BOOKHAM, INC.
Form 10-Q
February 05, 2009

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended December 27, 2008

OR

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

For the transition period from __________ to __________

Commission file number 000-30684

Bookham, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**20-1303994**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

2584 Junction Avenue, San Jose, California 95134

(Address of principal executive offices, zip code)

(408) 383-1400

(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days:

Yes þ No o

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

Large accelerated filer o	Accelerated filer þ	Non-accelerated filer o	Smaller reporting company o

(Do not check if a smaller reporting company)

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

Yes o No þ

Number of shares of common stock outstanding as of January 27, 2008: 100,870,290

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PART I. FINANCIAL INFORMATION

Item 1. ***Financial Statements***

BOOKHAM, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(unaudited, in thousands, except par value amount)

	December 27, 2008	June 28, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 35,296	$ 32,863
Short-term investments	8,894	17,845
Restricted cash	513	1,154
Accounts receivable, net	33,119	45,665
Inventories	58,448	59,612
Prepaid expenses and other current assets	4,842	6,007
Total current assets	141,112	163,146
Goodwill		7,881
Other intangible assets, net	6,191	7,829
Property and equipment, net	32,509	32,962
Other non-current assets	274	272
Total assets	$ 180,086	$ 212,090
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 15,402	$ 21,501
Accrued expenses and other liabilities	21,245	20,789
Total current liabilities	36,647	42,290
Other long-term liabilities	1,821	1,336
Deferred gain on sale-leaseback	14,019	19,402
Total liabilities	52,487	63,028
Commitments and contingencies (Note 9)		
Stockholders equity:		
Preferred stock: 5,000 shares authorized; none issued and outstanding		
Common stock:		
$0.01 par value per share; 175,000 shares authorized; 100,868 shares issued and outstanding at December 27, 2008 100,740 shares issued and outstanding at June 28, 2008	1,009	1,007
Additional paid-in capital	1,165,695	1,163,598
Accumulated other comprehensive income	24,742	44,036
Accumulated deficit	(1,063,847)	(1,059,579)

Total stockholders equity		127,599		149,062
Total liabilities and stockholders equity	$	180,086	$	212,090

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

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BOOKHAM, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited, in thousands, except per share amounts)

	Three Months Ended		Six Months Ended	
	December 27, 2008	December 29, 2007	December 27, 2008	December 29, 2007
Revenues	$ 50,204	$ 58,956	$ 116,735	$ 113,238
Cost of revenues	41,499	45,522	91,401	87,467
Gross margin	8,705	13,434	25,334	25,771
Operating expenses:				
Research and development	6,897	8,168	14,832	16,860
Selling, general and administrative	9,282	12,162	19,966	23,488
Amortization of intangible assets	444	1,353	907	3,350
Restructuring and severance charges	482	562	1,968	1,779
Legal settlement		877	(184)	877
Impairment of goodwill	7,881		7,881	
(Gain) loss on sale of property and equipment	(8)	(1,481)	8	(1,716)
Total operating expenses	24,978	21,641	45,378	44,638
Operating loss	(16,273)	(8,207)	(20,044)	(18,867)
Other income (expense):				
Other expense	(95)		(695)	
Interest income	209	494	457	746
Interest expense	(132)	(253)	(324)	(387)
Gain on foreign exchange	9,866	2,732	16,362	2,320
Total other income (expense)	9,848	2,973	15,800	2,679
Loss before income taxes	(6,425)	(5,234)	(4,244)	(16,188)
Income tax provision (benefit)	36	(47)	24	(47)
Net loss	$ (6,461)	$ (5,187)	$ (4,268)	$ (16,141)
Net loss per share:				
Basic	$ (0.06)	$ (0.06)	$ (0.04)	$ (0.19)
Diluted	$ (0.06)	$ (0.06)	$ (0.04)	$ (0.19)
Shares used in computing net loss per share:				
Basic	100,339	90,963	100,209	86,775
Diluted	100,339	90,963	100,209	86,775

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

BOOKHAM, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited, in thousands)

	Six Months Ended	
	December 27, 2008	December 29, 2007
Cash flows from operating activities:		
Net loss	$ (4,268)	$ (16,141)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	6,720	9,604
Stock-based compensation	2,241	4,409
Amortization of deferred gain on sale-leaseback	(486)	(714)
Impairment of short-term investments	706	
Impairment of goodwill	7,881	
Accretion on short-term investments	(102)	
(Gain) loss on sale of property and equipment	8	(1,716)
Changes in assets and liabilities:		
Accounts receivable, net	1,721	(6,614)
Inventories	(825)	(4,524)
Prepaid expenses and other current assets	684	4,925
Other assets	(88)	
Accounts payable	(5,264)	3,714
Accrued expenses and other liabilities	762	(1,884)
Net cash provided by (used in) operating activities	9,690	(8,941)
Cash flows from investing activities:		
Purchases of property and equipment	(6,934)	(5,688)
Proceeds from sale of property and equipment	14	1,775
Purchases of available-for-sale investments	(6,945)	
Sales and maturities of available-for-sale investments	15,350	
Transfer from restricted cash	575	4,480
Net cash provided by investing activities	2,060	567
Cash flows from financing activities:		
Proceeds from issuance of common stock, net		40,902
Proceeds from bank loan payable		501
Repayment of bank loan payable		(4,313)
Repayment of other loans	(31)	(12)
Amount paid to repurchase shares from former officer		(2)
Net cash provided by (used in) financing activities	(31)	37,076
Effect of exchange rate on cash and cash equivalents	(9,286)	(2,331)
Net increase in cash and cash equivalents	2,433	26,371

Cash and cash equivalents at beginning of period	32,863	36,631
Cash and cash equivalents at end of period	$ 35,296	$ 63,002

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

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BOOKHAM, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. Nature of Business

Bookham, Inc., a Delaware corporation (Bookham, Inc.), designs, manufactures and markets optical components, modules and subsystems that generate, detect, amplify, combine and separate light signals principally for use in high-performance fiber optics communications networks. Due to its advantages of higher capacity and transmission speed, optical transmission has become the predominant technology for large-scale communications networks. The Company s primary operating segment is its telecom segment, which addresses this optical communications market. The Company s remaining product lines, which address certain other optics and photonics markets, such as material processing, inspection and instrumentation, and research and development, and which leverage the resources, infrastructure and expertise of its telecom segment, comprise its non-telecom segment. References herein to the Company mean Bookham, Inc. and its subsidiaries.

Note 2. Basis of Preparation

The accompanying unaudited condensed consolidated financial statements as of December 27, 2008 and for the three and six months ended December 27, 2008 and December 29, 2007 have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Article 10 of Regulation S-X, and include the accounts of Bookham, Inc. and all of its subsidiaries. Accordingly, they do not include all of the information and footnotes required by such accounting principles for annual financial statements. In the opinion of management, all adjustments (consisting only of normal recurring adjustments) considered necessary for a fair presentation of the Company s consolidated financial position and operations have been included. The consolidated results of operations for the three and six months ended December 27, 2008 are not necessarily indicative of results that may be expected for any other interim period or for the full fiscal year ending June 27, 2009.

The condensed consolidated balance sheet as of June 28, 2008 has been derived from the audited consolidated financial statements as of such date. These unaudited condensed consolidated financial statements should be read in conjunction with the Company s audited consolidated financial statements included in the Company s Annual Report on Form 10-K for the fiscal year ended June 28, 2008 (the 2008 Form 10-K).

