for by the terms of issue of the relevant class, may be varied either: (1) with the consent in writing of the holders of 50% of the issued shares of that class; or (2) with the sanction of a resolution passed by a majority of the votes cast at a general meeting of the relevant class of shareholders at which a quorum consisting of at least two persons holding or representing two-thirds of the issued shares of the relevant class is present. Our bye-laws specify that the creation or issue of shares ranking equally with existing shares will not, unless expressly provided by the terms of issue of existing shares, vary the rights attached to existing shares. In addition, the creation or issue of preference shares ranking prior to common shares will not be deemed to vary the rights attached to common shares or, subject to the terms of any other series of preference shares, to vary the rights attached to any other series of preference shares.

## **Election and Removal of Directors**

Our bye-laws provide that our board shall consist of not less than two and not more than 15 directors as the board may from time to time determine. Our board of directors currently consists of seven directors, each of whom serves a term commencing of their election and continuing until the next annual general meeting or until their successors are elected or appointed or their office is otherwise vacated. Our bye-laws provide that persons standing for election as directors at a duly constituted and quorate annual general meeting are appointed by shareholders holding shares carrying a plurality of the votes cast on the resolution. Our bye-laws provide that, notwithstanding the foregoing, for so long as Babcock & Brown Limited, or Babcock & Brown, the parent of the Manager, holds any of our manager shares, our Manager has the right to appoint the nearest whole number of directors on our board of directors that is not more than 3/7ths of the number of directors on our board of directors at the time. The Manager's appointees on our board of directors will not be required to stand for election by our shareholders other than by Babcock & Brown.

Any shareholder wishing to propose for election as a director someone who is not an existing director or is not proposed by our board must give notice of the intention to propose the person for election. Where a person is to be proposed for election as a director at an annual general meeting by a shareholder, that notice must be given not less than 90 days nor more than 120 days before the anniversary of the last annual general meeting prior to the giving of the notice or, in the event the annual general meeting is called for a date that is not 25 days before or after such anniversary the notice must be given not later than ten days following the earlier of the date on which notice of the





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annual general meeting was posted to shareholders or the date on which public disclosure of the date of the annual general meeting was made.

A director (other than a director appointed by the Manager pursuant to its appointment right described above) may be removed with or without cause by a resolution including the affirmative vote of shareholders holding shares carrying at least 80% of the votes of all shares then issued and entitled to vote on the resolution, provided that notice of the shareholders meeting convened to remove the director is given to the director. The notice must contain a statement of the intention to remove the director and must be served on the director not less than 14 days before the meeting. The director is entitled to attend the meeting and be heard on the motion for his removal. A director appointed by the Manager pursuant to its appointment right described above may be removed with or without cause by the Manager upon notice from the Manager.

## **Anti-Takeover Provisions**

The following is a summary of certain provisions of our bye-laws that may be deemed to have an anti-takeover effect and may delay, deter or prevent a tender offer or takeover attempt that a shareholder might consider to be in its best interest, including those attempts that might result in a premium over the market price for the shares held by shareholders.

Pursuant to our bye-laws, our preference shares may be issued from time to time, and the board of directors is authorized to determine the rights, preferences, privileges, qualifications, limitations and restrictions. See Preference Shares.

The authorized but unissued common shares and our preference shares will be available for future issuance by the board of directors, subject to any resolutions of the shareholders. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued common shares and preference shares could render more difficult or discourage an attempt to obtain control over us by means of a proxy contest, tender offer, amalgamation or otherwise.

Our bye-laws provide that if a competitor of Babcock & Brown acquires beneficial ownership of 15% or more of our common shares, then we have the option, but not the obligation, within 90 days of the acquisition of such threshold beneficial ownership, to require that shareholder to tender for all of our remaining common shares, or to sell such number of common shares to us or to third parties at fair market value as would reduce its beneficial ownership to less than 15%. In addition, our bye-laws provide that the vote of each common share held by a competitor of Babcock & Brown that beneficially owns 15% or more, but less than 50%, of our common shares will be reduced to three-tenths of a vote per share on all matters upon which shareholder may vote.

## **Certain Provisions of Bermuda Law**

We have been designated by the Bermuda Monetary Authority as a non-resident for Bermuda exchange control purposes. This designation allows us to engage in transactions in currencies other than the Bermuda dollar, and there are no restrictions on our ability to transfer funds (other than funds denominated in Bermuda dollars) in and out of Bermuda or to pay dividends to United States residents who are holders of our common shares.

The Bermuda Monetary Authority has given its consent for the issue and free transferability of all of the common shares that underlie the ADSs that are the subject of this offering to and between non-residents of Bermuda for exchange control purposes, provided our ADSs remain listed on an appointed stock exchange, which includes the New York Stock Exchange. Approvals or permissions given by the Bermuda Monetary Authority do not constitute a

guarantee by the Bermuda Monetary Authority as to our performance or our creditworthiness. Accordingly, in giving such consent or permissions, the Bermuda Monetary Authority shall not be liable for the financial soundness, performance or default of our business or for the correctness of any opinions or statements expressed in this prospectus. Certain

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issues and transfers of common shares involving persons deemed resident in Bermuda for exchange control purposes may require the specific consent of the Bermuda Monetary Authority.

In accordance with Bermuda law, share certificates are only issued in the names of companies, partnerships or individuals. In the case of a shareholder acting in a special capacity (for example as a trustee), certificates may, at the request of the shareholder, record the capacity in which the shareholder is acting. Notwithstanding such recording of any special capacity, we are not bound to investigate or see to the execution of any such trust. We will take no notice of any trust applicable to any of our shares, whether or not we have been notified of such trust.

## **Differences in Corporate Law**

You should be aware that the Companies Act, which applies to us, differs in certain material respects from laws generally applicable to Delaware corporations and their shareholders. In order to highlight these differences, set forth below is a summary of certain significant provisions of the Companies Act (including modifications adopted pursuant to our bye-laws) and Bermuda common law applicable to us which differ in certain respects from provisions of the General Corporation Law of the State of Delaware. Because the following statements are summaries, they do not address all aspects of Bermuda law that may be relevant to us and our shareholders or all aspects of Delaware law which may differ from Bermuda law.

## ***Duties of Directors***

Our bye-laws provide that our business is to be managed and conducted by our board of directors. At common law, members of the board of directors of a Bermuda company owe a fiduciary duty to the company to act in good faith in their dealings with or on behalf of the company and exercise their powers and fulfill the duties of their office honestly. This duty includes the following essential elements:

- a duty to act in good faith in the best interests of the company;
- a duty not to make a personal profit from opportunities that arise from the office of director;
- a duty to avoid conflicts of interest; and
- a duty to exercise powers for the purpose for which such powers were intended.

The Companies Act imposes a duty on directors and officers of a Bermuda company:

- to act honestly and in good faith with a view to the best interests of the company; and
- to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In addition, the Companies Act imposes various duties on directors and officers of a company with respect to certain matters of management and administration of the company.

Directors and officers generally owe fiduciary duties to the company, and not to the company's individual shareholders. Our shareholders may not have a direct cause of action against our directors.

Under Delaware law, the business and affairs of a corporation are managed by or under the direction of its board of directors. In exercising their powers, directors are charged with a fiduciary duty of care to protect the interests of the

corporation and a fiduciary duty of loyalty to act in the best interests of its shareholders. The duty of care requires that directors act in an informed and deliberative manner and inform themselves, prior to making a business decision, of all material information reasonably available to them. The duty of care also requires that directors exercise care in overseeing and investigating the conduct of corporate employees. The duty of loyalty may be summarized as the duty to act in good faith, not out of self-interest, and in a manner which the director reasonably believes to be in the best interests of the shareholders.

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Delaware law provides that a party challenging the propriety of a decision of a board of directors bears the burden of rebutting the applicability of the presumptions afforded to directors by the business judgment rule. The business judgment rule is a presumption that in making a business decision, directors acted on an informed basis and that the action taken was in the best interests of the company and its shareholders, and accordingly, unless the presumption is rebutted, a board's decision will be upheld unless there can be no rational business purpose for the action or the action constitutes corporate waste. If the presumption is not rebutted, the business judgment rule attaches to protect the directors and their decisions, and their business judgments will not be second guessed. Where, however, the presumption is rebutted, the directors bear the burden of demonstrating the entire fairness of the relevant transaction. Notwithstanding the foregoing, Delaware courts may subject directors' conduct to enhanced scrutiny in respect of defensive actions taken in response to a threat to corporate control or the approval of a transaction resulting in a sale of control of the corporation.

### ***Interested Directors***

Bermuda law and our bye-laws provide that if a director has an interest in a material transaction or proposed material transaction with us or any of our subsidiaries or has a material interest in any person that is a party to such a transaction, the director must disclose the nature of that interest at the first opportunity either at a meeting of directors or in writing to the directors. Our bye-laws provide that, after a director has made such a declaration of interest, he is allowed to be counted for purposes of determining whether a quorum is present and to vote on a transaction in which he has an interest, unless disqualified from doing so by the chairman of the relevant board meeting.

Under Delaware law, such transaction would not be voidable if (1) the material facts as to such interested director's relationship or interests are disclosed or are known to the board of directors and the board in good faith authorizes the transaction by the affirmative vote of a majority of the disinterested directors, (2) such material facts are disclosed or are known to the shareholders entitled to vote on such transaction and the transaction is specifically approved in good faith by vote of the majority of shares entitled to vote thereon or (3) the transaction is fair as to the company as of the time it is authorized, approved or ratified. Under Delaware law, such interested director could be held liable for a transaction in which such director derived an improper personal benefit.

### ***Voting Rights and Quorum Requirements***

Under Bermuda law, the voting rights of our shareholders are regulated by our bye-laws and, in certain circumstances, the Companies Act. Under our bye-laws, at any general meeting, two or more persons present in person at the start of the meeting and representing in person or by proxy shareholders holding shares carrying more than 25% of the votes of all shares entitled to vote on the resolution shall constitute a quorum for the transaction of business. Generally, except as otherwise provided in the bye-laws, or the Companies Act, any action or resolution requiring approval of the shareholders may be passed by a simple majority of votes cast except for the election of directors which requires only a plurality of the votes cast.

Any individual who is a shareholder of our company and who is present at a meeting may vote in person, as may any corporate shareholder that is represented by a duly authorized representative at a meeting of shareholders. Our bye-laws also permit attendance at general meetings by proxy, provided the instrument appointing the proxy is in the form specified in the bye-laws or such other form as the board may determine. Under our bye-laws, each holder of common shares is entitled to one vote per common share held.

Under Delaware law, unless otherwise provided in a company's certificate of incorporation, each stockholder is entitled to one vote for each share of stock held by the stockholder. Delaware law provides that unless otherwise provided in a company's certificate of incorporation or bye-laws, a majority of the shares entitled to vote, present in person or represented by proxy, constitutes a quorum at a meeting of stockholders. In matters other than the election

of directors, with the exception of

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special voting requirements related to extraordinary transactions, and unless otherwise provided in a company's certificate of incorporation or bye-laws, the affirmative vote of a majority of shares present in person or represented by proxy at the meeting entitled to vote is required for stockholder action, and the affirmative vote of a plurality of shares is required for the election of directors.

