

PICO HOLDINGS INC /NEW
Form 10-K/A
April 01, 2013

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

FORM 10-K/A

(Amendment No. 2)

SANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL PERIOD ENDED December 31, 2012

OR

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

For the transition period from _____ to _____

Commission file number 033-36383

PICO HOLDINGS, INC.

(Exact Name of Registrant as Specified in Its Charter)

California

94-2723335

(State or other jurisdiction of incorporation)

(IRS Employer Identification No.)

7979 Ivanhoe Avenue, Suite 300 La Jolla, California 92037

(Address of Principal Executive Offices)

Registrant's Telephone Number, Including Area Code

(888) 389-3222

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class

Name of Each Exchange On Which Registered

Common Stock, Par Value \$.001

NASDAQ Stock Market LLC

Securities Registered Pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant is a well known seasoned issuer, as defined by Rule 405 of the
Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the
Act. Yes ☐ No ☒

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if
any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§
232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to
submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained
herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements
incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

Large accelerated filer Yes ☐ Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12-b of the Act). Yes ☐ No ☒

At June 30, 2012, the aggregate market value of shares of the registrant's common stock held by non-affiliates of the registrant (based upon the closing sale price of such shares on the NASDAQ Global Select Market on June 30, 2012) was \$447.3 million, which excludes shares of common stock held in treasury and shares held by executive officers, directors, and stockholders whose ownership exceeds 10% of the registrant's common stock outstanding at June 30, 2012. This calculation does not reflect a determination that such persons are affiliates for any other purposes. On March 1, 2013, the registrant had 22,733,649 shares of common stock, \$.001 par value, outstanding.

Explanatory Note

This amendment (Amendment No. 2) to Form 10-K for the year ended December 31, 2012 of PICO Holdings, Inc. (the 2012 Form 10-K) is being filed solely for the purpose of providing financial statements of Spigit, Inc. ("Spigit") in accordance with Rule 3-09 of Regulation S-X as part of the 2012 Form 10-K, filed on March 1, 2013. This Amendment No. 2 to the Form 10-K does not reflect any events that may have occurred subsequent to the original filing date of March 1, 2013, and does not modify or otherwise update in any way disclosures made in the original Form 10-K.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) FINANCIAL SCHEDULES AND EXHIBITS.

1. Financial Statements and Schedules.

Schedule	Description
VI	Spigit, Inc. Consolidated Financial Statements for the year ended December 31, 2012 (Unaudited)

Consolidated Balance Sheet (Unaudited)

Consolidated Statement of Operations (Unaudited)

Consolidated Statement of Redeemable Convertible Preferred Stock and Stockholders' Deficit (Unaudited)

Consolidated Statement of Cash Flows (Unaudited)

Notes to Consolidated Financial Statements (Unaudited)

Other schedules are omitted as the required information is not present or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements or notes thereto.

2. Exhibits

Exhibit Number	Description
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 (Section 906 of the Sarbanes-Oxley Act of 2002).
32.2	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350 (Section 906 of the Sarbanes-Oxley Act of 2002).
101	Interactive data files pursuant to Rule 405 of Regulation S-T: (i) the Consolidated Balance Sheet as of December 31, 2012 and December 31, 2011, (ii) the Consolidated Statement of Operations for the three years ended December 31, 2012, (iii) the Consolidated Statement of Shareholders' Equity for the three years ended December 31, 2012, (iv) the Consolidated Statement of Cash Flows for the three years ended December 31, 2012, (v) the Consolidated Statement of Comprehensive Income (Loss) for the three years ended December 31, 2012 and (vi) the Notes to the Consolidated Financial Statements.*

* Previously filed in the 2012 PICO Holdings, Inc. Form 10-K, on March 1, 2013.

3. Unaudited financial statements of Spigit, Inc., provided in accordance with Rule 3-09 of Regulation S-X as Schedule VI

Spigit, Inc.
Consolidated Financial Statements
December 31, 2012 (Unaudited)

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Spigit, Inc.

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December 31, 2012

Consolidated Financial Statements

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Spigit, Inc.

Consolidated Balance Sheet

December 31, 2012 (Unaudited)

(In thousands)	2012
Assets	(Unaudited)
Current assets:	
Cash and cash equivalents	\$1,147
Accounts receivable	4,698
Prepaid assets and other current assets	126
Total current assets	5,971
Long-term reseller receivables	590
Property and equipment, net	1,704
Total assets	8,265
Liabilities, Convertible Redeemable Preferred Stock, and Stockholders' Deficit	
Current liabilities:	
Accounts payable	2,408
Accrued and other liabilities	2,129
Deferred revenue	7,251
Current portion of debt	10,039
Total current liabilities	21,827
Deferred revenue	1,114
Total liabilities	22,941
Convertible redeemable preferred stock	
Series A1 convertible preferred stock, par value \$0.01 – 580 shares authorized; 553 shares issued and outstanding at December 31, 2012 (liquidation preference of \$638)	638
Series A2 convertible preferred stock, par value \$0.01 – 1,000 shares authorized; 1,000 shares issued and outstanding at December 31, 2012 (liquidation preference of \$1,000)	1,000
Series B1 convertible preferred stock, par value \$0.01 – 1,267 shares authorized; 1,267 shares issued and outstanding at December 31, 2012 (liquidation preference of \$4,481)	3,589
Series B2 convertible preferred stock, par value \$0.01 – 497 shares authorized; 497 shares issued and outstanding at December 31, 2012 (liquidation preference of \$2,577)	2,027
Series C convertible preferred stock, par value \$0.01 – 3,299 shares authorized; 3,299 shares issued and outstanding at December 31, 2012 (liquidation preference of \$16,961)	13,232
Series D convertible preferred stock, par value \$0.01 – 1,129 shares authorized; 1,121 shares issued and outstanding at December 31, 2012 (liquidation preference of \$16,205)	11,963
Series E convertible preferred stock, par value \$0.01 – 1,522 shares authorized; 1,126 shares issued and outstanding at December 31, 2012 (liquidation preference of \$23,065)	16,467
Total convertible redeemable preferred stock	48,916
Stockholders' deficit	
Common stock, par value \$0.01; 14,000 authorized shares; 630 issued and outstanding at December 31, 2012	—
Additional paid in capital	—
Accumulated deficit	(63,592)
	(63,592)
Total liabilities, convertible redeemable preferred stock, and stockholders' deficit	\$8,265