The preparation of the Company s 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, revenues and expenses reported in those financial statements. These judgments can be subjective and complex, and consequently actual results could differ materially from those estimates and assumptions. Descriptions of these estimates and assumptions are included in the 2008 Form 10-K.

Revenue Recognition for Financially Distressed Customers

The Company s revenue recognition policy, which is more fully described in its 2008 Form 10-K, follows Securities and Exchange Commission (SEC) Staff Accounting Bulletin, or SAB, No. 104, *Revenue Recognition in Financial Statements*. Specifically, the Company recognizes product revenue when (i) persuasive evidence of an arrangement exists, (ii) the product has been shipped and title has transferred, (iii) collectability is reasonably assured, (iv) fees are fixed or determinable and (v) there are no uncertainties with respect to customer acceptance.

In the second quarter of fiscal 2009 the Company issued billings of (i) $4.1 million for products that were shipped to Nortel Networks, but for which payment was not received prior to its bankruptcy filing on January 14, 2009, and (ii) $1.3 million for products that were shipped to a contract manufacturer for which payment may not be received due to the Nortel Networks bankruptcy filing. As a result, an aggregate of $5.4 million in revenue was deferred, and therefore was not recognized as revenues or accounts receivable in the accompanying consolidated financial statements at the time of such billings, as the Company determined that such amounts were not reasonably assured of collectability in accordance with its revenue recognition policy. The Company recognizes revenues from financially distressed customers when collectability becomes reasonably assured, assuming all other criteria for revenue recognition have been met.

Note 3. Fair Value

In the Company s first quarter of fiscal 2009, the Company adopted Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards (SFAS) No. 157, *Fair Value Measurements,* for all financial assets and financial liabilities and for all non-financial assets and non-financial liabilities recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). SFAS No. 157 clarifies that fair value is an exit price, representing the amount that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, SFAS No. 157 establishes a three-tier value hierarchy, which prioritizes the inputs used in measuring fair value as follows: (Level 1) observable inputs such as quoted prices in active markets; (Level 2) inputs other than quoted prices in active markets that are observable either directly or indirectly; and (Level 3) unobservable inputs in which there is little or no market data, which require the Company to develop its own assumptions. This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. On a recurring basis, the Company measures certain financial assets, primarily marketable securities, and liabilities at fair value.

The Company s cash equivalents and short-term investment instruments are classified within Level 1, Level 2 or Level 3 of the fair value hierarchy because they are valued using quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. The types of instruments valued based on quoted market prices in active markets include most U.S. government and agency securities and money market securities. Such instruments are generally classified within Level 1 of the fair value hierarchy. The types of instruments valued based on other observable inputs include investment-grade corporate bonds, mortgage-backed and asset-backed securities and foreign currency forward exchange contracts. Such instruments are generally classified within Level 2 of the fair value hierarchy.

In September 2008, Lehman Brothers Holdings Inc. (Lehman) filed a petition under Chapter 11 of the U.S. Bankruptcy Code. At December 27, 2008, the Company held a Lehman security with par value of $0.8 million. As of January 30, 2009, the Company does not have an estimate of the recovery value of this security, but has reduced the carrying value of this security to $0.1 million based on Level 3 inputs. For the three and six months ended December 27, 2008, the Company has recorded impairment charges for the Lehman security of $0.1 million and $0.7 million, respectively, which are included in other expense in the condensed consolidated statement of operations.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

Assets and liabilities measured at fair value on a recurring basis are shown in the table below by their corresponding balance sheet caption and consisted of the following types of instruments at December 27, 2008:

	Fair Value Measurement at Reporting Date Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
	(thousands)			
Assets:				
Cash and cash equivalents (1):				
Money market funds	$ 14,092	$	$	$ 14,092
Short-term investments:				

United States agency securities	6,177			6,177
United States corporate bonds		2,637	80	2,717
Total assets measured at fair value	$ 20,269	$ 2,637	$ 80	$ 22,986
Liabilities:				
Accrued expenses and other liabilities				
Unrealized loss on hedges	$	$ 3,332	$	$ 3,332
Total liabilities measured at fair value	$	$ 3,332	$	$ 3,332

(1) Excludes $21.2 million in cash held in Company bank accounts.

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Derivative Financial Instruments

SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, requires the Company to recognize all derivatives, such as foreign currency forward exchange contracts, on the condensed consolidated balance sheet at fair value regardless of the purpose for holding the instrument. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair value of the derivative will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments through operating results or recognized in accumulated other comprehensive income until the hedged item is recognized in operating results in the condensed consolidated statements of operations.

At the end of each accounting period, the Company marks-to-market all foreign currency forward exchange contracts that have been designated as cash flow hedges and changes in fair value are recorded in accumulated other comprehensive income until the underlying cash flow is settled and the contract is recognized in operating results. As of December 27, 2008, the Company held nineteen outstanding foreign currency forward exchange contracts to sell U.S. dollars and buy U.K. pounds sterling. These contracts had an aggregate notional value of approximately $22.0 million of put and call options expiring at various times between January 2009 and December 2009. To date, the Company has not entered into any such contracts for longer than 12 months and accordingly, all amounts included in accumulated other comprehensive income as of December 27, 2008 will generally be reclassified into earnings within the next 12 months. As of December 27, 2008, the Company has recorded an unrealized loss of $3.3 million to accumulated other comprehensive income related to recording the fair value of the nineteen foreign currency forward exchange contracts designated as hedges for accounting purposes.

Note 4. Balance Sheet Details

The following table provides details regarding the Company s cash, cash equivalents and short-term investments at the dates indicated:

	December 27, 2008	June 28, 2008
	(thousands)	
Cash and cash equivalents:		
Cash-in-bank	$ 21,204	$ 16,361
Money market funds	14,092	10,022
Commercial paper		6,480
	$ 35,296	$ 32,863
Short-term investments:		
United States agency securities	$ 6,177	$ 2,977
United States corporate bonds	2,717	14,868
	$ 8,894	$ 17,845

As of December 27, 2008 and June 28, 2008, all of the Company s short-term investments had a maturity of less than one year.

The following table provides details regarding the Company s inventories at the dates indicated:

	December 27, 2008	June 28, 2008
	(thousands)	
Inventories:		

Raw materials	$ 19,558	$ 21,140
Work-in-process	28,806	24,786
Finished goods	10,084	13,686
	$ 58,448	$ 59,612

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The following table provides details regarding the Company s property and equipment, net at the dates indicated:

	December 27, 2008	June 28, 2008
	(thousands)	
Property and equipment, net:		
Buildings	$ 15,842	$ 18,411
Plant and machinery	78,388	78,652
Fixtures, fittings and equipment	956	1,098
Computer equipment	11,475	13,846
	106,661	112,007
Less: accumulated depreciation	(74,152)	(79,045)
	$ 32,509	$ 32,962

The following table provides details regarding the Company s accrued expenses and other liabilities at the dates indicated:

	December 27, 2008	June 28, 2008
	(thousands)	
Accrued expenses and other liabilities:		
Trade creditor accruals	$ 2,599	$ 4,090
Compensation and benefits related accruals	7,090	6,724
Warranty accrual	2,174	2,598
Unrealized loss on hedges	3,332	
Other accruals	4,464	5,657
Current portion of restructuring accrual	1,586	1,720
	$ 21,245	$ 20,789

Note 5. Goodwill and Other Intangible Assets

The Company reviews its goodwill and other intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable, and also reviews goodwill annually in accordance with SFAS No. 142, *Goodwill and Other Intangibles*. The values assigned to goodwill and other intangible assets are based on estimates and judgments regarding expectations for the success and life cycle of products and technologies acquired.