### ***Dividends***

Pursuant to Bermuda law, a company is restricted from declaring or paying a dividend if there are reasonable grounds for believing that: (1) the company is, or would after the payment be, unable to pay its liabilities as they become due or (2) that the realizable value of its assets would thereby be less than the aggregate of its liabilities and its issued share capital. Under our bye-laws, each common share is entitled to dividends if, as and when dividends are declared by our board of directors, subject to any preferred dividend right of the holders of any preference shares. Issued share capital is the aggregate par value of the company's issued and outstanding common shares.

Under Delaware law, subject to any restrictions contained in the company's certificate of incorporation, a company may pay dividends out of surplus or, if there is no surplus, out of net profits for the fiscal year in which the dividend is declared and for the preceding fiscal year. Delaware law also provides that dividends may not be paid out of net profits if, after the payment of the dividend, capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

### ***Amalgamations, Mergers and Similar Arrangements***

The amalgamation of a Bermuda company with another company or corporation (other than certain affiliated companies) requires the amalgamation agreement to be approved by the company's board of directors and by its shareholders. Unless the company's bye-laws provide otherwise, the approval of 75% of the shareholders voting at such meeting is required to approve the amalgamation agreement, and the quorum for such meeting must be two persons holding or representing more than one-third of the issued shares of the company. Our bye-laws provide that a merger or an amalgamation (other than with a wholly owned subsidiary) that has been approved by the board must only be approved by a majority of the votes cast at a general meeting of the shareholders at which the quorum shall be two or more persons present in person and representing in person or by proxy shareholders holding shares carrying more than 25% of the votes of all shares entitled to vote on the resolution. Any merger or amalgamation not approved by our board must be approved by shareholders holding shares carrying not less than 66% of the votes of all shares entitled to vote on the resolution.

Under Bermuda law, in the event of an amalgamation of a Bermuda company with another company or corporation, a shareholder of the Bermuda company who did not vote in favor of the amalgamation and is not satisfied that fair value has been offered for such shareholder's shares may, within one month of notice of the shareholders meeting, apply to the Supreme Court of Bermuda to appraise the fair value of those shares.

Under Delaware law, with certain exceptions, a merger, consolidation or sale of all or substantially all the assets of a corporation must be approved by the board of directors and a majority of the issued and outstanding shares entitled to vote thereon. Under Delaware law, a shareholder of a corporation participating in certain major corporate transactions may, under certain circumstances, be entitled to appraisal rights pursuant to which such shareholder may receive cash in the amount of the fair value of the shares held by such shareholder (as determined by a court) in lieu of the consideration such shareholder would otherwise receive in the transaction.



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### ***Takeovers***

An acquiring party is generally able to acquire compulsorily the common shares of minority holders of a company in the following ways:

By a procedure under the Companies Act known as a scheme of arrangement. A scheme of arrangement could be effected by obtaining the agreement of the company and of holders of common shares, representing in the aggregate a majority in number and at least 75% in value of the common shareholders present and voting at a court ordered meeting held to consider the scheme of arrangement. The scheme of arrangement must then be sanctioned by the Bermuda Supreme Court. If a scheme of arrangement receives all necessary agreements and sanctions, upon the filing of the court order with the Registrar of Companies in Bermuda, all holders of common shares could be compelled to sell their shares under the terms of the scheme or arrangement.

If the acquiring party is a company by acquiring pursuant to a tender offer 90% of the shares or class of shares not already owned by, or by a nominee for, the acquiring party (the offeror), or any of its subsidiaries. If an offeror has, within four months after the making of an offer for all the shares or class of shares not owned by, or by a nominee for, the offeror, or any of its subsidiaries, obtained the approval of the holders of 90% or more of all the shares to which the offer relates, the offeror may, at any time within two months beginning with the date on which the approval was obtained, require by notice any nontendering shareholder to transfer its shares on the same terms as the original offer. In those circumstances, nontendering shareholders will be compelled to sell their shares unless the Supreme Court of Bermuda (on application made within a one-month period from the date of the offeror's notice of its intention to acquire such shares) orders otherwise.

Where the acquiring party or parties hold not less than 95% of the shares or a class of shares of the company, by acquiring, pursuant to a notice given to the remaining shareholders or class of shareholders, the shares of such remaining shareholders or class of shareholders. When this notice is given, the acquiring party is entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice, unless a remaining shareholder, within one month of receiving such notice, applies to the Supreme Court of Bermuda for an appraisal of the value of their shares. This provision only applies where the acquiring party offers the same terms to all holders of shares whose shares are being acquired.

Delaware law provides that a parent corporation, by resolution of its board of directors and without any shareholder vote, may merge with any subsidiary of which it owns at least 90% of each class of its capital stock. Upon any such merger, dissenting shareholders of the subsidiary would have appraisal rights.

### ***Shareholders Suits***

Class actions and derivative actions are generally not available to shareholders under Bermuda law. The Bermuda courts, however, would ordinarily be expected to permit a shareholder to commence an action in the name of a company to remedy a wrong to the company where the act complained of is alleged to be beyond the corporate power of the company or illegal, or would result in the violation of the company's memorandum of association or bye-laws. Furthermore, consideration would be given by a Bermuda court to acts that are alleged to constitute a fraud against the minority shareholders or, for instance, where an act requires the approval of a greater percentage of the company's shareholders than that which actually approved it.

When the affairs of a company are being conducted in a manner which is oppressive or prejudicial to the interests of some part of the shareholders, one or more shareholders may apply to the Supreme Court of Bermuda, which may make such order as it sees fit, including an order regulating the conduct



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of the company's affairs in the future or ordering the purchase of the shares of any shareholders by other shareholders or by the company.

Our bye-laws contain a provision by virtue of which our shareholders waive any claim or right of action that they have, both individually and on our behalf, against any director or officer in relation to any action or failure to take action by such director or officer, except in respect of any fraud or dishonesty of such director or officer. The operation of this provision as a waiver of the right to sue for violations of federal securities laws may be unenforceable in U.S. courts.

Class actions and derivative actions generally are available to shareholders under Delaware law for, among other things, breach of fiduciary duty, corporate waste and actions not taken in accordance with applicable law. In such actions, the court generally has discretion to permit the winning party to recover attorneys' fees incurred in connection with such action.

### ***Indemnification of Directors and Officers***

Section 98 of the Companies Act provides generally that a Bermuda company may indemnify its directors, officers and auditors against any liability which by virtue of any rule of law would otherwise be imposed on them in respect of any negligence, default, breach of duty or breach of trust, except in cases where such liability arises from fraud or dishonesty of which such director, officer or auditor may be guilty in relation to the company. Section 98 further provides that a Bermuda company may indemnify its directors, officers and auditors against any liability incurred by them in defending any proceedings, whether civil or criminal, in which judgment is awarded in their favor or in which they are acquitted or granted relief by the Supreme Court of Bermuda pursuant to section 281 of the Companies Act.

We have adopted provisions in our bye-laws that provide that we shall indemnify our officers and directors in respect of their actions and omissions, except in respect of their fraud or dishonesty. We also have entered into directors service agreements with our directors, pursuant to which we have agreed to indemnify them against any liability brought against them by reason of their service as directors, except in cases where such liability arises from fraud, dishonesty, bad faith, gross negligence, willful default or willful misfeasance. Our bye-laws provide that the shareholders waive all claims or rights of action that they might have, individually or in right of the company, against any of the company's directors or officers for any act or failure to act in the performance of such director's or officer's duties, except in respect of any fraud or dishonesty of such director or officer. Section 98A of the Companies Act permits us to purchase and maintain insurance for the benefit of any officer or director in respect of any loss or liability attaching to him in respect of any negligence, default, breach of duty or breach of trust, whether or not we may otherwise indemnify such officer or director. We have purchased and maintain a directors' and officers' liability policy for such a purpose.

Under Delaware law, a corporation may indemnify a director or officer of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in defense of an action, suit or proceeding by reason of such position if (1) such director or officer acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and (2) with respect to any criminal action or proceeding, such director or officer had no reasonable cause to believe his conduct was unlawful.

### ***Inspection of Corporate Records***

Members of the general public have the right to inspect our public documents available at the office of the Registrar of Companies in Bermuda and our registered office in Bermuiness objectives.



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**AMPEX CORPORATION**

**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 2 - Summary of Significant Accounting Policies**

*Basis of Presentation*

The consolidated financial statements included herein have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission for reporting on Form 10-Q. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations. In addition, certain reclassifications have been made to the prior year financial statements to conform to the current year's presentation. The statements should be read in conjunction with the Company's report on Form 10-K for the year ended December 31, 2003 and the Audited Consolidated Financial Statements included therein.

In the opinion of management, the financial statements reflect all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of financial position, results of operations and cash flows for the interim periods presented. The results of operations for the three month period ended March 31, 2004 are not necessarily indicative of the results to be expected for the full year.

**Note 3 Stock-Based Compensation**

The Company accounts for stock-based awards to employees in accordance with APB No. 25 ( APB 25 ), Accounting for Stock Issued to Employees, and has adopted the disclosure-only alternative of Statement of Financial Accounting Standards No. 123 ( SFAS 123 ), Accounting for Stock Based Compensation.

The Company has elected to account for employee stock options using the intrinsic value method prescribed by APB 25, and therefore compensation cost for stock options is measured as the excess, if any, of the quoted market price of the Company's stock at the date of the grant over the amount an employee must pay to acquire the stock. Had compensation cost for the Company's stock-based compensation plan been determined based on the fair value on the grant dates for awards under those plans consistent with the method of SFAS 123, the Company's net income (loss) applicable to common stockholders and basic and diluted income (loss) per share would have been reduced to the pro forma amounts indicated below:

<b>Three Months Ended</b>	
<b>March 31, 2004</b>	<b>March 31, 2003</b>
<b>(in thousands, except per share amounts)</b>	

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Net income (loss):		
As reported	\$ 72	\$ (1,932)
Compensation expense, net of tax	(1)	(8)
Pro forma	\$ 71	\$ (1,940)
Net income (loss) applicable to common stockholders:		
As reported	\$ 72	\$ (896)
Compensation expense, net of tax	(1)	(8)
Pro forma	\$ 71	\$ (904)
Basic and diluted income (loss) per share:		
Income (loss) per share, as reported	\$ 0.02	\$ (0.61)
Income (loss) per share, pro forma	\$ 0.02	\$ (0.61)
Income (loss) per share applicable to common stockholders, as reported	\$ 0.02	\$ (0.28)
Income (loss) per share applicable to common stockholders, pro forma	\$ 0.02	\$ (0.29)

These pro forma disclosures are not necessarily representative of the effects on reported net income (loss) and net income (loss) applicable to common stockholders for future years.