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

Spigit, Inc.
Consolidated Statement of Operations
Years Ended December 31, 2012 (Unaudited)

(In thousands)	2012 (Unaudited)
Revenues	\$17,420
Cost of revenue	(4,463)
Gross profit	12,957
Operating expenses	
Operating expense	5,140
Research and development	5,272
Sales and marketing	11,158
General and administrative	6,814
Total operating expenses	28,384
Operating loss	(15,427)
Other income (expense), net	
Other income	2,129
Interest expense	(445)
	1,684
Loss before provision for income taxes	(13,743)
Provision for income taxes	(68)
Net loss	\$(13,811)

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

Spigit, Inc.

Consolidated Statement of Redeemable Convertible Preferred Stock and Stockholders' Deficit
Years Ended December 31, 2012 (Unaudited)

(In thousands)	Convertible Redeemable Preferred Stock		Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount					
Balance at December 31, 2011	8,342	\$38,212	602	—	—	\$ (46,080)	\$ (46,080)
Issuance of Series E-2 convertible preferred stock at \$13.43 per share in cash, net of issuance costs	521	7,003	28	—	—		
Accretion of preferred dividends, premium and issuance costs		3,701				(3,701)	\$ (3,701)
Net loss						(13,811)	\$ (13,811)
Balance at December 31, 2012	8,863	\$48,916	630	—	—	\$ (63,592)	\$ (63,592)

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

Spigit, Inc.
Consolidated Statement of Cash Flows
Years Ended December 31, 2012 (Unaudited)

(In thousands)	2012 (Unaudited)
Operating activities	
Net loss	\$(13,811)
Adjustments to reconcile net loss to net cash used in operating activities:	
Depreciation and amortization	1,346
Changes in operating assets and liabilities:	
Accounts receivable	(887)
Prepaid assets and other assets	(155)
Accounts payable	789
Accrued and other liabilities	(1,130)
Deferred revenue	1,097
Net cash used in operating activities	(12,751)
Investing activities	
Purchases of property and equipment	(583)
Net cash used in investing activity	(583)
Financing activities	
Proceeds from loans due to shareholders	2,000
Proceeds from exercise of stock options	32
Proceeds from issuance of series E preferred stock, net of issuance costs	7,003
Net cash provided by financing activities	9,035
Net decrease in cash and cash equivalents	(4,299)
Cash and cash equivalents	
Beginning of year	5,446
End of year	\$1,147

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

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

1. The Company:

Spigit, Inc. (the "Company") was incorporated in April 2005 in the state of Delaware under the name IP Swap, and was renamed Spigit, Inc. in February 2007. The Company is a leading provider of collective idea management software, connecting employees, customers and business partners for innovation and insight discovery. Using enterprise-grade social technology, the Company's software taps into the collective intelligence of an organization and transforms it into actionable, predictive information. By incorporating incentives, idea graduation, idea trading and real-time analytics, the Company allows companies to harness the social capital within.

Liquidity and Capital Resources

The Company's financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business. Since its inception, the Company has incurred net losses and has an accumulated deficit of \$63.6 million as of December 31, 2012 and the Company's \$8 million bank loan is due June 30, 2013. Management believes that operating losses and negative cash flows from operations will continue in the foreseeable future. This and other factors raise substantial doubt about the Company's ability to continue as a going concern. Management plans to continue to finance the Company's operations with a combination of additional sales of its equity and debt. If adequate funds are not available in the future, the Company may be required to delay, reduce the scope of, or eliminate certain of its critical activities, including product development, or suspend its business operations. The accompanying consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

In January 2013, the Company completed an offering of approximately 1.8 million shares of series F preferred stock at \$2.7782 per share ("series F"), raising approximately \$5 million. The series F shares vote one for one, and require a cumulative dividend of 8.5% of the issue price per annum. In the event of a liquidation of the Company, the series F are entitled to preferential payments of two times the issue price plus all unpaid and accrued dividends and are convertible into common stock of the Company in certain events. The series F is owned by one shareholder, PICO Holdings, Inc, a publicly traded company listed on NASDAQ ("PICO"), which also owns approximately 3 million shares of the Company's common stock, resulting in total voting ownership of approximately 67% of the Company at March 15, 2013.

During 2012, the Company borrowed \$2 million from its two largest existing shareholders (one of them being PICO). The loans had a stated interest rate of 11% and were due to be repaid on March 30, 2013. However, in 2013 and concurrent with the series F offering, the loans were amended and the outstanding principle and accrued interest was converted at \$2.778 per share into approximately 736,000 shares of the Company's common stock.

In conjunction with the sale of the series F, the Company also exchanged all of the previously existing preferred stock outstanding (series A through series E) into one-fifth of a share of the Company's common stock effectively converting and canceling such preferred stock. The resulting capital structure of the Company's issued and outstanding equity consisted of 5.4 million shares of common stock and 1.8 million shares of series F.

Agreed to in the series F offering is a stipulation that states if the Company meets certain cash flow targets for the period February 2013 through April 2013, then the current series F preferred shareholders would be obligated before May 31, 2013, to invest an additional \$5 million for 1.8 million shares of series F.

2. Summary of Significant Accounting Policies:

Classification of Redeemable Convertible Preferred Stock

The Company applies Accounting Series Release (ASR) 268, an amendment to Regulation S-X, in the preparation of its consolidated financial statements and presents its redeemable convertible preferred stock, whose redemption is outside the control of the Company. The Company is required to present separately, in its balance sheet, amounts applicable to the following three general classes of securities (i) preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer, (ii) preferred stocks which are not redeemable or are redeemable solely at the option of the issuer, and (iii) common stocks. In addition, the rules require disclosure

of redemption terms, five-year maturity data, and changes in redeemable preferred stock.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

Due to the redemption provisions, the Series A through E are classified outside of permanent equity as “Mezzanine” at their original fair value on the date of issue, net of issuance costs. Accretion charges for Series B through E are recorded to increase the net amount of these shares to the redemption amount, including cumulative dividends of an additional 8.5% per annum and a 10% premium over their original issuance price, payable in respect of each of these preferred stock, at the earliest possible redemption date of October 19, 2016. The accretion charges are recorded against additional paid-in capital, if any, as the Company currently does not have retained earnings, and to accumulated deficit once there is no additional paid-in capital available. During the year ended December 31, 2013, accretion of \$3.7 million was recorded against accumulated deficit as the Company did not have any additional-paid-in-capital available.