During the three month period ended December 27, 2008, the Company observed indicators of potential impairment of its goodwill, including the impact of the current general economic downturn on the Company s future prospects and the continued decline of its current market capitalization, which caused the Company to conduct a preliminary interim goodwill impairment analysis. Specifically, indicators emerged within the New Focus reporting unit for SFAS No. 142 purposes, which includes the technology acquired in the March 2004 acquisition of New Focus, Inc. and is in the Company s non-telecom segment, and one other reporting unit in the non-telecom segment that includes the technology acquired in the March 2006 acquisition of Avalon Photonics AG, (the Avalon reporting unit) that led the Company to conclude that a SFAS No. 142 impairment test was required to be performed during the second quarter for goodwill in these reporting units.

Goodwill is tested for impairment using a two-step process. In the first step, the fair value of a reporting unit is compared to its carrying value. If the fair value of a reporting unit exceeds the carrying value of the net assets assigned to a reporting unit, goodwill is considered not impaired and no further testing is required. If the carrying value of the net assets assigned to a reporting unit exceeds the fair value of a reporting unit, a second step of the impairment test is performed in order to determine the implied fair value of a reporting unit s goodwill.

The Company determined, in its preliminary first step goodwill impairment analysis, that its goodwill in the New Focus and Avalon reporting units was in fact impaired. In the second step, the measurement of the impairment, the Company hypothetically applies purchase accounting to the reporting units using the fair values from the first step. Due to the timing and complexity of step two, the Company has yet to complete this step. However, based upon preliminary calculations, the Company recorded a preliminary estimate of $7.9 million for the impairment loss in its statements of operations for the three and six months ended December 27, 2008 as management concluded that the loss was probable and that the amount of loss was reasonably determinable. The $7.9 million estimate is only preliminary. The Company is continuing to evaluate the impairment of its goodwill, and the amount of the actual impairment charge may vary from this initial estimate. The Company expects that it will complete the full evaluation of the impairment analysis during the quarter ending March 28, 2009. The impairment will not result in any current or future cash expenditures.

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The Company also tested the intangible assets of these two reporting units during the second quarter in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. Based on this testing, the Company has determined that no impairment charge was necessary. At December 27, 2008, intangible assets subject to the amortization provisions of SFAS No. 142, net of accumulated amortization and impairment charges, were $6.2 million.

Note 6. Restructuring Liabilities

The following table summarizes the activity related to the Company s restructuring liability for the six months ended December 27, 2008:

	Accrued Restructuring Costs at June 28, 2008	Amounts Charged to Restructuring Costs	Amounts Paid or Written-off	Adjustments and Reversals	Accrued Restructuring Costs at December 27, 2008
			(thousands)		
Lease cancellations and commitments	$ 2,074	$ 1,638	$ (686)	$	$ 3,026
Termination payments to employees and related costs	754	378	(887)	(53)	192
Total accrued restructuring	2,828	$ 2,016	$ (1,573)	$ (53)	3,218
Less non-current accrued restructuring charges	(1,108)				(1,632)
Accrued restructuring charges included within accrued expenses and other liabilities	$ 1,720				$ 1,586

In connection with earlier plans of restructuring and cost reduction efforts, the Company continued to make scheduled payments drawing down the related lease cancellations and commitments and made further payments to terminated employees and for related costs. In the first quarter of fiscal 2009, the Company accrued an additional $1.5 million in expense related to existing restructuring plans for revised estimates of the cash flows for lease cancellations and commitments. Remaining net payments of lease cancellations and other commitments in connection with the Company s earlier restructuring and cost reduction efforts are included in the restructuring accrual as of December 27, 2008 and will be paid out through April 2011.

For the three and six months ended December 27, 2008, the Company made payments of $0.4 million and $0.7 million, respectively, related to lease commitments and made payments of $0.6 million and $0.9 million, respectively, in personnel related costs in connection with transferring certain non-telecom manufacturing activities from its San Jose, California facility to its Shenzhen, China facility. Separation payments under the restructuring and cost reduction efforts were accrued and charged to restructuring in the period that both the benefit amounts were determined and the amounts had been communicated to the affected employees.

Note 7. Accounting for Uncertainty in Income Taxes

FASB Interpretation No. (FIN) 48, *Accounting for Uncertainty in Income Taxes an interpretation of FASB Statement No. 109,* prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of uncertain tax positions taken, or expected to be taken, in a company s income tax return. FIN 48 also provides guidance on de-recognition, classification, interest and penalties, accounting in interim

periods, disclosure, and transition. FIN 48 utilizes a two-step approach for evaluating uncertain tax positions accounted for in accordance with SFAS No. 109, *Accounting for Income Taxes*. Step one, referred to as recognition, requires a company to determine if the weight of available evidence indicates that a tax position is more likely than not to be sustained upon audit, including resolution of related appeals or litigation processes, if any. Step two, measurement, is based on the largest amount of benefit which is more likely than not to be realized on ultimate settlement.

The Company s total amount of unrecognized tax benefits as of June 28, 2008 was approximately $92.3 million. For the six months ended December 27, 2008, there have been no material changes to the amount of unrecognized tax benefits. Also, the Company had no unrecognized tax benefits that, if recognized, would affect its effective tax rate for the six months ended December 27, 2008. Included in the balance of unrecognized tax benefits at December 27, 2008 is $1.3 million related to tax positions and estimated interest and penalties for which it is reasonably possible that the statute of limitations will expire in various jurisdictions within the next twelve months.

The Company s policy is to include interest and penalties related to unrecognized tax benefits within the Company s provision for (benefit from) income taxes. As of December 27, 2008, the Company did not have any accrual for payment of interest and penalties related to unrecognized tax benefits.

The Company files U.S. federal, U.S. state and foreign tax returns and has determined its major tax jurisdictions are the United States, the United Kingdom and China. Tax returns in the following jurisdictions remain open to examination by the appropriate governmental agencies: U.S. federal and China for tax years 2004 to 2008, Switzerland and various U.S. states for tax years 2003 to 2008 and the United Kingdom for tax years 2002 to 2008. The Company is not currently under audit in any major tax jurisdiction.

Note 8. Credit Agreement

On August 2, 2006, the Company and its wholly-owned subsidiaries Bookham Technology plc, New Focus, Inc. (New Focus) and Bookham (U.S.) Inc. (collectively the Borrowers) entered into a credit agreement with Wells Fargo Foothill, Inc. and other lenders for a three year $25.0 million senior secured revolving credit facility (the Credit Agreement). Advances are available under the Credit Agreement based on 80 percent of qualified accounts receivable , as defined in the Credit Agreement, at the time an advance is requested.

The obligations of the Borrowers under the Credit Agreement are guaranteed by the Company, Ignis Optics, Inc., Bookham (Canada) Inc., Bookham Nominees Limited and Bookham International Ltd., each a wholly-owned subsidiary of the Company (together, the Guarantors and together with the Borrowers, the Obligors), and are secured pursuant to a security agreement (the Security Agreement) by the assets of the Obligors, including a pledge of the capital stock holdings of the Obligors in certain of their direct subsidiaries. Any new direct subsidiary of the Obligors is required to execute a guaranty agreement and join in the Security Agreement. Pursuant to the terms of the Credit Agreement, borrowings made under the Credit Agreement bear interest at a rate based on either the London Interbank Offered Rate (LIBOR) plus 2.75 percentage points or the bank s prime rate plus 1.25 percentage points. In the absence of an event of default, any amounts outstanding under the Credit Agreement may be repaid and re-borrowed at any time until maturity, which is August 2, 2009.