The fair values of options at the date of grant was estimated using the Black-Scholes model with the following weighted average assumptions:

	Three Months Ended	
	March 31, 2004	March 31, 2003
Expected life (years)	1.0	1.0
Risk-free interest rate	1.27%	3.28%
Expected volatility	3.19	1.47
Expected dividend yield		

**Table of Contents****AMPEX CORPORATION****NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)****Note 4 Recent Pronouncements**

In December 2003, the FASB issued additional guidance clarifying the provisions of FASB Interpretation No. 46 ( FIN 46 ), Consolidation of Variable Interest Entities, an Interpretation of ARB No.51, or FIN 46-R. FIN 46-R provides a deferral of FIN 46 for certain entities. FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. The Company does not have any interests in variable interest entities and the adoption of FIN 46-R is not expected to have a material impact on the Company's financial position, cash flows or results of operations.

In May 2003, the FASB issued Statement of Financial Accounting Standards No. 150 ( SFAS 150 ), Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity . SFAS 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). SFAS 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The Company has adopted SFAS 150 effective June 15, 2003. The adoption of SFAS 150 had no impact on the Company's financial position, cash flows or results of operations.

In March 2004, the FASB approved EITF Issue 03-6, Participating Securities and the Two-Class Method under FAS 128. EITF Issue 03-6 supersedes the guidance in Topic No. D-95, Effect of Participating Convertible Securities on the Computation of Basic Earnings per Share and requires the use of the two-class method of participating securities. The two-class method is an earnings allocation formula that determines earnings per share for each class of common stock and participating security according to dividends declared (or accumulated) and participation rights in undistributed earnings. In addition, EITF Issue 03-6 addresses other forms of participating securities, including options, warrants, forwards and other contracts to issue an entity's common stock, with the exception of stock-based compensation (unvested options and restricted stock) subject to the provisions of Opinion No. 25 and FASB No. 123. EITF Issue 03-6 is effective for reporting periods beginning after March 31, 2004 and should be applied by restating previously reported earnings per share. The Company is currently in the process of evaluating the impact that the adoption of EITF Issue 03-6 will have on its financial position and results of operations.

**Note 5 - Computation of Basic and Diluted Income (Loss) per Share**

In accordance with the disclosure requirements of SFAS 128, a reconciliation of the numerator and denominator of basic and diluted income (loss) per common share is provided as follows (in thousands, except per share amounts):

<b>Three Months</b>	
<b>Ended March 31,</b>	
<b>2004</b>	<b>2003</b>

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Numerator		
Net income (loss)	\$ 72	\$ (1,932)
	<u>          </u>	<u>          </u>
Net income (loss) applicable to common stockholders	\$ 72	\$ (896)
	<u>          </u>	<u>          </u>
Denominator		
Weighted average common stock outstanding	3,718	3,171
	<u>          </u>	<u>          </u>
Basic and diluted income (loss) per share	\$ 0.02	\$ (0.61)
	<u>          </u>	<u>          </u>
Basic and diluted income (loss) per share applicable to common stockholders	\$ 0.02	\$ (0.28)
	<u>          </u>	<u>          </u>



**Table of Contents****AMPEX CORPORATION****NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

In the three months ended March 31, 2003, the Company issued 21,480 shares of Common Stock to redeem 537 shares of Redeemable Preferred Stock. Such shares of common stock are included in the weighted average common stock outstanding from the dates of exchange. As of October 30, 2003, the Company redeemed all of its outstanding shares of 8% Noncumulative Redeemable Preferred Stock by issuing shares of its Class A Common Stock. Accordingly, the Company issued 450,600 shares of Class A Common Stock. Such shares of common stock are included in the weighted average common stock outstanding from the dates of exchange.

Stock options to purchase 39,694 shares of Common Stock at prices ranging from \$2.40 to \$72.50 per share were outstanding at March 31, 2004, but were not included in the computation of diluted loss per share because they are anti-dilutive.

Stock options to purchase 126,208 shares of Common Stock at prices ranging from \$2.40 to \$97.50 per share were outstanding at March 31, 2003, but were not included in the computation of diluted loss per share because they are anti-dilutive.

**Note 6 - Supplemental Schedule of Cash Flow Information**

	<b>Three Months Ended March 31,</b>	
	<b>2004</b>	<b>2003</b>
	<b>(in thousands)</b>	
Interest paid	\$ 1,008	\$ 59
Income taxes paid	938	9
Preferred stock (redemptions)		(1,074)

Income taxes paid in the three months ended March 31, 2004 includes \$0.8 million representing payment to the California Franchise Tax Board to settle income tax and interest assessed for the period 1983 to 1985.

**Note 7 - Other Accrued Liabilities**

	<b>March 31,</b>	
	<b>2004</b>	<b>2003</b>
	<b>(in thousands)</b>	
Compensation and employee benefit	\$ 1,805	\$ 2,087

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Pension	9,384	10,841
Accrued pension contributions for Media Plan	2,079	2,953
Deferred revenue and customer deposits	4,160	5,236
Taxes	322	1,136
Warranty and other product costs	641	641
Interest payable	124	259
Environmental	100	100
Other	579	703
	<u>          </u>	<u>          </u>
Total	\$ 19,194	\$ 23,956
	<u>          </u>	<u>          </u>

**Table of Contents****AMPEX CORPORATION****NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

It is anticipated that pension contributions due under the Company's defined benefit plan and the Media defined plan totaling \$11.5 million will be funded by Hillside in which case the Company would issue notes to Hillside in an equivalent amount. See Note 8.

**Note 8 - Debt**

	<b>March 31, 2004</b>	<b>December 31, 2003</b>
	<u>          </u>	<u>          </u>
	(in thousands)	
<b><i>Notes Payable</i></b>		
Note payable - other	\$ 138	\$ 146
	<u>          </u>	<u>          </u>
<b>Total</b>	<b>\$ 138</b>	<b>\$ 146</b>
	<u>          </u>	<u>          </u>
<b><i>Long-term Debt</i></b>		
Senior discount notes	\$ 9,381	\$ 9,757
Hillside notes payable	3,259	3,259
Senior notes	62,810	61,006
	<u>          </u>	<u>          </u>
<b>Total</b>	<b>\$ 75,450</b>	<b>\$ 74,022</b>
	<u>          </u>	<u>          </u>

***Note Payable - Other***

The note is a non-interest-bearing demand promissory note held by NH Holding Incorporated. The outstanding balance at March 31, 2004 of \$0.1 million is expected to be paid or converted into shares of Common Stock.

***Hillside Notes***

In 1994, the Company, the Pension Benefit Guaranty Corporation (the PBGC) and certain affiliates, including Hillside, who were members of a group under common control for purposes of the Employee

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**Table of Contents****AMPEX CORPORATION****NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Retirement Income Security Act ( ERISA ) entered into certain agreements in connection with the reorganization of the Company's former parent, NH Holding Incorporated ( NHI ), relating to the pension plans of the Company and of its former Media subsidiaries, which are substantially underfunded. Pursuant to these agreements, Hillside is obligated to fund pension contributions in the event the Company and/or Media are unable to do so. At the Company's request, Hillside has made pension contributions totaling \$4.0 million through March 31, 2004 and, in addition, Hillside has made pension contributions totaling \$2.0 million on April 15, 2004. The Company has issued notes to Hillside in the amount of the pension contributions. The Company anticipates that due to our senior debt agreements, Hillside will be required to fund future contributions and such amounts are projected to be significant. In this event, the Company will issue additional Notes to Hillside. Under the terms of the Notes, \$150,000 is due on the first anniversary of the Notes with the remainder due on the fourth anniversary of the Notes. Pursuant to amendments to the senior debt agreements, all principal payments on the Hillside Notes will be deferred until after December 31, 2006 with earlier repayment in the event that the Senior Discount Notes and Senior Notes have been repaid in full. The Hillside Notes provide for interest paid quarterly at 1 percent plus 175% of the applicable mid-term Federal rate, (effective rate of 6.75% at March 31, 2004). The Company granted to Hillside a security interest in Data Systems' inventory and other assets as collateral for advances, which it is required to make pursuant to the agreement. The agreement contains certain restrictive covenants which, among other things, restrict the Company's ability to declare dividends, sell all or substantially all of its assets or commence liquidation, or engage in specified transactions with certain related parties, breach of which could result in acceleration of the Company's potential termination liabilities.

***Senior Notes and Senior Discount Notes***

In the first quarter of 2004, the Company restructured its outstanding 12% Senior Notes and Data Systems' 20% Senior Discount Notes. The Senior Notes were exchanged for new 12% Senior Notes due 2008 and the due date of the Senior Discount Notes was extended from January 5, 2005 to January 5, 2006. The restructured Notes are secured by liens on the Company's royalty stream that may be generated from existing and future patent licenses and, in addition, the Senior Discount Notes are secured by a deed of trust on Data Systems' manufacturing facility in Colorado Springs, CO and are guaranteed by the Company. The new securities provide for the payment of accrued interest and principal out of Available Cash Flow of the Company, which includes all future royalty proceeds received by the Company, net of withholding taxes, and proceeds of certain potential asset sales less certain debt and specified operating expenses and a working capital reserve of up to \$2.5 million. The Company is required to generate a minimum of \$30 million of Available Cash Flow during the three years ending December 31, 2006 or an event of default will occur under the Senior Note Indenture. Prior to maturity, the new Notes are payable as to accrued interest and principal solely to the extent of Available Cash Flow received by the Company, and unpaid accrued interest is payable through the issuance of additional Notes or capitalized. From March 2002 to March 2004, Available Cash Flow totaled \$5.0 million. For the three months ended March 31, 2004, interest incurred on the Senior Discount Notes and Senior Notes totaled \$2.3 million. A cash payment in March 2004 of \$1.0 million was applied against accrued interest on the Senior Discount Notes. For the three months ended March 31, 2003, interest incurred on the Senior Discount Notes and Senior Notes totaled \$2.1 million. No cash payments were made on the Senior Notes during this period. Additional Senior Notes in the amount of \$3.5 million, representing accrued interest for the period August 16, 2003 to February 15, 2004, were issued in February 2004. Additional Senior Notes in the amount of \$3.1 million, representing accrued interest for the period August 16, 2002 to February 15, 2003, were issued in February 2003. The security interest in royalty payments granted to the new 12% Senior Noteholders is subordinated to the security interest held by the Senior Discount Noteholders and no cash payments on the Senior Notes may be made until all payments of interest and principal have been made on the Senior Discount Notes. All payments due at maturity on the Notes must be made in cash.

The Indentures under which the new securities were issued contain customary affirmative and negative restrictive covenants that limit the payment of dividends, the incurrence of additional indebtedness or liens, certain sales of assets and other actions by the Company and its restricted subsidiaries. In the event of default, the holders of the Notes would be entitled to enforce the liens granted by the Company on its future patent royalty stream and the Colorado Springs facility and to apply amounts collected to repayment of the Notes.



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**AMPEX CORPORATION**

**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 9 - Commitments and Contingencies**

*Legal Proceedings*

The Company is currently a defendant in lawsuits that have arisen in the ordinary course of its business. Certain subsidiaries have been assessed income and value-added taxes together with penalties and interest. Management does not believe that any such lawsuits or unasserted claims will have a material adverse effect on the Company's financial position, results of operations or cash flows.