Regulation S-X sets forth the form and content of and requirements for financial statements required to be filed as part of registration statements under the Securities Act of 1933 or a filing of separate financial statements of significant subsidiaries. As such, these provisions are not required for private companies.

Basis of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary in the United Kingdom. All intercompany accounts and transactions have been eliminated in consolidation.

Foreign Currency

The functional currency of the Company's foreign subsidiary is the US dollar. Accordingly, the consolidation of the financial statements does not require the recording of translation adjustments. Foreign exchange gains or losses associated with the foreign currency transactions are included in the results of operations and were not material in 2012.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and reported amounts of revenues and expenses during the reporting periods covered by the financial statements and accompanying notes. In particular, the Company makes estimates with respect to revenue recognition, collectability of accounts receivable, software capitalization, warranty reserves, useful lives of long-lived assets, including property, plant and equipment, stock-based compensation, income taxes and contingencies. Actual results could differ from those estimates.

Fair Value of Financial Instruments

The carrying amounts of certain of the Company's financial instruments, which include cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities, approximate fair value due to their short maturities. Based on the borrowing rates currently available to the Company for loans with similar terms, the carrying value of the Company's debt approximates its fair value.

Cash and Cash Equivalent

Cash and cash equivalent are stated at cost, which approximates fair value. The Company considers highly liquid investments with original maturities from the date of purchase of three months or less to be cash equivalents. Cash and cash equivalents consist principally of deposits held by a financial institution with a high credit standing.

Property and Equipment

Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term or estimated useful life. Costs of maintenance and repairs that do not improve or extend the lives of the respective assets are expensed as incurred.

Research and Development Costs

The Company expenses the cost of research and development as incurred. Research and development expenses consist primarily of expenses for research and development staff and the cost of certain third-party service providers.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

Software Development Costs

The Company accounts for costs related to the development of software products in accordance with the applicable authoritative guidance. For software products to be sold, leased, or otherwise marketed, the Company expenses all costs incurred to establish the technological feasibility of the software product and capitalizes qualifying costs incurred after technological feasibility is achieved. For software products developed or obtained for internal use, the Company capitalizes all related costs, beginning when it is determined that certain factors are present including, among others, that technology exists to achieve performance requirements. All costs that relate to the planning and post implementation phases of software developed for internal use are expensed as incurred.

Income Taxes

The Company uses the asset and liability method to account for income taxes in accordance with the authoritative guidance. Under this method, deferred tax assets and liabilities are determined based on future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases, and tax loss and credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates applied to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

The Company records interest and penalties related to unrecognized tax benefits in income tax expense.

The Company records interest and penalties related to unrecognized tax benefits in income tax expense.

Revenue Recognition

Revenue consists of fixed subscription fees for the Company's software and services. The Company commences revenue recognition when all of the following conditions are met:

- Persuasive evidence of an arrangement exists;
- Subscription or services have been delivered to the customer;
- Collection of related fees is reasonably assured; and
- Related fees are fixed or determinable.

The Company's customers do not have the contractual right to take possession of the software in substantially all transactions. Instead, the software is delivered through the Internet from the Company's hosting facilities. Fixed fee subscription services include access to the hosted software, set-up assistance and customer support, which are exclusively provided to direct customers by the Company and is considered non-separable deliverables. The Company recognizes the subscription fee ratably over the contracted term of the subscription agreement, generally one year. Revenue recognition commences on the later of the start date specified in the subscription arrangement, the date the customer's first module is set-up and access is granted to the customer, and when all of the revenue recognition criteria have been met, including when any acceptance period lapses.

The Company's consulting services consist of certain professional services, business process consulting and training services that are short-term in nature. Consulting services may be purchased separately at any time to complement or enhance the customers' experience in Spigit products and services.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

In October 2009, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update No. 2009-13 ("ASU 2009-13"), which amended the accounting guidance for multiple-deliverable revenue arrangements to:

- Provide updated guidance on whether multiple deliverables exist, how the deliverables in an arrangement should be separated, and how the consideration should be allocated;

- Require an entity to allocate revenue in an arrangement using estimated selling prices ("ESP") of each deliverable if a vendor does not have vendor-specific objective evidence of selling price ("VSOE") or third-party evidence of selling price ("TPE"); and

- Eliminate the use of the residual method and require a vendor to allocate revenue using the relative selling price method.

The Company adopted this accounting guidance for arrangements entered into or materially modified after January 1, 2011. The Company expanded its offering of consulting services in connection with subscription services in multiple elements arrangements. The Company accounts for subscription and consulting services revenue as separate units of account. Subscription services are routinely sold separately by the Company as the consulting services are not essential to the functionality of the hosted application and customers renew their subscription without additional services. The Company allocates revenue to each unit of account based on a selling price hierarchy. The selling price for a deliverable is based on its VSOE, if available, TPE, if VSOE is not available, or ESP, if neither VSOE nor TPE are available.

Since VSOE and TPE are not available for the Company's subscription or consulting services, the Company uses ESP to allocate revenue. The Company establishes ESP within a range of selling prices considering multiple factors including, but not limited to, standalone sales, price list adjusted for discounting practices and margin objectives. The adoption of this standard did not have a material impact on the Company's revenue recognition for multiple deliverable arrangements.

In 2012, one customer accounted for 7% of the Company's revenues and one customer accounted for 10.5% of the Company's accounts receivable balance

Deferred Revenue

Deferred revenue consists of billings or payments received in advance of revenue recognition from the Company's subscription and other services described above and are recognized as revenue when all of the revenue recognition criteria are met.