The obligations of the Borrowers under the Credit Agreement may be accelerated upon the occurrence of an event of default under the Credit Agreement, which includes customary events of default, including payment defaults, defaults in the performance of affirmative and negative covenants, the material inaccuracy of representations or warranties, a cross-default related to other indebtedness in an aggregate amount of $1.0 million or more, bankruptcy and insolvency related defaults, defaults relating to such matters as ERISA and judgments and a change of control default. The Credit Agreement contains negative covenants applicable to the Company, the Borrowers and their subsidiaries, including financial covenants requiring the Borrowers to maintain a minimum level of earnings before interest, taxes, depreciation and amortization (EBITDA) if the Borrowers have not maintained minimum liquidity (defined as $30 million of qualified cash and excess availability, each as also defined in the Credit Agreement), as well as restrictions on liens, capital expenditures, investments, indebtedness, fundamental changes to the borrower s business, dispositions of property, making certain restricted payments (including restrictions on dividends and stock repurchases), entering into new lines of business, and transactions with affiliates. As of December 27, 2008 and June 28, 2008, there were no borrowings under the Credit Agreement. As of December 27, 2008, the Company was in compliance with all covenants under the Credit Agreement and there was $0.3 million in an outstanding letter of credit with a vendor secured by this credit facility which expires in February 2009. As of June 28, 2008, there were $4.8 million in outstanding letters of credit with vendors secured by this credit facility.

In connection with the Credit Agreement, the Company agreed to pay a monthly servicing fee of $3,000 and an unused line fee equal to 0.375 percentage points per annum, payable monthly on the unused amount of revolving credit commitments. To the extent there are letters of credit outstanding under the Credit Agreement, the Borrowers are obligated to pay the administrative agent a letter of credit fee at a rate equal to 2.75 percentage points per annum.

Note 9. Commitments and Contingencies

Guarantees

The Company follows the provisions of FIN 45, *Guarantor s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness to Others, an interpretation of FASB Statements No. 5, 57 and 107 and a rescission of FASB Interpretation No. 34*. The Company has the following financial guarantees:

In connection with the sale by New Focus of its passive component line to Finisar, Inc., New Focus agreed to indemnify Finisar for claims related to the intellectual property sold to Finisar. This obligation expires in May 2009 and has no limitation on maximum liability. The Company has not historically paid out any amounts related to this indemnification obligation and does not expect to in the future, therefore no accrual has been made for this indemnification obligation.

The Company indemnifies its directors and certain employees as permitted by law, and has entered into indemnification agreements with its directors and senior officers. The Company has not recorded a liability associated with these indemnification arrangements as the Company historically has not incurred any costs associated with such indemnification arrangements and does not expect to in the future. Costs associated with such indemnification arrangements may be mitigated by insurance coverage that the Company maintains.

The Company also has indemnification clauses in various contracts that it enters into in the normal course of business, such as those issued by its banks in favor of several of its suppliers or indemnification in favor of customers in respect of liabilities they may incur as a result of purchasing the Company s products should such products infringe the intellectual property rights of a third party. The Company has not historically paid out any amounts related to these indemnification obligations and does not expect to in the future, therefore no accrual has been made for these indemnification obligations.

Provision for warranties

The Company accrues for the estimated costs to provide warranty services at the time revenue is recognized. The Company s estimate of costs to service its warranty obligations is based on historical experience and expectation of future conditions. To the extent the Company experiences increased warranty claim activity or increased costs associated with servicing those claims, the Company s warranty costs will increase, resulting in a decrease to gross profit and to net income (loss).

	Three Months Ended		Six Months Ended	
	December 27, 2008	December 29, 2007	December 27, 2008	December 29, 2007
	(thousands)			
Warranty provision beginning of period	$ 2,594	$ 2,370	$ 2,598	$ 2,569
Warranties issued	694	681	1,622	1,303
Warranties utilized or expired	(727)	(693)	(1,488)	(1,550)
Currency translation adjustment	(387)	(27)	(558)	9
Warranty provision end of period	$ 2,174	$ 2,331	$ 2,174	$ 2,331

Litigation

On June 26, 2001, a putative securities class action captioned Lanter v. New Focus, Inc. et al., Civil Action No. 01-CV-5822 was filed against New Focus and several of its officers and directors, or the Individual Defendants, in the United States District Court for the Southern District of New York. Also named as defendants were Credit Suisse First Boston Corporation, Chase Securities, Inc., U.S. Bancorp Piper Jaffray, Inc. and CIBC World Markets Corp., or the Underwriter Defendants, the underwriters in New Focus s initial public offering. Three subsequent lawsuits were filed containing substantially similar allegations. These complaints have been consolidated.

On November 7, 2001, a Class Action Complaint was filed against Bookham Technology plc and others in the United States District Court for the Southern District of New York. On April 19, 2002, plaintiffs filed an Amended Class Action Complaint, described below. The Amended Class Action Complaint names as defendants Bookham Technology plc, Goldman, Sachs & Co. and FleetBoston Robertson Stephens, Inc., two of the underwriters of Bookham Technology plc s initial public offering in April 2000, and Andrew G. Rickman, Stephen J. Cockrell and

David Simpson, each of whom was an officer and/or director at the time of Bookham Technology plc s initial public offering.

Various plaintiffs have filed similar actions asserting virtually identical allegations against more than 300 other public companies, their underwriters, and their officers and directors arising out of each company s initial public offering. These actions, including the action against New Focus and the action against Bookham Technology plc, have been coordinated for pretrial purposes and captioned In re Initial Public Offering Securities Litigation, 21 MC 92.

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On April 19, 2002, plaintiffs filed a Consolidated Amended Class Action Complaint in the New Focus action and an Amended Class Action Complaint in the Bookham Technology plc action (together, the Amended Class Action Complaints). The Amended Class Action Complaints assert claims under certain provisions of the securities laws of the United States. They allege, among other things, that the prospectuses for Bookham Technology plc s and New Focus s initial public offerings were materially false and misleading in describing the compensation to be earned by the underwriters in connection with the offerings, and in not disclosing certain alleged arrangements among the underwriters and initial purchasers of ordinary shares, in the case of Bookham Technology plc, or common stock, in the case of New Focus, from the underwriters. The Amended Class Action Complaints seek unspecified damages (or, in the alternative, rescission for those class members who no longer hold our or New Focus common stock), costs, attorneys fees, experts fees, interest and other expenses. In October 2002, the Individual Defendants were dismissed, without prejudice, from the action subject to their execution of tolling agreements. In July 2002, all defendants filed Motions to Dismiss the Amended Class Action Complaints. The motions were denied as to Bookham Technology plc and New Focus in February 2003. Special committees of the board of directors authorized the companies to negotiate a settlement of pending claims substantially consistent with a memorandum of understanding negotiated among class plaintiffs, all issuer defendants and their insurers.