*Environmental Matters*

Ampex's facilities are subject to numerous federal, state and local laws and regulations designed to protect the environment from waste emissions and hazardous substances. Owners and occupiers of sites containing hazardous substances, as well as generators and transporters of hazardous substances, are subject to broad liability under various federal and state environmental laws and regulations, including liability for investigative and cleanup costs and damages arising out of past disposal activities. Ampex has been named from time to time as a potentially responsible party by the United States Environmental Protection Agency with respect to contaminated sites that have been designated as Superfund sites, and are currently engaged in various environmental investigation, remediation and/or monitoring activities at several sites located off Company facilities. Management has provided reserves, which have not been discounted, related to investigation and cleanup costs and believes that the final disposition of these matters will not have a material adverse effect on the Company's financial position, results of operations or cash flows.

The Company has not accrued any liability for costs that might be assessed against it by federal or state environmental agencies involving sites owned by the Company's former subsidiary Media. Media is primarily responsible for the cleanup at its facilities and at off site locations. The Company believes that it has no material contingent liability in connection with the Media properties.

*Guarantees*

The Company, as permitted under Delaware law and in accordance with its Bylaws, indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while they were serving at its request in such capacity. The maximum amount of potential future indemnification is unlimited; however, the Company has a Director and Officer Insurance Policy that enables the Company to recover a portion of any future amounts paid. As a result of the insurance policy coverage, the Company believes the fair value of these indemnification agreements is minimal.

The Company's sales agreements indemnify its customers for any expenses or liability resulting from claimed infringements of patents, trademarks or copyrights of third parties. The terms of these indemnification agreements are generally perpetual any time after execution of the

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agreement. The maximum amount of potential future indemnification is unlimited. However, to date, the Company has not paid any claims or been required to defend any lawsuits with respect to any claim.

The Company has guaranteed certain lease payments with respect to equipment and real estate of subsidiaries. The Company has recorded a liability for substantially the full amount of its guarantee, net of the anticipated sublease income expected to be realized.

The Company is the plan sponsor and is contingently liable to provide funding for plan benefits under a pension plan of a former affiliate, Media, which was sold in 1995. Presently the unfunded accumulated benefit liability is \$19.6 million. During 2003, the Company and Media entered into the Retirement Plan Funding and Settlement Agreement, which provides for monthly payments of \$74,000 by Media to Ampex in settlement of future pension contributions that may be required under the Media Plan that would be funded by Ampex. Ampex recognized a liability of \$7.5 million, of which \$5.4 million was provided in the fourth quarter of 2003, representing the probable amount of estimated future funding necessary under the Media Plan, net of amounts expected to be reimbursed by Media. On an ongoing basis, the Company continues to assess its obligation under the Media Plan and additional obligations may be recognized in the future based on that assessment.

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**AMPEX CORPORATION**

**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 10 - Preferred Stock**

Beginning in June 1999, the Company became obligated to redeem the Redeemable Preferred Stock in quarterly installments. For the three months ended March 31, 2003, the Company issued 21,480 shares of its Common Stock to satisfy the quarterly redemption requirements. On October 2, 2003, the Company redeemed all remaining Redeemable Preferred Stock. The Company recognized a benefit from extinguishment of preferred stock to the extent that the face amount of the preferred stock redeemed exceeded the market price of the common stock issued.

**Note 11 - Related Party Transactions**

***Equity Investment:***

In the third quarter of 2003, the Company's unrestricted investment subsidiary invested \$1 million to acquire a 21.6% interest in a limited partnership that was formed by the Company and certain other institutional and individual investors, including the general partner which is controlled by Ampex's CEO, to purchase shares of 4imprint Group plc, a publicly-held British promotional products company. Ampex's CEO, Edward Bramson, acquired shares in the products company in concert with the limited partnership. The Board of Directors of the Company determined that the terms of the Company's investment were at least as favorable as the terms afforded to unrelated investors. Mr. Bramson serves as the temporary, non-executive Chairman of the Board of the products company. Mr. Bramson has assigned to Ampex all compensation he may receive as a non-executive board member.

The Company uses the equity method of accounting for its interest in the limited partnership. At March 31, 2004, the investment included in the caption "Other Assets" on the Consolidated Balance Sheets totaled \$1.7 million.

The limited partnership accounted for its interest in the products company using the equity method of accounting. In the three months ended March 31, 2004, the partnership reported a net gain of \$5.6 million. The Company's pro rata share of the net gain totaled \$1.2 million and is included in "Equity in Net Gain of Limited Partnership" in the Consolidated Statements of Operations and Comprehensive Loss. In addition, the Company realized fees of \$0.3 million from other investors on the distribution of profits from the Company's investment partnership, which were netted against Selling and Administrative Expenses.

The following table provides summarized financial information on a 100% basis for the limited partnership accounted for under the equity method as of March 31, 2004 and for the three months then ended (in thousands):

Balance Sheet Data:



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Total assets	\$ 9,104
Total liabilities	\$ 3
Total partners' capital	\$ 9,101

Earnings Data:

Loss from operations	\$ (8)
Equity in net loss of products company	\$ (115)
Gain on sale of stock of products company	\$ 5,772
	<hr/>
Net gain	\$ 5,649
	<hr/>

The gain on sale of stock of the products company resulted from the sale of 62.4% of the shares held by the partnership. Proceeds from the sale of such shares were received by the partnership and distributed to partners in April 2004. The Company's pro rata share of such proceeds totaled \$1.7 million. Total assets of the partnership include 1.9 million shares of the products company which have a carrying value of \$1.2 million and fair market value of \$4.9 million.

**Table of Contents****AMPEX CORPORATION****NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)****Capital Transaction:**

In 1995, 1996 and 1997, the Company sold shares of its Class A Common Stock to First Jeffson Corporation ( FJC ) and to Second Jeffson Corporation ( SJC ), affiliated corporations controlled by Edward Bramson, the Chairman and Chief Executive Officer of Ampex Corporation. The purchase price was paid part in cash and part with promissory notes. The notes were collateralized by a pledge of shares of Class A Common Stock that were purchased. For several years, the market value of the pledged shares has been substantially less than the principal amount of the notes. In 2002, FJC advised the Company that there could be no assurance that it would be able to obtain additional funds from Mr. Bramson or others to make future payments of interest or principal on the notes. During 2003, FJC failed to make scheduled interest payments amounting to \$205,953 on outstanding notes aggregating \$2,794,050 that were to mature in January 2005 and October 2007. Accordingly, in March 2004, after reviewing the matter with legal advisors, Ampex foreclosed on these notes and caused the 85,000 pledged shares, which had a fair market value of \$153,000, to be registered in the Company's name. In connection with the foreclosure transaction, FJC also transferred to the Company 500 additional shares of Class A Common Stock and \$12,600 in cash, which represented substantially all of FJC's other assets. The foreclosure action did not affect the Company's net assets or results of operations, exclusive of tax benefits that may be realized in future years. The Company intends to cancel shares received from FJC and has excluded them from shares outstanding at March 31, 2004. Interest and principal paid by FJC on the notes in prior years totaling \$2.4 million will be retained by Ampex.

**Note 12 - Accumulated Other Comprehensive Income**

The balances of each classification within accumulated other comprehensive income are as follows:

	<b>Minimum Pension Liability</b>	<b>Foreign Currency Items</b>	<b>Accumulated Other Income</b>
	_____	_____	_____
	(in thousands)		
December 31, 2003	\$ (72,716)	\$ 726	\$ (71,990)
Current period change	472	2	474
	_____	_____	_____
March 31, 2004	\$ (72,244)	\$ 728	\$ (71,516)
	_____	_____	_____

**Note 13 - Income Taxes**

As at December 31, 2003, the Company had net operating loss carryforwards for income tax purposes of \$197 million expiring in the years 2005 through 2023. As a result of the financing transactions that were completed in April 1994 and February 1995, the Company's ability to utilize its net operating losses and credit carryforwards as an offset against future consolidated federal income tax liabilities will be restricted in its application, which will result in a material amount of the net operating loss never being utilized by the Company. The provision for income taxes for the three months ended March 31, 2004 and 2003 consisted primarily of withholding taxes on royalty income.

**Note 14 - Segment Reporting**

The Company has two operating segments: high-performance mass data storage systems, instrumentation recorders and professional video recorders ( Recorders ) and licensing of intellectual property. The accounting policies of the segments are the same as those described in the summary of significant accounting policies.

The Company evaluates segment performance based on return on operating assets employed. Profitability is measured as income or loss from continuing operations before income taxes excluding goodwill amortization and restructuring charges.

**Table of Contents****AMPEX CORPORATION****NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Intersegment sales and transfers are accounted for at current market prices but they were not significant to revenues.

	<b>Three Months Ended March 31, 2004</b>			
	(in thousands)			
	<b>Recorders</b>	<b>Licensing of Intellectual Property</b>	<b>Eliminations and Corporate</b>	<b>Totals</b>
Revenues from external customers	\$ 8,228	\$ 1,661	\$	\$ 9,889
Interest income	19		6	25
Interest expense	490		1,869	2,359
Depreciation, amortization and accretion	104		107	211
Segment income (loss)	1,492	858	(2,278)	72
Segment assets	28,708		5,581	34,289
Expenditures for segment assets	28		8	36

	<b>Three Months Ended March 31, 2003</b>			
	(in thousands)			
	<b>Recorders</b>	<b>Licensing of Intellectual Property</b>	<b>Eliminations and Corporate</b>	<b>Totals</b>
Revenues from external customers	\$ 8,244	\$ 386	\$	\$ 8,630
Interest income	10		3	13
Interest expense	585		1,636	2,221
Depreciation, amortization and accretion	152		150	302
Segment income (loss)	1,221	141	(3,294)	(1,932)
Segment assets	25,079		4,058	29,137
Expenditures for segment assets	2			2

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### **Forward-Looking Statements**

**This Form 10-Q contains predictions, projections and other statements about the future that are intended to be forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause our actual results, performance or achievements or industry results to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Such risks, uncertainties and other important factors include, among others, those described under Risk Factors, below. These forward-looking statements speak only as of the date of this Report. We disclaim any obligation or undertaking to disseminate updates or revisions of any expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. IN ASSESSING FORWARD-LOOKING STATEMENTS CONTAINED IN THIS FORM 10-Q, READERS ARE URGED TO READ CAREFULLY ALL SUCH CAUTIONARY STATEMENTS.**

### **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion and analysis of the financial condition and results of operations of Ampex Corporation and its subsidiaries should be read in conjunction with the unaudited Consolidated Financial Statements and the Notes thereto, included elsewhere in this Report, and the Consolidated Financial Statements and the Notes thereto, and Management's Discussion and Analysis of Financial Condition and Results of Operations, included in our Annual Report on Form 10-K for the year ended December 31, 2003, as filed with the Securities and Exchange Commission (the 2003 Form 10-K).

#### **Common Shares**

On June 12, 2003, we effected a one-for-twenty reverse stock split of our Class A Common Stock. The number of outstanding shares was reduced from approximately 63.4 million to 3.2 million shares. Common share data and per share calculations for all prior periods included in Management's Discussion and Analysis of Financial Condition and Results of Operations of Ampex Corporation and in the unaudited Consolidated Financial Statements and the Notes thereto, have been restated to reflect the impact of the one-for-twenty reverse stock split.