Cost of Revenue

Cost of revenue primarily consists of costs related to hosting of the Company's application suite and expenses related to its hosting facility, plus the cost of providing consulting services to our customers.

Warranties and Indemnification

The Company has entered into service level agreements with a majority of its customers warranting defined levels of availability and performance, and permitting, in a few instances, those customers to receive service credits or to terminate their agreements in the event that the Company fails to meet those levels. To date, the Company has not experienced any significant failures to meet defined levels of reliability and performance as a result of those agreements and, accordingly, has not accrued any liabilities related to these agreements in the accompanying consolidated financial statements.

Additionally, the Company's arrangements generally include provisions for indemnifying customers against liabilities if its services infringe a third party's intellectual property rights or a breach by the Company if its confidentiality obligations harms a third party. To date, the Company has not incurred any material costs as a result of those

indemnifications and has not accrued any liabilities related to these obligations in the accompanying consolidated financial statements.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

Advertising and Promotion Costs

Expenses related to advertising and promotions of products are charged to sales and marketing expense as incurred.

Advertising and promotion expenses amounted to approximately \$177,000 for the year ended December 2012.

Allowance for Doubtful Accounts

The Company makes judgments as to its ability to collect outstanding accounts receivable and provides allowances for accounts receivable when and if collection becomes doubtful. The Company had no allowance for doubtful accounts as of December 31, 2012.

Stock Based Compensation

The Company accounts for stock-based awards to employees using the fair value-based method in accordance with the authoritative guidance for stock-based compensation, which requires the measurement of compensation expense based on the estimated fair value of the awards on the date of grant and the recognition of the expense over the requisite service period.

The Company estimates the fair value of stock options using the Black-Scholes option-pricing model, which requires the use of the following assumptions: (i) the expected volatility of the Company's common stock, which is based on volatility data of a group of peer companies; (ii) the expected term of the option award, which is based on the disclosed expected term of a group of peer companies; (iii) an expected dividend yield, which is assumed to be 0% as the Company has historically not paid dividends and does not anticipate paying dividends in the foreseeable future; and (iv) a risk-free interest rate, which is based on the U.S. Treasury yield curve in effect on the date of grant for zero coupon U.S. Treasury notes with maturities approximately equal to expected term of the option award.

The Company accounts for stock based compensation arrangements with non-employees in accordance with ASC 505-50, Equity - Equity-Based Payments to Non-Employees, which requires that such equity instruments be recorded at their fair value on the measurement date. The measurement of stock based compensation for non-employees is subject to periodic adjustment as the underlying equity instruments vest, and the related compensation expense is based on the estimated fair value of the equity instruments using the Black Scholes option pricing model.

Recent Accounting Pronouncements

In July 2012, the FASB issued guidance on the testing of indefinite-lived intangible assets for impairment. This update amends previous guidance, and permits an entity first to assess qualitative factors to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired as a basis for determining whether it is necessary to perform the quantitative impairment test. The new guidance will be effective for the Company beginning January 1, 2013. The Company does not expect the amended guidance to have a material impact on the consolidated financial statements.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

3. Balance Sheet

Property and Equipment, Net:

(in thousands)	2012
Furniture	\$ 114
Leasehold improvements	94
Computer hardware	287
Software cost capitalized	2,646
	3,141
Less: Accumulated depreciation and amortization	(1,437)
Total property and equipment, net	\$ 1,704

Depreciation expense totaled \$91,000 for the year ended December 31, 2012. Amortization expense, consisting primarily of amortization of capitalized costs of internally developed software, totaled \$735,000 for the year ended December 31, 2012.

Accrued and Other Current Liabilities:

(in thousands)	2012
Accrued commissions and bonuses	\$ 241
Accrued paid-time-off	869
Accrued taxes	735
Other	284
	\$ 2,129

Commitments and Contingencies:

The Company leases various office facilities in California, under non-cancellable operating lease agreements with expiration dates in 2012 and 2013. Rent expense for the year ended December 31, 2012 was approximately \$565,000.

Aggregate future minimum payments required under these leases at December 31, 2012 are as follows:

(in thousands)	
2013	\$ 89
Thereafter	—
	\$ 89

The Company from time to time could be subject to legal proceedings arising in the normal course of its business activities. Depending on the nature and timing of any such dispute, an unfavorable resolution of a matter could materially affect the Company's future results of operations, cash flows or financial position in a future period. The Company records a liability for legal matters if and when such liability is probable and reasonably estimable. As of December 31, 2012, the Company did not have any recorded liabilities related to legal matters nor did the Company have any exposure to a reasonably possible material contingency.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

4. Fair Value Measurements:

In accordance with ASC 820, Fair Value Measurements, for its financial assets and liabilities. The Company discloses and recognizes the fair value of its assets and liabilities using a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to valuations based upon unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to valuations based upon unobservable inputs that are significant to the valuation (Level 3 measurements). The guidance establishes three levels of the fair value hierarchy as follows:

Level 1 - Observable inputs, such as quoted prices in active markets for identical assets or liabilities.

Level 2 - Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The Company did not have any material fair value measurements in 2012.

5. Credit Facility and Related Party Debt:

The Company has a loan and security agreement with a bank to borrow up to \$10 million under a line of credit facility. Borrowings under the credit facility bear interest at a per annum rate equal to the greater of: (a) the bank Prime Rate; or (b) the rate of interest equal to the sum of (i) 2.50% plus (ii) the Daily Adjusting LIBOR Rate. If the bank determines that it is unable to determine the Daily Adjusting LIBOR Rate for any day, the "Prime Rate" would be the per annum rate which is equal to the greater of: (i) the Prime Rate in effect on such day; or (ii) 2.50% per annum. The credit facility is collateralized by all of the Company's assets, including intangible assets, and matures on June 30, 2013.