The plaintiffs and most of the issuer defendants and their insurers entered into a stipulation of settlement for the claims against the issuer defendants, including Bookham Technology plc and New Focus. This stipulation of settlement was subject to, among other things, certification of the underlying class of plaintiffs. Under the stipulation of settlement, the plaintiffs would dismiss and release all claims against participating defendants in exchange for a payment guaranty by the insurance companies collectively responsible for insuring the issuers in the related cases, and the assignment or surrender to the plaintiffs of certain claims the issuer defendants may have against the underwriters. On February 15, 2005, the District Court issued an Opinion and Order preliminarily approving the settlement provided that the defendants and plaintiffs agree to a modification narrowing the scope of the bar order set forth in the original settlement agreement. The parties agreed to the modification narrowing the scope of the bar order, and on August 31, 2005, the District Court issued an order preliminarily approving the settlement.

On December 5, 2006, following an appeal from the underwriter defendants the United States Court of Appeals for the Second Circuit overturned the District Court s certification of the class of plaintiffs who are pursuing the claims that would be settled in the settlement against the underwriter defendants. Plaintiffs filed a Petition for Rehearing and Rehearing En Banc with the Second Circuit on January 5, 2007 in response to the Second Circuit s decision and have informed the District Court that they would like to be heard as to whether the settlement may still be approved even if the decision of the Court of Appeals is not reversed. The District Court indicated that it would defer consideration of final approval of the settlement pending plaintiffs request for further appellate review.

On April 6, 2007, the Second Circuit denied plaintiffs petition for rehearing, but clarified that the plaintiffs may seek to certify a more limited class in the District Court. In light of the overturned class certification on June 25, 2007, the District Court signed an Order terminating the settlement. The actions against Bookham Technology plc and New Focus remain stayed while litigation proceeds in six test cases against other companies which involve claims virtually identical to those that have been asserted against Bookham Technology plc and New Focus. On November 13, 2007, the issuer defendants in certain designated focus cases filed a motion to dismiss the second consolidated amended class action complaints that were filed in those cases. On March 26, 2008, the District Court issued an Opinion and Order denying, in large part, the motions to dismiss the amended complaints in the focus cases.

It is uncertain if the litigations will settle. If settlement of the litigations does not occur and litigation against Bookham Technology plc and New Focus continues, the Company believes that both Bookham Technology plc and New Focus have meritorious defenses to the claims made in the Amended Class Action Complaints and therefore believes that such claims will not have a material effect on its financial position, results of operations or cash flows.

On March 4, 2008, Bookham filed a declaratory judgment complaint captioned *Bookham, Inc. v. JDS Uniphase Corp. and Agility Communications, Inc.*, Civil Action No. 5:08-CV-01275-RMW, in the United States District Court for the Northern District of California, San Jose Division. Bookham s complaint seeks declaratory judgments that its tunable laser products do not infringe any valid, enforceable claim of U.S. Patent Nos. 6,658,035, 6,654,400 and 6,687,278, and that all claims of the aforementioned patents are invalid and unenforceable. Bookham s complaint also contains

affirmative claims for relief against JDS Uniphase Corp. and Agility Communications, Inc. for statutory unfair competition, and for intentional interference with economic advantage.

On July 21, 2008, JDS Uniphase Corp. and Agility Communications, Inc. answered Bookham s complaint and asserted counterclaims against Bookham for infringement of U.S. Patent Nos. 6,658,035, 6,654,400 and 6,687,278, which JDS Uniphase Corp. acquired from Agility Communications, Inc. On October 6, 2008, JDS Uniphase Corp. indicated that its

infringement claims are directed at Bookham s LamdaFlex™ TL500 VCJ; TL5000VLJ; TL3000; TL7000; TL8000 and TL9000 products. JDS Uniphase Corp. seeks unspecified compensatory damages, treble damages and attorneys fees from Bookham, and an order enjoining Bookham from future infringement of the patents-in-suit. This litigation has been stayed due to JDS Uniphase Corp. s commencement of a U.S. International Trade Commission Investigation, which is described below.

On November 7, 2008, JDS Uniphase Corp. petitioned the U.S. International Trade Commission to commence an investigation into alleged violations by Bookham of Section 337 of the Tariff Act of 1930. On December 8, 2008, the U.S. International Trade Commission commenced investigation No. 337-TA-662 into Bookham s alleged importation into the United States, sale for importation, and sale within the United States after importation of tunable laser chips, assemblies, and products containing the same that infringe U.S. Patent Nos. 6,658,035 and 6,687,278. JDS Uniphase Corp. seeks a general exclusion order prohibiting the importation of any Bookham tunable laser chip, assembly, or product containing the same that infringes any claim of the aforementioned patents, as well as an order prohibiting sales after importation into the United States of any allegedly infringing products. The U.S. International Trade Commission has adopted a target completion date of March 19, 2010 for the investigation, and indicated that a final initial determination should be filed by November 19, 2009. Any adverse ruling by the U.S. International Trade Commission, including an exclusion order that could prohibit us from importing into the United States tunable laser chips, assemblies, or products containing the same, or prolonged litigation will have an adverse effect on the Company s business and any resolution may not be in the Company s favor.

On April 18, 2008, the Company settled a lawsuit in the United Kingdom under which it had been seeking claims against a land developer in connection with the Company s sale of a certain parcel of land in 2005. In the fiscal year ended June 28, 2008, the Company has recorded a gain of $2.9 million, net of costs, associated with this settlement.

Note 10. Stock-based Compensation Expense

The Company accounts for stock-based compensation under SFAS No. 123R, *Share-Based Payment*, which requires companies to recognize in their statement of operations all share-based payments, including grants of stock options, based on the grant date fair value of such share-based awards. The application of SFAS No. 123R requires the Company s management to make judgments in the determination of inputs into the Black-Scholes stock option pricing model which the Company uses to determine the grant date fair value of stock options it grants. This model requires assumptions to be made related to expected stock price volatility, expected option life, risk-free interest rate and dividend yield. While the risk-free interest rate is a less subjective assumption, typically based on factual data derived from public sources, the expected stock price volatility and option life assumptions require a greater level of judgment, which makes them critical accounting estimates.

The Company has not issued and does not anticipate issuing dividends to stockholders and accordingly uses a zero percent dividend yield assumption for all Black-Scholes stock option pricing calculations. The Company uses an expected stock-price volatility assumption that is based on historical realized volatility of the underlying common stock during a period of time. With regard to the weighted-average option life assumption, the Company evaluates the exercise behavior of past grants as a basis to predict future activity.

The assumptions used to value stock option grants for the three and six months ended December 27, 2008 and December 29, 2007 are as follows:

	Three Months Ended		**Six Months Ended**	
	December 27, 2008	**December 29, 2007**	**December 27, 2008**	**December 29, 2007**
Expected life	4.5 years	4.5 years	4.5 years	4.5 years
Risk-free interest rate	2.3%	4.1%	3.1%	4.6%
Volatility	82.9%	77.0%	70.4%	81.7%
Dividend yield				

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The amounts included in cost of revenues and operating expenses for stock-based compensation expenses for the three and six months ended December 27, 2008 and December 29, 2007 were as follows:

	Three Months Ended		Six Months Ended	
	December 27, 2008	December 29, 2007	December 27, 2008	December 29, 2007
	(thousands)			
Stock-based compensation by category of expense:				
Costs of revenues	$ 284	$ 708	$ 679	$ 1,323
Research and development	222	643	472	1,094
Selling, general and administrative	518	1,332	1,090	1,992
	$ 1,024	$ 2,683	$ 2,241	$ 4,409
Stock-based compensation by type of award				
Stock options	$ 842	$ 1,061	$ 1,669	$ 2,177
Restricted stock awards	150	1,835	430	2,179
Inventory adjustment to cost of revenues	32	(213)	142	53
	$ 1,024	$ 2,683	$ 2,241	$ 4,409

As of December 27, 2008 and June 28, 2008, the Company had capitalized $0.2 million and $0.3 million, respectively, of stock-based compensation as inventory.