#### **Licensing Revenue and Product Groups**

We have two operating segments: (1) high-performance mass data storage systems, instrumentation recorders and professional video products made by Data Systems; and (2) licensing of intellectual property by Ampex. For information regarding revenues, income or loss, assets and other financial data for each business segment, see Note 14 of Notes to Unaudited Consolidated Financial Statements.

The first operating segment includes Data Systems' three principal product groups and its service revenue:

Mass data storage systems, including Data Systems' 19-millimeter scanning recorders and library systems (DST and DIS products) and related tape and aftermarket parts;

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Instrumentation recorders, including Data Systems data acquisition and instrumentation products (primarily DCRsi instrumentation recorders) and related tape and aftermarket parts;

Professional video products, consisting principally of television aftermarket products that Data Systems continues to support but no longer manufactures; and

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Service revenue, consisting principally of maintenance contracts on Data Systems products.

Our intellectual property licensing segment generates royalty income from licenses granted to companies that manufacture consumer video products (such as VCRs and camcorders) and, in certain cases, professional video tape recorders.

No other class of similar products or service accounted for more than 15% of consolidated revenue during the comparison periods discussed below.

The following table shows licensing revenue, sales of Data Systems products by product group and service revenue on Data Systems products for the three months ended March 31, 2004 and 2003.

	<b>For the Three Months Ended March 31,</b>	
	(in millions)	
	<b>2004</b>	<b>2003</b>
<b><i>Ampex Corporation</i></b>		
Licensing revenue	\$ 1.7	\$ 0.4
<b><i>Ampex Data Systems Corporation</i></b>		
Mass data storage tape drives and library systems	1.2	2.9
Data acquisition and instrumentation recorders	4.2	2.0
Service revenue	2.2	2.6
Other	0.6	0.7
<b>Total net product and service revenues</b>	<b>\$ 8.2</b>	<b>\$ 8.2</b>

**Results of Operations for the Three Months Ended March 31, 2004 and 2003**

*Product and Service Revenue.* Total product and service revenue was \$8.2 million in the three months ended March 31, 2004 and 2003. The increased data acquisition and instrumentation recorder systems revenue was attributable to an increase in the volume of these products sold to government agencies and defense contractors, which are currently the largest market for Data Systems mass data storage and instrumentation recorders. This market has experienced an increase in activity in recent years as additional funding has been granted for intelligence gathering programs. There can be no assurance that this increased spending will continue beyond 2004. Government agencies and defense contractors have historically experienced significant pressure to reduce spending and we expect them to experience such pressure in the future. The increased revenue from sales of data acquisition and instrumentation recorders was offset by lower revenue from sales of our mass data storage tape drives and library systems and lower service revenue. These decreases were due to a decline in the volume of these products sold to professional broadcast customers.

Our backlog of firm orders was \$6.8 million at March 31, 2004 compared to \$3.9 million at March 31, 2003. We typically operate with low levels of backlog, requiring us to obtain the vast majority of each period's orders in the same period that they must be shipped to the customer. Historically, a small number of large orders have significantly impacted sales levels and often orders are received late in the quarter making it

difficult to predict sales levels in future periods.



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*Royalty Income.* Royalty income was \$1.7 million in the three months ended March 31, 2004 compared to \$0.4 million in the three months ended March 31, 2003. Our royalty income is derived from licenses of our patents. We receive most of our royalty income from licenses granted to companies that manufacture consumer video products (such as VCRs and camcorders) and, in certain cases, professional video tape recorders. The increase in royalty income between the comparison periods is a result of ongoing payments as a percentage of the sales price of product sales under license agreements completed in June 2003 with two companies authorizing their use of our patents in the manufacture of videotape recorders, including digital camcorders. Sales of licenses products are beyond our control and, accordingly, we cannot predict whether this increase will be sustained in future periods.

Certain license agreements have recently expired and our patents covering analog VCRs have expired which has caused the decline in royalty income from levels realized in prior years. We are negotiating with former licensees terms by which we may extend the license of our intellectual property. In order for us to attain levels of royalty income realized in prior years, it will be necessary for us to successfully conclude additional licensing negotiations with manufacturers of digital camcorders, digital still cameras, DVDs and/or other consumer products. Our digital patents have historically not been licensed for use in many of these products and there can be no assurance that negotiations will be successful. We have recently negotiated our first license for DVD recorders with a multi-billion dollar Japanese manufacturer of consumer electronic products. They expect to begin production later this year of certain new products that will use our patents. Since these products have not been marketed, it is not possible to forecast the revenue impact on Ampex. Also, we are in advanced negotiations with one of the largest manufacturers of digital still cameras for our first patent license in this market, but we are at present far apart on financial terms. While we hope to arrive at a satisfactory agreement, we may be required to pursue litigation if negotiations are not successful.

*Gross Profit.* Gross profit represents product and service revenue less cost of product sales and service. Gross profit as a percentage of net product and service revenue was 50.9% in the three months ended March 31, 2004 compared to 48.9% in the three months ended March 31, 2003. Our gross profit percentages fluctuate based on a number of factors including the volume of systems revenue, product mix and level of service revenues. The increase in the gross profit percentage in 2004 when compared to 2003 was due in large part to the increase in data acquisition and instrumentation recorders, which generate higher margins than margins earned on mass data storage tape drives and library systems.

*Intellectual Property Costs.* Intellectual property costs relate to those expenditures incurred by our in-house patent department in procuring royalty income. During the three months ended March 31, 2004, we incurred certain legal costs in preparation for possible future patent enforcement litigation. The costs of patent litigation can be material. If we pursue litigation as a strategy to enforce our patents, we would deplete a substantial portion of our cash and short-term investments. The institution of patent enforcement litigation may also increase the risk of counterclaims alleging infringement by us of patents held by third parties or seeking to invalidate patents held by us.

*Selling and Administrative Expenses.* Selling and administrative expenses decreased to \$2.8 million (28.1% of total revenue) in the three months ended March 31, 2004 from \$3.1 million (35.7% of total revenue) in the three months ended March 31, 2003. Selling and administrative costs decreased in 2004 compared to 2003 due in part to fees of \$0.3 million realized from other investors on the distribution of profits from our investment partnership.

*Research, Development and Engineering Expenses.* Research, development and engineering expenses represented 9.0% and 7.9% of total revenue in the three months ended March 31, 2004 and 2003, respectively. We do not capitalize any RD&E expenditures. The increase in RD&E expenditures during 2004 is due primarily to costs incurred to produce engineering prototypes of the new ruggedized disk and

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solid-state memory-based data acquisition recorders. Such costs are expected to decline once these products have been commercialized. In recent years, we have decreased the amount spent in research, development and engineering programs due to declining product revenue levels. We may be required to make additional cuts in RD&E spending if Data Systems sales decline significantly from current levels.

*Operating Income.* We reported operating income of \$1.4 million in the three months ended March 31, 2004 compared to \$0.4 million in the three months ended March 31, 2003. The increase in operating income in 2004 was primarily as a result of the factors discussed above under Royalty Income.

*Equity in Net Gain of Limited Partnership.* We account for our interest in an investment limited partnership under the equity method of accounting. During the quarter ended March 31, 2004, the partnership sold 62.4% of the shares that it held of a publicly-held, British promotional products company. Our share of the gain amounted to \$1.2 million. See Note 11 to Notes to Unaudited Consolidated Financial Statements.

*Interest Expense.* Interest expense increased in the three months ended March 31, 2004 to \$2.4 million, of which \$1.0 million was paid in cash, compared to \$2.2 million in the three months ended March 31, 2003. There was no cash interest payment made in the three months ended March 31, 2003. The balance of interest expense not paid in cash was capitalized and added to the principal balance of the Senior Discount Notes or the Senior Notes. Interest expense in future years may increase due to the capitalization of interest on our indebtedness not paid in cash from Available Cash Flow as well as from additional notes issued to Hillside in the event they make future years pension contributions.

*Amortization of Debt Financing Costs.* Financing costs associated with the original issuance of the 12% Senior Notes are being charged to expense through the maturity date in 2008.

*Interest Income.* Interest income is earned on cash balances and short and long-term investments.

*Other (Income) Expense, Net.* In the three months ended March 31, 2004 and 2003, other income (expense), net consists primarily of foreign currency transaction gains and losses resulting from our foreign operations.

*Provision for Income Taxes.* The provisions for income taxes in the three months ended March 31, 2004 and 2003 consisted primarily of foreign income taxes and withholding taxes on royalty income. We were not required to include any material provision for U.S. Federal income tax due to the utilization of net operating loss carry forwards and timing differences. At December 31, 2003, we had net operating loss carry forwards for income tax purposes of \$197 million, expiring in the years 2005 through 2023. As a result of financing transactions that were completed in 1994 and 1995, we are limited in the amount of net operating loss carry forwards that can offset consolidated Federal taxable income in a given year. We derive pretax foreign income from our international operations, which are conducted principally by our foreign subsidiaries. In addition, our royalty income is subject, in certain cases, to foreign tax withholding. Such income is taxed by foreign taxing authorities, and our domestic interest and amortization expenses and operating loss carry forwards are not deductible in computing such foreign taxes. Effective July 1, 2004 the new US/Japanese tax treaty will eliminate withholding taxes on royalty payments, therefore eliminating withholding taxes that would otherwise be payable.

*Net Income (Loss).* We reported net income of \$0.1 million in the three months ended March 31, 2004 compared to a net loss of \$1.9 million in the three months ended March 31, 2003, primarily as a result of the factors discussed above.

*Benefit from Extinguishment of Mandatorily Redeemable Preferred Stock.* We issued shares of Common Stock to satisfy our redemption obligation on our Redeemable and Convertible Preferred Stock. By agreement, such shares were valued at \$50.00 each (\$2.50 per share pre-reverse stock split), which was higher than the market value per share at the time of redemption. As a result, we recorded a benefit available to common stockholders in the three months ended March 31, 2003 of \$1.0 million. In October 2003, we redeemed all remaining Redeemable Preferred Stock.

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*Other Comprehensive Income (Loss).* In the three months ended March 31, 2004 and 2003, other comprehensive income (loss) consists of foreign currency transaction adjustments resulting from our foreign operations.

*Inflation and Changing Prices.* We do not believe that inflation or changing prices have had any material impact on our product and service revenue, licensing income or income from continuing operations for the three months ended March 31, 2004 and 2003.

## **Liquidity and Capital Resources**

*General.* We have incurred significant losses in recent years, primarily with respect to discontinued operations, and our liquidity has been affected as a result. We have limited liquidity with which to conduct our operations. Cash and marketable securities totaled \$14.9 million at March 31, 2004, substantially all of which was generated by Data Systems and is available to be reinvested in that business. Substantially all cash generated by our licensing activities in excess of operating expenses and certain other expenses is to be applied to reduce debt. We have restructured and extended the maturity date of our long-term senior debt, discontinued unprofitable Internet video operations in 2001 and borrowed funds from a former affiliate in order to make required contributions to our employee retirement pension plan. We have also significantly restructured and down-sized the operations of Data Systems in order for that business to be profitable at current sales levels. Management currently believes that our cash balances, coupled with anticipated royalty collections under licensing agreements presently in effect, as well as our ability to borrow pension contributions from a former affiliate, Hillside, should be sufficient to satisfy all projected cash obligations through March 2005.