The Company is subject to financial covenants under the line of credit. The Company is required to achieve certain gross bookings, calculated on a rolling two quarter basis, and the Company is required to achieve a certain renewal rate of the customer licenses. Neither of those covenants have been violated as of December 31, 2012. The Company is also required to produce audited financial statements within 120 days of its December 31, year end. In addition, the bank requires the Company to maintain a majority of its cash with the bank account, with at least a minimum balance of \$1 million during the term of the credit facility. The bank has the right to terminate or reduce the line of credit upon (i) any material adverse effect on the business, operations, property or financial condition of the Company, (ii) any material adverse effect on the ability of the Company to repay borrowings or otherwise perform, observe or comply with any of its other obligations under the line of credit, (iii) any material adverse effect on the validity or enforceability of any of the material rights or remedies of the bank, or (iv) any material adverse effect on any of the security interests and liens of the bank in any property constituting a collateral. As of December 31, 2012, the Company had borrowings of approximately \$8 million outstanding under the line of credit.

Related Party Debt:

At December 31, 2012, the Company had \$2 million in debt outstanding that is due to its two largest existing shareholders. The funds were borrowed in 2012, had a stated interest rate of 11% and were due to be repaid on March 30, 2013. However, in 2013 the loans were amended and concurrent with the series F offering, the principle balance and accrued interest were converted at \$2.778 per share into 736,000 shares of the Company's common stock.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

6. Redeemable Convertible Preferred Stock and Stockholders' Deficit:

Common Stock

The Company's Certificate of Incorporation, as amended, authorizes the Company to issue 14,000,000 shares of \$0.01 par value common stock. The holders of common stock are entitled to receive dividends whenever funds are legally available and when and if declared by the Board of Directors, subject to the prior rights of holders of all classes of preferred stock outstanding.

Preferred Stock

The table below provides information on the Company's preferred stock offerings (in thousands) as of December 31, 2012:

Preferred Stock ⁽¹⁾	Shares Authorized	Shares Issued and Outstanding	Original Issuance Value (less Issuance Costs)	Liquidation Value ⁽²⁾
Series A-1 preferred stock ⁽⁴⁾	780	553	\$638	\$638
Series A-2 preferred stock ⁽⁴⁾	1,000	1,000	\$1,000	\$1,000
Series B-1 preferred stock ⁽³⁾	1,267	1,267	\$2,533	\$4,481
Series B-2 preferred stock	497	497	\$1,492	\$2,577
Series C preferred stock	3,299	3,299	\$9,850	\$16,961
Series D preferred stock	1,121	1,121	\$10,113	\$16,205
Series E preferred stock	1,522	1,126	\$15,122	\$23,065

(1) All of the classes of preferred stock presented in the table above are collectively referred hereinafter as the Preferred Stock.

(2) Includes cumulative accruing dividends through October 24, 2016 and a liquidation premium equal to 10% of the original issue price of each class of the preferred stock accretion using the interest rate method through October 24, 2016, the earliest optional redemption date by their holders.

(3) Of the \$2.5 million carrying value of the Series B-1 preferred stock, approximately \$1.5 million represents the conversion of a promissory note by an investor in July 2009.

(4) The Series A-1 together with the Series A-2 preferred stock are hereinafter referred to as the Series A preferred stock.

Voting

Each holder of the Preferred Stock is entitled to the number of votes equal to the number of shares of common stock into which such shares of preferred stock are convertible.

Dividends

The holders of the Series B, Series C, Series D and Series E preferred stock, in preference to the holders of the Series A preferred stock or any other capital stock, are entitled to cash dividends at a rate of 8.5% (per annum) of the initial issuance price of each class of preferred stock. The dividends are cumulative and payable only when and as declared by the Board of Directors. The dividend is accrued within the lines convertible redeemable preferred stock in the accompanying consolidated balance sheets and amounted to \$3.7 million at December 31, 2012.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

Liquidation

In the event of any liquidation, dissolution, or winding up of the Company, either voluntary or involuntary, the holders of the Series B, Series C, Series D and Series E preferred stock would be entitled to receive a liquidation preference over the Series A preferred stock and common stock equal to the issuance price of their shares of the Series B, Series C, Series D and Series E preferred stock plus accrued dividends. After the full liquidation preference had been paid to the holders of the Series B, Series C, Series D and Series E preferred stock, any remaining funds and assets of the Company legally available for distribution to stockholders would be distributed pro rata to the holders of the Series A preferred stock, and then among the holders of the Series B, Series C, Series D and Series E preferred stock and common stock, on an as-converted basis. With respect to the liquidation rights of the Series B, Series C, Series D and Series E preferred stock, a merger or consolidation of the Company in which its stockholders do not retain a majority of the voting power in the surviving corporation, or a sale of all or substantially all of the Company's assets, would each be deemed to be a liquidation, dissolution or winding up of the Company, entitling the holders of the Series B, Series C, Series D and Series E preferred stock to the liquidation preference described above.

Conversion

Each share of the Series A, Series B, Series C, Series D and Series E preferred stock, upon the request of a majority of the holders of each series, is convertible into the number of shares of common stock which results from dividing the per share conversion price of such shares by the conversion price per share in effect for the convertible preferred stock at the time of conversion. The conversion price for the Preferred Stock is equal to the original issuance price, as follows:

	Conversion Price
Series A-1 preferred stock	\$1.15
Series B-1 preferred stock	\$2.00
Series B-2 preferred stock	\$3.02
Series C preferred stock	\$3.03
Series D preferred stock	\$9.14
Series E preferred stock	\$13.43

The conversion price can be adjusted upon occurrence of certain equity transactions, such as stock split or stock dividend, and upon issuance of additional shares of common stock for a consideration per share less than the conversion price for a given Series of preferred stock.

The Series A preferred stock automatically converts into common stock upon the closing of an underwriting public offering of shares of common stock of the Company at an offering price of at least \$3.00 per share and gross proceeds to the Company in excess of \$25 million. The Series B, Series C, Series D and Series E preferred stock automatically converts into common stock upon the closing of an underwriting public offering of shares of common stock of the Company at an offering price of at least \$21.00 per share and gross proceeds to the Company in excess of \$50 million.

Redemption

At any time on or after October 24, 2016, the holders of a majority of the then outstanding Series B, Series C, Series D, and/or Series E preferred stock may require the Company to redeem all of the outstanding Series B, Series C, Series D, and/or Series E preferred stock at a price equal to 110% of the original issuance price for each such preferred stock plus all accrued but unpaid dividends as of the date of redemption.