The following table summarizes the combined activity under all of the Company s equity incentive plans for the six months ended December 27, 2008:

	Awards Available For Grant (thousands)	Stock Options Outstanding (thousands)	Weighted-Average Exercise Price	Restricted Stock Awards / Units Outstanding (thousands)	Weighted-Average Grant Date Fair Value
Balances at June 28, 2008	9,603	6,822	$ 5.87	1,503	$ 2.91
Granted	(2,707)	2,707	$ 1.74		$
Exercised or released			$	(741)	$ 3.06
Cancelled or forfeited	1,029	(870)	$ 5.20	(211)	$ 4.38
Balances at December 27, 2008	7,925	8,659	$ 4.36	551	$ 2.39

The Company generally grants stock options that vest over a four to five year service period and restricted stock awards that vest over a one to four year service period, and in certain cases each may vest earlier based upon the achievement of specific performance-based objectives or pursuant to action by the Company s Board of Directors or a committee of the Board.

Supplemental disclosure information about the Company s stock options outstanding as of December 27, 2008 was as follows:

Weighted-

	Shares	Weighted-Average Exercise Price	Average Remaining Contractual Life	Aggregate Intrinsic Value
	(thousands)		(years)	(thousands)
Options exercisable at December 27, 2008	3,515	$ 7.36	6.6	$
Options expected to vest at December 27, 2008	8,298	$ 4.47	6.7	$
Options outstanding at December 27, 2008	8,659	$ 4.36	8.0	$

The aggregate intrinsic value in the table above represents the total pretax intrinsic value, based on the Company s closing stock price of $0.45 as of December 27, 2008, which would have been received by the option holders had all option holders exercised their options as of that date. There were no shares of common stock subject to in-the-money options which were exercisable as of December 27, 2008. The Company settles employee stock option exercises with newly issued shares of common stock.

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Note 11. Earnings (Loss) Per Share

SFAS No. 128, *Earnings Per Share*, requires dual presentation of basic and diluted earnings per share on the face of the statement of operations. Basic earnings per share is computed using only the weighted-average number of shares of common stock outstanding for the applicable period, while diluted earnings per share is computed assuming conversion of all potentially dilutive securities, such as stock options, unvested restricted stock awards and units and warrants during such period.

For the three and six months ended December 27, 2008 and for the three and six months ended December 29, 2007, there were no stock options, warrants or restricted stock awards factored into the computation of diluted shares outstanding since the Company incurred a net loss in these periods and their inclusion would be anti-dilutive.

For the three and six months ended December 27, 2008, the effects of potentially dilutive securities (which include warrants, stock options and restricted stock awards) totaling 19.0 million and 18.5 million common shares, respectively, have been excluded from the calculation of diluted net loss per share because their inclusion would have been anti-dilutive. For the three and six months ended December 29, 2007, the effects of potentially dilutive securities totaling 16.9 million in each period have been excluded from the calculation of diluted net loss per share because their inclusion would have been anti-dilutive.

Note 12. Comprehensive Loss

For the three and six months ended December 27, 2008 and December 29, 2007, the Company s comprehensive loss was primarily comprised of its net loss, the change in the unrealized loss on currency instruments designated as hedges, and unrealized gain on short-term investments and foreign currency translation adjustments.

The components of comprehensive loss were as follows:

	Three Months Ended		Six Months Ended	
	December 27, 2008	December 29, 2007	December 27, 2008	December 29, 2007
	(thousands)			
Net loss	$ (6,461)	$ (5,187)	$ (4,268)	$ (16,141)
Other comprehensive loss:				
Unrealized loss on currency instruments designated as hedges	(2,982)	(384)	(4,023)	(222)
Unrealized gain on short-term investments	61		44	
Currency translation adjustments	(8,903)	(1,175)	(15,315)	562
Comprehensive loss	$ (18,285)	$ (6,746)	$ (23,562)	$ (15,801)

Note 13. Segments of an Enterprise and Related Information

SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, establishes standards for reporting information about operating segments, geographic areas and major customers in financial statements. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. The Chief Executive Officer of the Company is the Company s chief operating decision maker. As of December 27, 2008, the Company is organized and operates as two operating segments: (i) telecom and (ii) non-telecom. The telecom segment is responsible for the design, development, chip and filter level manufacturing, marketing and selling of optical solutions for telecommunications applications. The non-telecom segment is responsible for the design, development, marketing and selling of non-telecom products, which include photonics and microwave solutions, high power lasers, thin film filters and VCSELs (vertical cavity surface emitting lasers). The Company evaluates the performance of its segments and allocates resources based on consolidated revenues and overall performance.

Segment information for the three and six months ended December 27, 2008 and December 29, 2007 is as follows:

	Three Months Ended		Six Months Ended	
	December 27, 2008	December 29, 2007	December 27, 2008	December 29, 2007
	(thousands)			
Revenues				
Telecom	$ 37,418	$ 44,799	$ 89,673	$ 85,532
Non-telecom	12,786	14,157	27,062	27,706
Consolidated revenues	$ 50,204	$ 58,956	$ 116,735	$ 113,238

	Three Months Ended		Six Months Ended	
	December 27, 2008	December 29, 2007	December 27, 2008	December 29, 2007
	(thousands)			
Operating loss				
Telecom	$ (6,922)	$ (6,916)	$ (8,262)	$ (15,802)
Non-telecom	(454)	788	(1,836)	505
Total segment operating loss	(7,376)	(6,128)	(10,098)	(15,297)
Stock compensation	1,024	2,683	2,241	4,409
Legal settlement		877	(184)	877
(Gain) loss on sale of property and equipment	(8)	(1,481)	8	(1,716)
Impairment of goodwill	7,881		7,881	
Consolidated operating loss	$ (16,273)	$ (8,207)	$ (20,044)	$ (18,867)

The following table shows revenues by geographic area based on the delivery locations of the Company s products:

	Three Months Ended		Six Months Ended	
	December 27, 2008	December 29, 2007	December 27, 2008	December 29, 2007
	(thousands)			
United States	$ 11,780	$ 13,604	$ 30,981	$ 28,357
Canada	3,243	10,832	7,898	21,456
Europe:				
United Kingdom	2,324	2,581	5,860	4,264
Other	10,313	9,656	21,091	18,350
Asia:				
China	12,567	14,659	27,432	25,263
Other	6,851	5,702	13,263	11,483
Rest of world	3,126	1,922	10,210	4,065
	$ 50,204	$ 58,956	$ 116,735	$ 113,238

The following table sets forth the Company s long-lived tangible assets by geographic region as of the dates indicated:

	December 27, 2008	**June 28, 2008**
	(thousands)	
United States	$ 1,842	$ 1,824
China	22,802	20,443
United Kingdom	3,312	6,296
Other	4,553	4,399
	$ 32,509	$ 32,962

Significant Customers and Concentration of Credit Risk

For the three months ended December 27, 2008, Nortel Networks accounted for 11 percent and Huawei Technologies accounted for 15 percent of the Company s revenues. For the three months ended December 29, 2007, Nortel Networks accounted for 15 percent and Cisco Systems accounted for 11 percent of the Company s revenues. For the six months ended December 27, 2008, Nortel Networks accounted for 15 percent and Huawei Technologies accounted for 14 percent of the Company s revenues. For the six months ended December 29, 2007, Nortel Networks accounted for 15 percent and Cisco Systems accounted for 11 percent of the Company s revenues.