Our expectations as to our cash flows and future cash balances are based on a number of assumptions, including assumptions regarding anticipated revenues, customer purchasing and payment patterns, and improvements in general economic conditions, and our ability to borrow significant pension contributions due in future years from Hillside many of which are beyond our control. If we experience a decrease in demand for our products or anticipated royalty income or if Hillside is unable to fund pension contributions on our behalf we may be required to further reduce expenditures, borrow additional funds, seek to raise additional equity, or take additional actions as we deem appropriate. There can be no assurance that we will be successful in these efforts, the failure of which may have a material adverse effect on our ability to achieve our intended business objectives. The risk factors discussed elsewhere in this Report describe uncertainties that could have an adverse effect on our liquidity and capital resources.

*Senior Debt.* As of March 31, 2004 we had outstanding approximately \$75.5 million of total borrowings, which includes approximately \$62.8 million under our 12% Senior Notes due 2008, \$9.4 million under our 20% Senior Discount Notes due 2006 and \$3.3 million of Hillside Notes. Such indebtedness is secured by liens on a substantial portion of our assets, including future royalty receipts. We may incur additional indebtedness from time to time in the future, subject to certain restrictions imposed by our debt agreements. In March 2004, we received consent from the holders of our senior debt securities (i) to extend the maturity date of our Senior Discount Notes from January 5, 2005 to January 5, 2006, (ii) to extend the measurement date from December 31, 2004 to December 31, 2006, by which we are required to generate at least \$30 million of Available Cash Flow, as defined in the Senior Note indenture, and (iii) to defer scheduled principal repayments on our pension notes through December 31, 2006. Substantial pension contributions are projected to be required beginning in 2004 and thereafter. Pension contributions totaling \$7.9 million for plan year 2003 and \$2.8 million for plan year 2004 are projected to be paid in 2004. Hillside has funded the April 15, 2004 pension contribution due of \$2.0 million and it is anticipated that Hillside will fund other scheduled contributions as they become due. In that event we would issue additional notes to Hillside in an equivalent amount, which will correspondingly increase the amounts of our outstanding debt.

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As recently amended, the Senior Notes require that we generate a minimum of \$30 million of Available Cash Flow (as defined) during the five-year period ending December 31, 2006. From March 2002 to March 2004, we have generated \$5 million of Available Cash Flow. To satisfy this covenant, we will be required to increase our revenues from licensing operations substantially above current levels. If we fail to generate the required revenues or if we default in our other obligations under the relevant loan agreements, the Note holders would have the right to accelerate the indebtedness and foreclose on their liens, which would materially and adversely affect our financial condition and our ability to achieve our intended business objectives.

The indentures under which the Senior Notes and the Senior Discount Notes were issued contain customary affirmative and negative restrictive covenants that limit the payment of dividends, the incurrence of additional indebtedness or liens, certain sales of assets and other actions by us and our restricted subsidiaries. In the event of default, the holders of the Notes would be entitled to enforce the liens granted by us on our future patent royalty stream and the Colorado Springs facility and to apply amounts collected to repayment of the Notes.

*Cash Flow.* We generated cash from continuing operating activities totaling \$2.1 million in the three months ended March 31, 2004. We used cash from continuing operating activities totaling \$1.6 million in the three months ended March 31, 2003. Cash used by discontinued operations totaled \$0.2 million in the three months ended March 31, 2004 and \$0.3 million in the three months ended March 31, 2003.

Pursuant to an agreement between us, Hillside and certain other parties, dated November 22, 1994, Hillside is obligated to fund pension contributions in the event we are unable to do so. At our request, Hillside has made five pension contributions totaling \$4.0 million through March 31, 2004, evidenced by Notes issued by us in the amount of the pension contributions. The Notes are secured by a lien on Data Systems inventories. Estimated pension contributions totaling \$10.7 million due in 2004 have been computed using actuarial assumptions presently in effect and reflect recent legislation that provided relief to underfunded plans. Hillside funded the April 15, 2004 pension contribution due of \$2.0 million and it is anticipated that Hillside will fund other scheduled contributions as they become due. In this event, we would issue additional notes to Hillside in an equivalent amount. Under the terms of the notes, accrued interest is payable quarterly and a principal payment of \$150,000 is due on the first anniversary of each note, with the remainder due on the fourth anniversary of the notes. In 2003, principal repayments of \$300,000 were made on the Hillside Notes. Pursuant to amendments to our senior debt agreements in 2004, all principal payments on the Hillside Notes will be deferred until after December 31, 2006 with earlier repayment in the event that the Senior Discount Notes and Senior Notes have been repaid in full. In September 2002, Ampex and Hillside entered into an agreement whereby an affiliate of Hillside assumed fiduciary responsibility for the management of substantially all of the pension plan's assets.

*Off-Balance Sheet Arrangements.* During the three months ended March 31, 2004 and 2003, we did not have any off-balance sheet arrangements, other than operating leases as disclosed under Contractual Obligations set forth in the 2003 Form 10-K, that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that our Management believes is material to investors.

*Disclosure of Contractual Obligations.* During the three months ended March 31, 2004, there were no material changes outside the ordinary course of our business in the contractual obligations and commercial commitments set forth in the 2003 Form 10-K, except for the issuance of additional Senior Notes to capitalize interest expense for August 16, 2003 to February 15, 2004 in the amount of \$3.5 million and a reduction, based on an actuarial computation, in required current year pension contributions from \$13.9 million estimated at December 31, 2003 to \$11.5 million estimated at March 31, 2004. The reduction in the current year pension liability has been added to long-term pension liability.

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### **Recent Pronouncements**

In December 2003, the FASB issued additional guidance clarifying the provisions of FASB Interpretation No. 46 ( FIN 46 ), Consolidation of Variable Interest Entities, an Interpretation of ARB No.51, or FIN 46-R. FIN 46-R provides a deferral of FIN 46 for certain entities. FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. We do not have any interests in variable interest entities and the adoption of FIN 46-R is not expected to have a material impact on our financial position, cash flows or results of operations.

In May 2003, the FASB issued Statement of Financial Accounting Standards No. 150 ( SFAS 150 ), Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity . SFAS 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). SFAS 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. We have adopted SFAS 150 effective June 15, 2003. The adoption of SFAS 150 had no impact on our financial position, cash flows or results of operations.

In March 2004, the FASB approved EITF Issue 03-6, Participating Securities and the Two-Class Method under FAS 128. EITF Issue 03-6 supersedes the guidance in Topic No. D-95, Effect of Participating Convertible Securities on the Computation of Basic Earnings per Share and requires the use of the two-class method of participating securities. The two-class method is an earnings allocation formula that determines earnings per share for each class of common stock and participating security according to dividends declared (or accumulated) and participation rights in undistributed earnings. In addition, EITF Issue 03-6 addresses other forms of participating securities, including options, warrants, forwards and other contracts to issue an entity's common stock, with the exception of stock-based compensation (unvested options and restricted stock) subject to the provisions of Opinion No. 25 and FASB No. 123. EITF Issue 03-6 is effective for reporting periods beginning after March 31, 2004 and should be applied by restating previously reported earnings per share. We are currently in the process of evaluating the impact that the adoption of EITF Issue 03-6 will have on our financial position and results of operations.

### **Risk Factors**

#### ***We Have Experienced Significant Losses and Our Losses May Continue***

We have incurred significant net losses in prior periods. These losses were primarily attributable to our former Internet video programming business, which we discontinued in 2001, and to our former disk storage business, which we discontinued in 2000. We no longer operate either of these businesses and we have provided reserves for all known costs of closure.

Our continuing operations include the results of our manufacturing subsidiary, Data Systems, and the results of our corporate patent licensing division. In the three months ended March 31, 2004, we generated operating income and net income. In the three months ended March 31, 2003, we generated operating income but due to Interest Expense we reported a net loss. In 2002 and 2001, we reported an operating loss and net loss. Although we have restructured much of our senior debt whereby the amount of interest that we need to pay in cash through 2006 is limited to Available Cash Flow, as defined, we continue to incur substantial interest expense on our indebtedness and this interest, if not paid in cash, is added to the outstanding debt balance which will increase our interest expense in future periods.

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Although Data Systems reported operating income and net income in the three months ended March 31, 2004 and in 2003 and 2002, its business is dependent on the funding of government defense programs, which we believe will come under increased pressure in the future. Revenues from our licensing

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operations in the three months ended March 31, 2004 improved over the comparable period in 2003 and we continue to attempt to negotiate new license agreements for use of our patents in digital camcorders as well as in digital cameras, DVDs and other consumer products not previously licensed by us. We have recently negotiated our first license for DVD recorders with a multi-billion dollar Japanese manufacturer of consumer electronic products. They expect to begin production later this year of certain new products that will use our patents. Since these products have not been marketed, it is not possible to forecast the revenue impact on Ampex. Also, we are in advanced negotiations with one of the largest manufacturers of digital still cameras for our first patent license in this market, but we are at present far apart on financial terms. While we hope to arrive at a satisfactory agreement, we may be required to pursue litigation if negotiations are not successful. Even if we are successful, there can be no assurance that licensing revenues will attain levels comparable to prior years or levels sufficient to repay our debt.

Accordingly, there is a material risk that we may not continue to be profitable in future periods. See Management's Discussion and Analysis of Financial Condition and Results of Operations, above and the other Risk Factors included in this section.

### ***Risks of Limited Liquidity***

We have limited liquidity with which to conduct our operations. Our cash and short-term investments totaled \$14.9 million at March 31, 2004, substantially all of which was generated by Data Systems and is available to be reinvested in that business. Substantially all cash generated by our licensing activities in excess of operating expenses and certain other expenses is to be applied to reduce debt.

While we have recently restructured our senior debt to extend maturities and modify certain covenants that have improved our liquidity, we may be required to use our funds in litigation to enforce our patents. Our Management believes that our liquidity, coupled with our ability to borrow pension contributions from Hillside Capital Incorporated, ( Hillside ), a member of a group under common control for purposes of the Employee Retirement Income Security Act ( ERISA ), should be sufficient to satisfy our projected cash obligations through March 2005, but there can be no assurance in this regard. If Hillside is unable to fund future pension contributions our financial position could be materially and adversely affected.