Spigit, Inc.

Notes to Consolidated Financial Statements

December 31, 2012 (Unaudited)

8. Stock-Based Compensation:

The Company's 2007 Stock Incentive Plan (the "Plan"), provides for the issuance of stock options and restricted stock grants to eligible employees of the Company. Under the Plan, options to purchase common stock and restricted stock awards may be granted at no less than the fair value of the Company's common stock on the date of the grant. These awards generally have vesting terms of 1/4th of the total number of shares on the twelve-month anniversary of the vesting commencement date and 1/48th of the original number of shares each month thereafter and expire 10 years from the date of grant. Fair value is determined by the Board of Directors. The fair value estimate incorporates various subjective assumptions, including information about comparable public companies and expectations as to future cash flows and liquidity events. As of December 31, 2012, 1.5 million shares were authorized for issuance to officers, directors, employees and consultants of the Company pursuant to the Plan, of which approximately 112,000 shares were available for future grants under the Plan.

The following table summarizes the activity for stock options for the year ended December 31, 2012:

(in thousands, except per share and term data)	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term
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stock equal to the quotient of \$1,000 per share divided by the conversion price. The "conversion price" shall initially be equal to \$22.79 per share or 125% of the closing price and at no time can the Series B convertible preferred stock convert into shares of common stock at a discount to the closing price. The "closing price" equals \$18.23 per share and was based upon the average of our closing bid prices as listed on The Nasdaq National Market for the 20 trading days preceding the date of the closing of the transaction.

The Series B convertible preferred stock is convertible at the option of the holder after the first anniversary of the original issuance of the Series B convertible preferred stock, which was January 7, 2002, or, if earlier, upon a "change in control" (as defined in the certificate of designation). Except with respect to an automatic conversion as described below, the conversion price shall be equal to 125% of the closing price until the third anniversary of the original issue date of the Series B convertible preferred stock, which will be January 7, 2004. Upon the third anniversary of the original issue date, the conversion price shall be adjusted to be equal to either (i) the closing price, in the event that the average of the closing bid prices of our common stock as quoted on The Nasdaq National Market for the 20 trading days preceding the third anniversary of the original issuance (the "Future

Price") is less than or equal to the closing price; (ii) the Future Price (as defined above) if the Future Price is greater than the closing price but less than 125% of the closing price; or (iii) 125% of the closing price if the Future Price is equal to or greater than 125% of the closing price.

To the extent not previously converted, the Series B convertible preferred stock will automatically convert into shares of our common stock, based on the then effective conversion price, upon the earliest of (i) the fourth anniversary of the original issue date; (ii) immediately prior to an "asset transfer" or "acquisition" (as defined in the certificate of designation); or (iii) with the consent of the holders of a majority of the then outstanding Series B convertible preferred stock immediately prior to our liquidation, dissolution or winding up. In the event of an automatic conversion pursuant to an asset transfer, acquisition or liquidation, the adjustment mechanism described above will be applied immediately prior to the automatic conversion.

In the event of our liquidation, dissolution or winding down, either voluntary or involuntary, following the payment of any distributions due the holders of any class of capital stock or series of preferred stock that ranks senior to the Series B convertible preferred stock, the holders of the Series B convertible preferred stock shall be entitled to receive, prior and in preference to any distribution of any of our assets or surplus funds to the holders of our common stock or any class of capital stock or series of preferred stock that does not rank senior to or on parity with the Series B convertible preferred stock, an amount per share (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to the Series B convertible preferred stock) equal to up to \$1,000.

Registration Rights

As of the date hereof, Enzon Pharmaceuticals, Inc. has the right to require us to register shares of our common stock issued upon conversion of the Series B convertible preferred stock issued pursuant to the purchase agreement relating to its equity investment. We are required to pay all expenses in connection with such registration. Pfizer Inc. has the right to include shares of our common stock purchased pursuant to the purchase agreement relating to its equity investment in the first firmly underwritten public offering of our common stock effected after January 18, 2000. We are required to pay all expenses in connection with such registration, excluding the fees of counsel for Pfizer. Baxter Healthcare Corporation has the right to include shares of our common stock purchased pursuant to the purchase agreement relating to its equity investment in any firmly underwritten public offering of our common stock effected prior to March 1, 2004. We are required to pay all expenses in connection with such registration, excluding fees of counsel for Baxter.

Anti-Takeover Effects of Provisions of Delaware Law and Our Charter Documents.

Rights Plan

We are subject to certain anti-takeover provisions under our share purchase rights plan. The rights issued and issuable pursuant to our share purchase rights plan trade with our common stock and are not currently exercisable. Under certain circumstances, the rights initially become exercisable for 1/100 share of our Series A junior participating preferred stock. The plan also provides that:

if a third party acquires more than 20% of our common stock, the rights holders, other than the third party, would have the right to purchase a certain number of shares of our common stock at a discount;

if we are acquired in a merger or other business combination transaction or 50% or more of our consolidated assets or earning power are sold, the rights holders would have the right to acquire a certain number of shares of the common stock of the acquiring company at a discount; or

our board of directors may, under certain circumstances, exchange each right, other than those held by such third party, for one share of our common stock.

The provisions described above may discourage, delay or prevent a third party from acquiring us. These provisions may also discourage, delay or prevent a third party from acquiring a large portion of our securities, or initiating a tender offer or proxy contest, even if our stockholders might receive a premium for their shares in the acquisition over then current market prices.

Certificate of Incorporation

Our certificate of incorporation provides for our board of directors to be divided into three classes, with staggered three-year terms. As a result, only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Stockholders have no cumulative voting rights, and the stockholders representing a majority of the shares of common stock outstanding are able to elect all of the directors.

Our certificate of incorporation also requires that any action required or permitted to be taken by our stockholders must be effected at a duly called annual or special meeting of the stockholders and may not be effected by a consent in writing and that the stockholders may amend our bylaws or adopt new bylaws, only by the affirmative vote of 66²/₃% of the outstanding voting securities. A special meeting of the stockholders may be called by our Chairman, our Chief Executive Officer, a resolution adopted by a majority of the total number of authorized directors or stockholders owning 10% or more of the outstanding voting capital stock. These provisions may have the effect of delaying, deferring or preventing a change in control.