As of December 27, 2008, Huawei Technologies accounted for 17 percent and Cisco Systems accounted for 14 percent of accounts receivable. As of June 28, 2008, Nortel Networks accounted for 15 percent and Huawei Technologies accounted for 12 percent of accounts receivable.

In the second quarter of fiscal 2009 the Company issued billings of (i) $4.1 million for products that were shipped to Nortel Networks, but for which payment was not received prior to its bankruptcy filing on January 14, 2009, and (ii) $1.3 million for products that were shipped to a contract manufacturer for which payment may not be received due to the Nortel Networks bankruptcy filing. As a result, an aggregate of $5.4 million in revenue was deferred, and therefore was not recognized as revenues or accounts receivable in the accompanying consolidated financial statements at the time of such billings, as the Company determined that such amounts were not reasonably assured of collectability in accordance with its revenue recognition policy. As of December 27, 2008, the Company had contractual receivables from these two customers totaling $5.4 million, which are not reflected in the accompanying condensed consolidated balance sheet as of such date.

Note 14. Recent Accounting Pronouncements

With the exception of those discussed below, there have been no recent accounting pronouncements or changes in accounting pronouncements during the six months ended December 27, 2008, as compared to the recent accounting pronouncements described in the 2008 Form 10-K, that are of significance, or potential significance, to the Company.

In December 2007, the FASB issued SFAS No. 141R, *Business Combinations*. This standard establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any non-controlling interest in the acquiree and the goodwill acquired in a business combination. This standard also establishes disclosure requirements that will enable users to evaluate the nature and financial effects of a business combination. SFAS No. 141R is effective for the Company for acquisitions made after June 27, 2009. The Company does not anticipate that the adoption of this pronouncement will have a significant impact on its financial statements; however, the implementation of SFAS No. 141R may have a material impact on the Company s accounting for businesses acquired by the Company post-adoption.

In February 2008, the FASB issued FASB Staff Position (FSP) No. 157-2, *Effective Date of FASB Statement No. 157*. FSP No.157-2 delays the effective date of SFAS No. 157 for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually), until the beginning of the first quarter of fiscal 2010. The Company is currently evaluating the impact that SFAS No. 157 will have on its consolidated financial statements when it is applied to non-financial assets and non-financial liabilities that are not measured at fair value on a recurring basis beginning in the first quarter of fiscal 2010. The major categories of non-financial assets and non-financial liabilities that are measured at fair value, for which the Company has not yet applied the provisions of SFAS No. 157, are goodwill and intangible assets.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities, an amendment of FASB Statement No. 133*. SFAS No. 161 requires enhanced disclosures for derivative instruments, including those used in hedging activities. It is effective for fiscal years and interim periods beginning after November 15, 2008, and will be applicable to the Company in the third quarter of fiscal 2009. The Company is currently evaluating the effect, if any, that the adoption of SFAS No. 161 may have on its consolidated results of operations and financial condition.

In April 2008, the FASB issued FSP No. 142-3, *Determination of the Useful Life of Intangible Assets*. FSP No. 142-3 amends the factors that should be considered in developing assumptions about renewal or extension used in estimating the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. FSP No. 142-3 is intended to improve the consistency between the useful life of a recognized intangible asset under SFAS

No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141R and other generally accepted accounting principles. FSP No.142-3 is effective for financial statements issued for fiscal years beginning after December 15,

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2008. The measurement provisions of this standard will apply only to intangible assets of the Company acquired after June 27, 2009.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 supersedes the existing hierarchy contained in the U.S. auditing standards. The existing hierarchy was carried over to SFAS No. 162 essentially unchanged. SFAS No. 162 becomes effective 60 days following the Securities and Exchange Commission s approval of the Public Company Accounting Oversight Board amendments to the auditing literature. The new hierarchy is not expected to change the Company s current accounting practice in any area.

In October 2008, the FASB issued FSP No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*. FSP No. 157-3 clarifies the application of SFAS No. 157 for financial assets in a market that is not active. FSP No. 157-3 was effective upon issuance. SFAS No. 157 was adopted by the Company, as it applies to its financial instruments, in the first quarter of fiscal 2009. The impact of adoption of SFAS No. 157 is discussed in Note 3.

Note 15. Subsequent Events

Merger of Bookham Inc. and Avanex Corporation

On January 27, 2009, Bookham announced that it had entered into a definitive agreement providing for the merger of Bookham and Avanex Corporation (Avanex). In connection with the merger, which is subject to customary closing conditions, including shareholder approval by both companies, Avanex shareholders will receive, at a fixed exchange ratio, 5.426 shares of Bookham common stock for every share of Avanex common stock. Bookham expects to issue approximately 88.6 million shares of Bookham common stock in the proposed transaction. Upon the close of the transaction, Bookham shareholders will own approximately 53.25 percent and Avanex shareholders will own approximately 46.75 percent of the combined company. Based on the closing price of Bookham common stock of $0.397 per share on January 27, 2009, the total consideration to be paid to Avanex shareholders would be equivalent to $35.2 million or $2.15 per share of Avanex common stock. The merger is expected to be completed within the next three to six months.

The Company has become aware that on February 3, 2009, a complaint was filed in the Alameda County Superior Court of the State of California naming, among others, the Company and Ultraviolet Acquisition Sub, Inc., a wholly-owned subsidiary of the Company, or Merger Sub, in a purported class action lawsuit on behalf of the stockholders of Avanex Corporation. The case is captioned Charlene McCune and Mary Cooksey, individually, and on behalf of all others similarly situated, v. Giovanni Barbarossa, Paul Smith, Vinton Cerf, Joel Smith, Susan Wang, Gregory Dougherty, Dennis Wolf, Avanex Corporation, Bookham, Inc. and Ultraviolet Acquisition Sub, Inc., Case No. RG09434156. The complaint relates to the proposed business combination of the Company and Avanex through a merger of Merger Sub with and into Avanex announced on January 27, 2009. The complaint alleges, among other things, that the individual Avanex director defendants are acting in their own interests at the expense of the Avanex stockholders and that they failed to adequately disclose all material information concerning the proposed transaction. The complaint further alleges that the individual Avanex director defendants failed to secure adequate consideration in the proposed transaction, are acting contrary to their duty to maximize stockholder value and are violating their fiduciary duties, including their duties of loyalty, good faith, independence and candor. The complaint further alleges that defendants Avanex, the Company and Merger Sub aided and abetted the individual Avanex director defendants breaches of fiduciary duties. The plaintiffs seek, among other things, to enjoin the proposed transaction as well as unspecified damages and costs.