### ***We Have Significant Indebtedness, Which May Affect Our Financial Condition***

As of March 31, 2004 we had outstanding approximately \$75.5 million of total borrowings, which includes approximately \$62.8 million under our 12% Senior Notes due 2008, \$9.4 million under our 20% Senior Discount Notes due 2006 and \$3.3 million of Hillside Notes. Such indebtedness is secured by liens on a substantial portion of our assets. We may incur additional indebtedness from time to time in the future, subject to certain restrictions imposed by our debt agreements. In March 2004, we received consent from the holders of our senior debt securities (i) to extend the maturity date of our Senior Discount Notes from January 5, 2005 to January 5, 2006, (ii) to extend the measurement date from December 31, 2004 to December 31, 2006, by which we are required to generate at least \$30 million of Available Cash Flow, as defined in the Senior Note indenture, and (iii) to defer scheduled principal repayments on our pension notes through December 31, 2006. Substantial pension contributions are projected to be required beginning in 2004 and thereafter. Pension contributions totaling \$7.9 million for plan year 2003 and \$2.8 million for plan year 2004 are projected to be paid in 2004 and significant contributions are projected to be required over the next several years which may total as high as \$81 million. The determination of our obligation is dependent on our selection of certain assumptions used by actuaries in calculating such amounts. Hillside funded the April 15, 2004 pension contribution due of \$2.0 million and it is anticipated that Hillside will fund other scheduled contributions as they become due. In that event, we would issue additional notes to Hillside in an equivalent amount, which will correspondingly increase the amount of our outstanding debt.



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As recently amended, the Senior Notes require that we generate a minimum of \$30 million of Available Cash Flow (as defined) during the five-year period ending December 31, 2006. From March 2002

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to March 2004, we have generated \$5 million of Available Cash Flow. To satisfy this covenant, we will be required to increase our revenues from licensing operations substantially above current levels. If we fail to generate the required revenues or if we default in our other obligations under the relevant loan agreements, the Noteholders would have the right to accelerate the indebtedness and foreclose on their liens, which would materially and adversely affect our financial condition.

We are the plan sponsor and are contingently liable to provide funding for plan benefits under a pension plan of a former affiliate, Media, which was sold in 1995. Presently the unfunded accumulated benefit liability is \$19.6 million. During 2003, the Company and Media entered into the Retirement Plan Funding and Settlement Agreement, which provides for monthly payments of \$74,000 by Media to us in settlement of future pension contributions that may be required under the Media Plan that would be funded by us. We recognized a liability of \$7.5 million, of which \$5.4 million was provided in the fourth quarter of 2003, representing the probable amount of estimated future funding necessary under the Media Plan, net of amounts expected to be reimbursed by Media. On an ongoing basis, we continue to assess our obligation under the Media Plan and additional obligations may be recognized in the future based on that assessment.

The degree to which we are leveraged could have other important consequences to investors, including the following:

a substantial portion of our cash flow from licensing operations must be dedicated to the payment of principal of and interest on our outstanding indebtedness, and therefore will not be available for other purposes;

recent restructurings of our senior debt and borrowings to fund our pension plan contributions have increased our interest expense and, although we have endeavored to refinance a portion of this debt by entering into a mortgage or sale and leaseback of our Colorado facility in order to lower these costs, to date we have not been successful in these efforts;

our ability to obtain additional financing in the future for working capital needs, capital expenditures, acquisitions and general corporate purposes may be materially limited or impaired by the terms of our existing debt agreements, and even if existing lenders consent to the issuance of new debt, such financing may not be available on terms favorable to us;

we may be more highly leveraged than our competitors, which may place us at a competitive disadvantage;

our leverage may make us more vulnerable to a downturn in our business or the economy in general; and

the financial covenants and other restrictions contained in our indentures and other agreements relating to our indebtedness also restrict our ability to make new investments, dispose of assets or to pay dividends on or repurchase common stock.

We expect that our cash balances and cash flow from operations as well as our ability to borrow pension contributions from Hillside, a former affiliate, will be sufficient to fund anticipated operating expenses, capital expenditures and our debt service requirements as they become due, at least through March 2005. However, we cannot assure you that the amounts available from these sources will be sufficient for such purposes in future periods. Also, we cannot assure you that additional sources of funding will be available if we need them or, if available, will be on satisfactory terms. If we cannot service our indebtedness, we will be forced to adopt alternative strategies. These strategies may include reducing or delaying capital

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expenditures, selling assets, restructuring or refinancing our indebtedness, or seeking additional equity capital. We cannot give any assurance that any of these strategies will be successful or that they will be permitted under our debt indentures.

### ***Risks Associated With a Decline in U.S. Government Spending***

Data Systems' business depends materially on continued U.S. government expenditures on intelligence and defense programs. The loss or significant decline in spending on various imaging and intelligence gathering programs where we are subcontractors to prime government contractors could materially adversely affect our business. U.S. intelligence and defense budgets have experienced declines from time to time in recent years, resulting in program delays, program cancellations and deferral of funding for approved programs. Although several intelligence programs have received government funding which has led to increased sales by Data Systems, we cannot be assured that sales of new systems will continue at these levels. If sales of new systems decline in the future, we may be increasingly dependent upon revenues from the sale of spare parts, service and tape.

### ***Our Royalty Income is Subject to Material Fluctuations***

Royalty income has historically fluctuated widely due to a number of factors that we cannot predict, such as the extent to which third parties use our patented technology, the extent to which we must pursue litigation in order to enforce our patents, and the ultimate success of our licensing and litigation activities. The cost of patent litigation can be material. Also, a court may rule that our patents are invalid, causing existing licensees to discontinue payments to us. Our royalty income fluctuates significantly from quarter to quarter and from year to year, and we cannot give any assurance as to the level of royalty income that will be realized in future periods.

We cannot assure you that we will be able to develop patentable technology that will generate significant patent royalties in future years to replace patents as they expire. Our expenditures for research and development are less than what we spent in prior years, which are likely to have a long-term adverse effect on our ability to maintain a significant portfolio of patented technologies.

### ***Our Stock Price May be Subject to Continued Volatility***

The trading price of our Common Stock has been and can be expected to be subject to significant volatility, reflecting a variety of factors, including:

fluctuations in patent royalty revenues and developments in our patent licensing program;

quarterly fluctuations in operating results;

modifications to our senior debt agreements and other events that affect our liquidity;

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announcements of the introduction of new products, technologies or services by us or our competitors;

announcements by us of acquisitions of, or investments in, new businesses or other events;

reports and predictions concerning us by analysts and other members of the media; and

general economic or market conditions.

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The stock market in general, and technology companies in particular, have experienced a high degree of price volatility, which has had a substantial effect on the market prices of many such companies for reasons that often are unrelated or disproportionate to operating performance. These broad market and industry fluctuations may adversely affect the price of the Class A Common Stock, regardless of our operating performance.

### ***Risks Associated With Acquisition Strategy***

We are not currently seeking to make any acquisitions of a controlling interest in new businesses. At present, the terms of our principal debt instruments substantially restrict our ability to make acquisitions or investments in new businesses. However, we have made, and may under certain circumstances in the future make, acquisitions of, and/or investments in, other businesses. These entities may be involved in new businesses in which we have not historically been involved. In 2003, our unrestricted subsidiary invested \$1 million to acquire a minority interest in a private investment limited partnership that has purchased common shares of a British promotional products company. Our CEO, Edward Bramson, acquired shares in this company in concert with the limited partnership and he controls the corporate general partner of the limited partnership. Mr. Bramson has been appointed the temporary, non-executive Chairman of the Board of the British company. See Note 11 of Notes to unaudited Consolidated Financial Statements elsewhere herein. We may not be able to identify or acquire additional acquisition candidates in the future, or complete any further acquisitions or investments on satisfactory terms.

Acquisitions and investments involve numerous additional risks, including difficulties in the management of operations, services and personnel of the acquired companies, and of integrating acquired companies with us and/or each other's operations. We may also encounter problems in entering markets and businesses in which we have limited or no experience. Acquisitions can also divert Management's attention from other business concerns. We have made and may make additional investments in companies in which we own less than a 100% interest. Such investments involve additional risks, including the risk that we may not be in a position to control the management or policies of such entities, and the risk of potential conflicts with other investors.

Accordingly, there can be no assurance that any acquisitions or investments that we have made, or may make in the future, will result in any return, or as to the timing of any return. All of our acquisitions of Internet companies have been written off during 2000 and 2001. In addition, we elected to discontinue the operations of MicroNet, which we acquired in 1998. It is possible that we could lose all or a substantial portion of any future investments.

### ***Our Operating Results Are Subject to Quarterly Fluctuations***

Our sales and results of operations are generally subject to quarterly and annual fluctuations. Various factors affect our operating results, some of which are not within our control, including:

customer ordering patterns;

availability and market acceptance of new products and services;

timing of significant orders and new product announcements;

order cancellations;

receipt of royalty income;

the amount and timing of capital expenditures and other costs relating to our operations;

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the availability of critical raw materials and inventory subassembly components from our suppliers; and

general economic and industry conditions.

Results of a given quarter or year may not necessarily be indicative of results to be expected for future periods. In addition, fluctuations in operating results may negatively affect our debt service coverage, or our ability to issue debt or equity securities should we wish to do so, in any given fiscal period. Material fluctuations in our operating results in future periods could have a material adverse effect on the price of the Class A Common Stock.

### ***Seasonal Customer Ordering Patterns May Affect Our Business***

A substantial portion of our backlog at a given time is normally shipped within one or two quarters thereafter. Therefore, sales in any quarter are heavily dependent on orders received in that quarter and the immediately preceding quarter.

### ***We May be Unable to Respond to Rapid Technological Change and the Need to Develop New Products***

All the industries and markets, from which we derive or expect to derive revenues, directly or through our licensing program, are characterized by continual technological change and the need to introduce new products, product upgrades and patentable technology. This has required, and will continue to require, that we spend substantial amounts for the research, development and engineering of new products and advances to existing products. We cannot assure you that our existing products, technologies and services will not become obsolete or that any new products, technologies or services will win commercial acceptance. Obsolescence of existing product lines, or inability to develop and introduce new products and services, could have a material adverse effect on our sales and results of operations in the future. The development and introduction of new technologies, products and services are subject to inherent technical and market risks, and there can be no assurance that we will be successful in this regard. Our expenditures for research and development have been declining in recent years, which is likely to have a long-term adverse effect on our ability to maintain a significant portfolio of patented technologies. In addition, further reductions in our research and development programs could adversely affect our ability to remain competitive.

### ***We Encounter Significant Competition in All of Our Businesses***

Data Systems encounters significant competition in all the markets for its products and services. Many of its competitors have greater resources and access to capital than us. In the mass data storage market, Data Systems competes with a number of well-established competitors such as IBM Corporation, Storage Technology Corporation, Sony Corporation and ADIC, as well as smaller companies. In addition, other manufacturers of scanning video recorders may seek to enter the mass data storage market in competition with us. In addition, price declines in competitive storage systems, such as magnetic or optical disk drives, can negatively impact sales of Data Systems' tape-based DST products.

In the instrumentation market, Data Systems competes primarily with companies that depend on government contracts for a major portion of their sales in this market, including Calculex, L-3 Communications Corporation and Sypris Solutions, Inc. The number of competitors in this market has decreased in recent years as the level of government spending in many areas has declined.





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### ***We Are Dependent on Certain Suppliers***

Data Systems purchases certain components from a single domestic or foreign manufacturer. Significant delays in deliveries or defects in such components could adversely affect our manufacturing operations, pending qualification of an alternative supplier. In addition, we produce highly engineered products in relatively small quantities. As a result, our ability to cause suppliers to continue production of certain products on which we depend may be limited. We do not generally enter into long-term raw materials or components supply contracts.