The classification of our board of directors and lack of cumulative voting will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management.

These and other provisions may have the effect of deterring hostile takeovers or delaying changes in control or management. These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and in the policies of our board of directors and to discourage certain types of transactions that may involve an actual or threatened change in control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy rights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, such provisions also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in our management.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the time that such stockholder became an interested stockholder, unless:

prior to such time, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested holder;

upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of

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determining the number of shares outstanding those shares owned (a) by persons who are directors and also officers and (b) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

at or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least $66\frac{2}{3}\%$ of the outstanding voting stock which is not owned by the interested stockholder.

In general, Section 203 defines "business combination" to include the following:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines "interested stockholder" as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such entity or person.

Certain Transactions

Our bylaws provide that we will indemnify our directors and officers, employees and other agents to the fullest extent permitted by Delaware law. We are also empowered under

our bylaws to enter into indemnification contracts with our directors and officers and to purchase insurance on behalf of any person whom we are required or permitted to indemnify.

In addition, our certificate of incorporation provides that the liability of our directors for monetary damages shall be eliminated to the fullest extent permissible under Delaware law. Pursuant to Delaware law, our directors shall not be liable for monetary damages for breach of the directors' fiduciary duty of care to us and our stockholders. However, this provision does not eliminate the duty of care, and in appropriate circumstances, equitable remedies such as injunctive or other forms of nonmonetary relief that will remain available under Delaware law. In addition, each director will continue to be subject to liability for (i) breach of the directors duty of loyalty to us or our stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) violating Section 174 of the Delaware General Corporation Law, or (iv) any transaction from which the director derived an improper personal benefit. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Transfer Agent and Registrar

Mellon Investor Services LLC is the transfer agent and registrar for our common stock. Mellon Investor Services' address is 235 Montgomery Street, 23rd Floor, San Francisco, CA 94104 and telephone number is (415) 743-1422.

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SELLING SECURITY HOLDERS

We issued and sold the notes to "qualified institutional buyers" as defined in Rule 144A of the Securities Act in transactions exempt from the registration requirements of the Securities Act pursuant to Rule 506 of the Securities Act.

The following table sets forth information, as of November 20, 2003, with respect to the selling holders and the principal amounts of notes, if any, and numbers of shares of common stock, if any, owned by each selling holder that may be offered under this prospectus. The information is based on information provided by or on behalf of the selling holders, and we have not independently verified this information. The selling holders may offer all, some or none of the notes or common stock covered by this prospectus. Because the selling holders may offer all or some portion of the notes or the common stock, no estimate can be given as to the amount of the notes or the common stock that will be held by the selling holders upon termination of any sales; the table below assumes that all selling holders will sell all of their notes or common stock, unless otherwise indicated. In addition, the selling holders identified below may have sold, transferred or otherwise disposed of all or a portion of their notes or common stock since the date on which they provided the information regarding their notes and common stock in transactions exempt from the registration requirements of the Securities Act.

Name	Principal Amount of Notes Owned and Offered(1)	Common Stock Beneficially Owned(1)(2)	Common Stock Offered(1)(2)	Principal Amount of Notes Owned After Completion of Offering	Principal Amount of Common Stock Owned After Completion of Offering	Percentage of Common Stock Owned After Completion of the Offering(3)

Name	Principal Amount of Notes Beneficially Owned and Offered(1)	Common Stock Beneficially Owned(1)(2)	Common Stock Offered(1)(2)	Principal Amount of Notes Owned After Completion of Offering	Principal Amount of Common Stock Owned After Completion of Offering	Percentage of Common Stock Owned After Completion of the Offering(3)
Salomon Brothers Asset Management, Inc.(4)	\$ 21,889,000	3,162,026(5)	1,928,546		1,233,480	2.2%
Alexandra Global Master Fund Ltd	\$ 29,097,000	2,909,668(6)	2,563,612		346,056	*
Brencourt Multi-Strategy Master, Ltd	\$ 6,159,000	542,643	542,643			
Brencourt Merger Arbitrage Master, Ltd	\$ 766,000	67,488	67,488			
Context Convertible Arbitrage Offshore, Ltd	\$ 930,000	330,275(7)	81,938		248,337	*
Context Convertible Arbitrage Fund, LP	\$ 438,000	178,931(8)	38,590		140,341	*

*

Less than one percent (1%)

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- (1) Amounts indicated may be in excess of the total amount registered due to sales or transfers exempt from the registration requirements of the Securities Act since the date upon which the selling holders provided to us the information regarding their notes and common stock.
- (2) Unless otherwise noted, represents shares of common stock issuable upon conversion of the notes.
- (3) Percentage is based on 56,122,809 shares of common stock outstanding as of October 31, 2003.
- (4) These selling security holders are affiliates of registered broker-dealers and have advised us that they purchased the notes in the ordinary course of business and, at the time of the purchase of the notes, had no agreements or understandings directly or indirectly with any person to distribute the notes or the shares of common stock issuable upon conversion thereof.
- (5) Includes 1,233,480 shares of common stock issuable upon conversion of 3% convertible subordinated notes due June 2010.
- (6)

Includes 346,056 shares of common stock issuable upon conversion of 5% convertible subordinated notes due February 2007.

(7)

Includes 7,821 shares of common stock issuable upon conversion of 5% convertible subordinated notes due February 2007, 39,635 shares of common stock issuable upon conversion of 3.5% convertible subordinated notes due October 2007 and 200,881 shares of common stock issuable upon conversion of 3% convertible subordinated notes due June 2010.

(8)

Includes 13,036 shares of common stock issuable upon conversion of 5% convertible subordinated notes due February 2007, 19,817 shares of common stock issuable upon conversion of 3.5% convertible subordinated notes due October 2007 and 107,488 shares of common stock issuable upon conversion of 3% convertible subordinated notes due June 2010.

None of the selling holders nor any of their affiliates, officers, directors or principal equity holders has held any position or office or has had any material relationship with us within the past three years. All of the notes were "restricted securities" under the Securities Act prior to this registration.