### ***We Are Subject to Certain Risks Related to Our International Operations***

Although we significantly curtailed Data Systems' international operations in prior years, sales to foreign customers (including U.S. export sales) continue to be significant to our results of operations. International operations are subject to a number of special risks, including limitations on repatriation of earnings, restrictive actions by local governments, and nationalization. Additionally, export sales are subject to export regulation and restrictions imposed by U.S. government agencies. Fluctuations in the value of foreign currencies can affect our results of operations. We do not normally seek to mitigate our exposure to exchange rate fluctuations by hedging our foreign currency positions.

### ***We Are Dependent on Certain Key Personnel***

We are highly dependent on our Management. Our success depends upon the availability and performance of our executive officers and directors. We have not entered into employment agreements with any of our key employees, and the loss of their services could have a material adverse effect on us. We do not maintain key man life insurance on any of these individuals.

### ***Our Charter Documents and Certain of Our Governing Instruments May Prevent a Takeover***

Our Certificate of Incorporation provides for a classified Board of Directors, with members of each class elected for a three-year term. It also provides for nullification of voting rights of certain foreign stockholders in certain circumstances involving possible violations of security regulations of the United States Department of Defense.

The indenture governing our outstanding Senior Notes requires us to offer to repurchase the Senior Notes at a purchase price equal to 101% of the outstanding principal amount thereof together with accrued and unpaid interest in the event of a change of control. Under the indenture, a change of control includes the following events: a person or group of people acting together acquires 50% or more of our outstanding voting stock; or the transfer of substantially all of our assets to any such person or group, other than to certain of our subsidiaries and affiliates.

The Note Purchase Agreement governing our outstanding Senior Discount Notes requires us to repay such notes in full upon the occurrence of a change of control. Under the agreement, a change of control includes, among other things: any person or group becomes the beneficial owner of more than 50% of our outstanding voting stock, or any merger or consolidation of Ampex with or into any other entity. The agreement also requires us to repay the notes if we sell Data Systems or sell its Colorado Springs, CO manufacturing facility.

These provisions could have anti-takeover effects by making an acquisition of us by a third party more difficult or expensive in certain circumstances.

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### ***We do not Expect to Pay Dividends on Our Common Stock***

We have not declared dividends on our Common Stock since our incorporation in 1992 and we have no present intention of paying dividends on our Common Stock. We are also restricted by the terms of certain debt and other agreements as to the declaration of dividends.

### ***We Are Dependent on Licensed Patents and Proprietary Technology***

Our success depends, in part, upon our ability to establish and maintain the proprietary nature of our technology through the patent process. There can be no assurance that one or more of our patents will not be successfully challenged, invalidated or circumvented or that we will otherwise be able to rely on such patents for any reason. In addition, our competitors, many of whom have substantial resources and have made substantial investments in competing technologies, may seek to apply for and obtain patents that restrict our ability to make, use and sell our products either in the United States or in foreign markets. If any of our patents are successfully challenged, invalidated or circumvented or our right or ability to manufacture our products becomes restricted, our ability to continue to manufacture and market our products could be adversely affected, which would likely have a material adverse effect upon our business, financial condition and results of operations.

Litigation may be necessary to enforce our patents, to protect trade secrets or know-how owned by us or to determine the enforceability, scope and validity of the proprietary rights of others. Any litigation or interference proceedings brought against, initiated by, or otherwise involving us, may require us to incur substantial legal and other fees and expenses and may require some of our employees to devote all or a substantial portion of their time to the prosecution or defense of such litigation or proceedings.

### ***We Are Subject to Environmental Regulation and Our Business Could be Negatively Affected by the Costs of Compliance***

Our facilities are subject to numerous federal, state and local laws and regulations designed to protect the environment from waste emissions and hazardous substances. Owners and occupiers of sites containing hazardous substances, as well as generators and transporters of hazardous substances, are subject to broad liability under various federal and state environmental laws and regulations, including liability for investigative and cleanup costs and damages arising out of past disposal activities. We have been named from time to time as a potentially responsible party by the United States Environmental Protection Agency with respect to contaminated sites that have been designated as Superfund sites, and are currently engaged in various environmental investigation, remediation and/or monitoring activities at several sites located off our facilities. There can be no assurance we will not ultimately incur a liability in excess of amounts currently reserved for pending environmental matters, or that additional liabilities with respect to environmental matters will not be asserted. In addition, changes in environmental regulations could impose the need for additional capital equipment or other requirements. Such liabilities or regulations could have a material adverse effect on us in the future.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We have an investment in a limited partnership that holds shares in a publicly-held British promotional products company, and which we account for under the equity method. During the quarter ended March 31, 2004, the limited partnership sold 62.4% of its holdings. See Note 11 of Notes to Unaudited Consolidated Financial Statements. There has been no other material change to the disclosure made in the 2003 Form 10-K.



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### **ITEM 4. CONTROLS AND PROCEDURES**

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of Management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) under the Exchange Act). Based on the evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective in timely making known to them material information required to be disclosed in our periodic reports filed with the SEC. In designing and evaluating the disclosure controls and procedures, Management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and Management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

There were no changes in our internal control over financial reporting identified in the evaluation described above that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

We are a party to routine litigation incidental to our business. In the opinion of Management, no such current or pending lawsuits, either individually or in the aggregate, are likely to have a material adverse effect on our financial condition, results of operations or cash flows.

Our facilities are subject to numerous federal, state and local laws and regulations designed to protect the environment from waste emissions and hazardous substances. We are also subject to the federal Occupational Safety and Health Act and other laws and regulations affecting the safety and health of employees in its facilities. Management believes that we are generally in compliance in all material respects with all applicable environmental and occupational safety laws and regulations or have plans to bring operations into compliance. Management does not anticipate that capital expenditures for pollution control equipment for fiscal 2004 or 2005 will be material.

Owners and occupiers of sites containing hazardous substances, as well as generators and transporters of hazardous substances, are subject to broad liability under various federal and state environmental laws and regulations, including liability for investigative and cleanup costs and damages arising out of past disposal activities. We are engaged in a total of seven environmental investigations, remediation and/or monitoring activities at sites located off our facilities, including the removal of solvent contamination from subsurface aquifers at a site in Sunnyvale, California. Some of these activities involve the participation of state and local government agencies. We have been named as a potentially responsible party by the United States Environmental Protection Agency with respect to five contaminated sites that have been designated as Superfund sites on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act of 1980. Five sites (including four Superfund sites) are associated with the operations of the Media subsidiaries formerly owned by us. Although we sold Media in November 1995, we may have continuing liability with respect to environmental contamination at these sites if Media fails to discharge its responsibilities with respect to such sites. In October 2003, the California Regional Water Quality Control Board issued us a letter, which rescinds continued cleanup requirements for the Sunnyvale, California site, allowing us to shut down and remove all remediation equipment and substantially reduce any further obligation. During 2003, we spent a total of approximately \$0.1 million in connection with environmental investigation, remediation and monitoring activities and we expect to spend a similar amount in fiscal 2004 for such activities.

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Because of the inherent uncertainty as to various aspects of environmental matters, including the extent of environmental damage, the most desirable remediation techniques and the time period during

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which cleanup costs may be incurred, it is not possible for us to estimate with any degree of certainty the ultimate costs that we may incur with respect to the currently pending environmental matters referred to above. Nevertheless, at March 31, 2004, we had an accrued liability of \$0.4 million for pending environmental liabilities associated with the Sunnyvale site and certain other sites currently owned or leased by us. We have not accrued any liability for contingent liabilities we may incur with respect to former Media sites discussed above. Based on facts currently known to Management, they believe we have no contingent liability in connection with such pending matters, either individually, or in the aggregate, that are material to our financial condition or cash flow or results of operations or material to investors.

While we believe that we are generally in compliance with all applicable environmental laws and regulations or have plans to bring operations into compliance, it is possible that we will be named as a potentially responsible party in the future with respect to additional Superfund or other sites. Furthermore, because we conduct our business in foreign countries as well as in the U.S., it is not possible to predict the effect that future domestic or foreign regulation could have on our business, operating results, financial condition or cash flow. There can be no assurance that we will not ultimately incur liability in excess of amounts currently reserved for pending environmental matters, or that additional liabilities with respect to environmental matters will not be asserted. In addition, changes in environmental regulations could impose the need for additional capital equipment or other requirements. Such liabilities or regulations could have a material adverse effect on us in the future.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

Ampex did not sell any securities during the first fiscal quarter of 2004 that were not registered under the Securities Act of 1933.

**ISSUER PURCHASES OF EQUITY SECURITIES**

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs</u>
January 1-31, 2004				
February 1-29, 2004				
March 1-31, 2004	85,500 <sup>(1)</sup>	\$ 1.80		
<b>Total</b>	<b>85,500</b>	<b>\$ 1.80</b>		

- (1) On March 17, 2004, Ampex foreclosed on two promissory notes previously issued to Ampex by First Jefferson Corporation ( FJC ), an affiliated corporation controlled by our CEO, Edward J. Bramson. In connection with the foreclosure, Ampex acquired 85,500 shares of Class A Common Stock, with a market value of \$1.80 per share, and \$12,600 in cash, all of which represented substantially all of FJC's assets.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

Not applicable.



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**ITEM 5. OTHER INFORMATION**

There were no matters required to be disclosed in a current report on Form 8-K during the fiscal quarter covered by this report that were not so disclosed.

There were no material changes to the procedures by which security holders may recommend nominees to the Company's Board of Directors that were implemented since Ampex last provided such disclosure in its 2004 Proxy Statement, dated April 29, 2004.

**ITEM 6(a). EXHIBITS**

The Exhibits filed with this Report are listed in the Exhibit Index included elsewhere herein and which is hereby incorporated by reference in this Item 6(a).

**ITEM 6(b). REPORTS ON FORM 8-K**

During our fiscal quarter ended March 31, 2004, we filed the following reports on Form 8-K:

- (i) Current Report on Form 8-K dated April 1, 2004, attaching our earnings release for the year ended December 31, 2003, including related financial statements, under Items 7 and 12.

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**SIGNATURES**

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

**AMPEX CORPORATION**

Date: May 14, 2004

/s/ EDWARD J. BRAMSON

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Edward J. Bramson  
Chairman and Chief Executive Officer

Date: May 14, 2004

/s/ CRAIG L. McKIBBEN

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Craig L. McKibben  
Vice President, Chief Financial Officer and Treasurer

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**AMPEX CORPORATION**

**FORM 10-Q FOR THE QUARTER ENDED**

**March 31, 2004**

**EXHIBIT INDEX**

<b><u>Exhibit No.</u></b>	<b><u>Exhibit Description</u></b>
31.1	Chief Executive Officer certification pursuant to Rules 13a-14(a) and 15d-14(a) of the Exchange Act.
31.2	Chief Financial Officer certification pursuant to Rules 13a-14(a) and 15d-14(a) of the Exchange Act.
32.1	Chief Executive Officer and Chief Financial Officer certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.