Information concerning the selling holders may change from time to time and any changed information will be set forth in supplements to this prospectus and/or amendments to the registration statement of which this prospectus is a part, if and when necessary. In addition, the conversion rate and therefore, the number of shares of common stock issuable upon conversion of the notes, is subject to adjustment under certain circumstances. Accordingly, the aggregate principal amount of notes and the number of shares of common stock into which the notes are convertible may increase or decrease.

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PLAN OF DISTRIBUTION

The selling holders and their successors, including their transferees, pledgees or donees or their successors, may sell the notes and/or the common stock covered by this prospectus from time to time directly to purchasers or through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, concessions or commissions from the selling holders or the purchasers. These discounts, concessions or commissions as to any particular underwriter, broker-dealer or agent may be in excess of those customary in the types of transactions involved.

The notes and/or the common stock covered by this prospectus may be sold:

in one or more transactions at fixed prices;

at prevailing market prices at the time of sale;

at prices related to the prevailing market prices;

at varying prices determined at the time of sale; or

at negotiated prices.

These sales may be effected in transactions, which may involve crosses or block transactions:

on any national securities exchange or U.S. inter-dealer system of a registered national securities association on which the notes or the common stock may be listed or quoted at the time of sale;

in the over-the-counter market;

in transactions otherwise than on these exchanges or systems or in the over-the-counter market;

through the writing of options, whether the options are listed on an options exchange or otherwise; or

through the settlement of short sales.

Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

In connection with the sale of the notes and/or the common stock covered by this prospectus, the selling holders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the notes or the common stock in the course of hedging the positions they assume; however, the selling holders may not use the common stock covered by this prospectus to satisfy a short sale obligation entered into prior to the effectiveness of the registration statement of which this prospectus is a part. Subject to the limitation described above, the selling holders may also sell the notes or the common stock covered by this prospectus short and deliver these securities to close out their short positions, or loan or pledge the notes or the common stock to broker-dealers or other financial institutions that in turn may sell these securities. The selling holders also may transfer, donate and pledge notes and shares of common stock covered by this prospectus, in which case the transferees, donees, pledgees or other successors in interest will be deemed selling holders for purposes of this prospectus.

The aggregate proceeds to the selling holders from the sale of the notes or common stock offered by them will be the purchase price of the notes or common stock less discounts and commissions, if any. Each of the selling holders reserves the right to accept and, together with their broker-dealers or agents from time to time, to reject, in whole or in part, any proposed purchase of notes or common stock to be made directly or through broker-dealers or agents. We will not receive any of the proceeds from the offering of the notes or common stock covered by this prospectus.

Our common stock is listed for trading on the Nasdaq National Market. There is no public market for the notes, and we do not intend to list the notes for trading on any national securities exchange or

on the Nasdaq National Market and can give no assurance about the development of any trading market for the notes.

In order to comply with the securities laws of some states, if applicable, the notes and/or common stock covered by this prospectus may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the notes and/or common stock covered by this prospectus may not be sold unless they have been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

The selling holders and any underwriters, broker-dealers or agents that participate in the sale of the notes and/or common stock covered by this prospectus may be "underwriters" within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the notes and/or common stock may be underwriting discounts and commissions under the Securities Act. Selling holders who are "underwriters" within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act. If the selling securityholders were deemed to be underwriters, the selling securityholders could be subject to certain statutory liabilities under the federal securities laws, including under Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Securities Exchange Act of 1934.

The selling securityholders and any other persons participating in the distribution of the notes and/or common stock covered by this prospectus will be subject to the Securities Exchange Act. The Securities Exchange Act rules include, without limitation, Regulation M, which may limit the timing of or prohibit the purchase and sale of notes and/or common stock covered by this prospectus by the selling securityholders and any such other person. In addition, under Regulation M, any selling securityholder or other person engaged in the "distribution", within the meaning of Regulation M, of the notes and/or common stock covered by this prospectus may not engage in market-making activities with respect to the notes and/or common stock for certain periods prior to the commencement of that distribution, unless, in the case of persons other than selling securityholders, an applicable exemption is available under Regulation M. The foregoing may affect the marketability of the notes and/or common stock covered by this prospectus and the ability of any person or entity to engage in market-making activities with respect to those securities.

In that regard, the selling securityholders are required to acknowledge that they understand their obligations to comply with the provisions of the Securities Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with the offering made by this prospectus. Each selling securityholder is required to agree that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The selling holders may not sell any, or may sell less than all, of the notes and/or common stock offered by them pursuant to this prospectus. In addition, any securities covered by this prospectus that qualify for sale pursuant to Rule 144 or Rule 144A of the Securities Act may be sold under Rule 144 or Rule 144A rather than pursuant to this prospectus. A selling holder may transfer, devise or gift these securities by other means not described in this prospectus.

To the extent required, the specific notes and/or common stock to be sold, the names of the selling holders, the respective purchase prices and public offering prices, the names of any agent, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement of which this prospectus is a part.

We entered into a registration rights agreement for the benefit of holders of the notes to register their notes and common stock into which the notes are convertible under applicable federal and state securities laws under specific circumstances and at specific times. The registration rights agreement

provides for cross-indemnification of the selling holders and us and their and our respective directors, officers and controlling persons against specific liabilities in connection with the offer and sale of the notes and the common stock, including liabilities under the Securities Act.

We will pay substantially all costs and expenses associated with the registration of the notes and the common stock covered by this prospectus. These expenses include the SEC's filing fees and fees under state securities or "blue sky" laws. The selling stockholders will pay all underwriting discounts, commissions, transfer taxes and certain other expenses associated with any sale of the notes and/or the common stock by them.

LEGAL MATTERS

The validity of the notes and the shares of common stock offered by this prospectus will be passed upon for us by Cooley Godward LLP, Palo Alto, California. As of the date of this prospectus, certain partners and associates of Cooley Godward LLP own an aggregate of 3,000 shares of our common stock.

EXPERTS

Ernst & Young LLP, independent auditors, have audited our consolidated financial statements included in our Annual Report on Form 10-K, as amended, for the year ended December 31, 2002, as set forth in their report, which is incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements are incorporated by reference in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

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