Item 2. ***Management s Discussion and Analysis of Financial Condition and Results of Operations***

This Quarterly Report on Form 10-Q contains forward-looking statements about our plans, objectives, expectations and intentions. You can identify these statements by words such as expect, anticipate, intend, scheduled, designed plan, believe, seek, estimate, may, will, continue, proposed and similar words. You should read these fo statements carefully. These forward-looking statements discuss our future expectations, contain projections of our future results of operations or our financial condition or state other forward-looking information, and may involve known and unknown risks over which we have limited or no control. You should not place undue reliance on forward-looking statements and actual results may differ materially from those contained in forward-looking statements. We cannot guarantee any future results, levels of activity, performance or achievements. Moreover, we assume no obligation to update forward-looking statements or update the reasons actual results could differ materially from those anticipated in forward-looking statements, except as required by law. The factors discussed in the sections captioned Management s Discussion and Analysis of Financial Condition and Results of Operations and Risk Factors in this Quarterly Report on Form 10-Q identify important factors that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements.

Overview

We design, manufacture and market optical components, modules and subsystems that generate, detect, amplify, combine and separate light signals principally for use in high-performance fiber optics communications networks. Due to its advantages of higher capacity and transmission speed, optical transmission has become the predominant technology for large-scale communications networks. Our primary operating segment, which we refer to as our telecom segment, addresses the optical communications market. We are one of the largest vertically-integrated vendors of optical components used for fiber optic telecommunications network applications. Our customers include leading equipment systems vendors, including ADVA, Alcatel-Lucent, Ciena, Cisco, Huawei, Nortel Networks, Tellabs and Tyco. Our remaining product lines, which comprise our non-telecom segment, leverage our optical component technologies and expertise in manufacturing optical subsystems to address opportunities in other markets, including industrial, research, semiconductor capital equipment, military and biotechnology.

Our products typically have a long sales cycle. The period of time between our initial contact with a customer and the receipt of a purchase order is frequently a year or more. In addition, many customers perform, and require us to perform, extensive process and product evaluation and testing of components before entering into purchase arrangements.

Because of recent changes in the spending plans of certain telecom customers, leading them to draw down their existing inventories, we anticipate that our revenues in the near term will decline. Further, because of the worldwide financial uncertainty, it is possible that network providers will significantly reduce capital expenditures in the near term and that more of the equipment providers whom we supply will therefore draw down inventories, reduce production levels of existing products and defer introduction of new products. We cannot currently predict the duration or the overall impact of any such reduced demand in our markets over the next several quarters. We intend to respond to these trends through management efforts and actions that include carefully controlling our expenses, focusing on continuing to improve our direct product costs and monitoring our inventory levels and our capital spending. However, we do expect that the anticipated reductions in revenues in our third fiscal quarter, and any further reductions beyond such quarter, will have an impact on our gross margins, income (loss) from operations and net income (loss).

Recent Developments

On January 27, 2009, we announced that we had entered into a definitive agreement to merge with Avanex Corporation (Avanex). In connection with the merger, which is subject to customary closing conditions, including shareholder approval by both companies, Avanex shareholders will receive, at a fixed exchange ratio, 5.426 shares of our common stock for every share of Avanex common stock. We expect to issue approximately 88.6 million shares of our common stock in the proposed transaction. Upon the close of the transaction, our shareholders will own approximately 53.25 percent and Avanex shareholders will own approximately 46.75 percent of the combined company. Based on the closing price of our common stock of $0.397 per share on January 27, 2009, the total consideration to be paid to Avanex shareholders would be equivalent to $35.2 million or $2.15 per share of Avanex

common stock. If the merger is completed, we expect that we will incur an aggregate of approximately $7.0 million in restructuring expenses, which we anticipate will be offset by $7.0 million in quarterly cost savings, which are expected to be realized in full at the end of the first twelve months after the deal closes, as a result of the merger. The merger is expected to be completed within the next three to six months.

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Critical Accounting Policies

We believe that several accounting policies we have implemented are important to understanding our historical and future performance. We refer to such policies as critical because they generally require us to make judgments and estimates about matters that are uncertain at the time we make the estimate, and different estimates which also would have been reasonable at the time could have been used, and would have resulted in materially different reported financial results.

The critical accounting policies we identified in our Annual Report on Form 10-K for the year ended June 28, 2008 (or the 2008 Form 10-K), related to revenue recognition and sales returns, inventory valuation, accounting for acquisitions and goodwill, impairment of goodwill and other intangible assets and accounting for share-based payments. It is important that the discussion of our operating results that follows be read in conjunction with the critical accounting policies discussed in our 2008 Form 10-K.

Revenue Recognition for Financially Distressed Customers

Our revenue recognition policy, which is more fully described in our 2008 Form 10-K, follows Securities and Exchange Commission Staff Accounting Bulletin, or SAB, No. 104, *Revenue Recognition in Financial Statements*. Specifically, we recognize product revenue when (i) persuasive evidence of an arrangement exists, (ii) the product has been shipped and title has transferred, (iii) collectability is reasonably assured, (iv) fees are fixed or determinable and (v) there are no uncertainties with respect to customer acceptance. We recognize revenues from financially distressed customers when collectability becomes reasonably assured, assuming all other criteria for revenue recognition have been met.

In the three months ended December 27, 2008, we issued billings of (i) $4.1 million for products that were shipped to Nortel Networks, but for which payment was not received prior to its bankruptcy filing on January 14, 2009 and (ii) $1.3 million for products that were shipped to a contract manufacturer to Nortel Networks for which payment may not be received as a result of the Nortel Networks bankruptcy filing. As a result, an aggregate of $5.4 million in revenue was not recognized as revenues or accounts receivable in the accompanying condensed consolidated financial statements at the time of such billings, and such amounts were therefore deferred as we determined that such amounts were not reasonably assured of collectability in accordance with our revenue recognition policy. The corresponding costs associated with these billings for the second quarter of fiscal 2009 are fully included in costs of revenues in the condensed consolidated financial statements, which are included elsewhere in this Quarterly Report on Form 10-Q, as title to the products passed to the customer upon shipment or delivery, depending on the terms of the individual sale. Accordingly, revenue deferrals for the second quarter of fiscal 2009 to financially distressed customers reduced revenues and gross margin and increased net loss by $5.4 million, and decreased our gross margin rate by approximately 8 percentage points. To the extent that collectability becomes reasonably assured for these deferred billings in future periods, our future results will benefit from the recognition of these amounts.

Impairment of Goodwill

We review our goodwill and other intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable, and also review goodwill annually in accordance with SFAS No. 142, *Goodwill and Other Intangibles*. The values assigned to goodwill and other intangible assets are usually based on estimates and judgments regarding expectations for the success and life cycle of products and technologies acquired.

During the three month period ended December 27, 2008, we observed indicators of potential impairment of our goodwill, including the impact of the current general economic downturn on our future prospects and the continued decline of our current market capitalization, which caused us to conduct a preliminary interim goodwill impairment analysis. Specifically, indicators emerged within the New Focus reporting unit for SFAS No. 142 purposes, which includes the technology acquired in the March 2004 acquisition of New Focus, Inc. and is in our non-telecom segment, and one other reporting unit in our non-telecom segment that includes the technology acquired in the March 2006 acquisition of Avalon Photonics AG, (the Avalon reporting unit) that led us to conclude that a SFAS No. 142 impairment test was required to be performed during the second quarter for goodwill in these reporting units.

Goodwill is tested for impairment using a two-step process. In the first step, the fair value of a reporting unit is compared to its carrying value. If the fair value of a reporting unit exceeds the carrying value of the net assets assigned to a reporting unit, goodwill is considered not impaired and no further testing is required. If the carrying value of the net assets assigned to a reporting unit exceeds the fair value of a reporting unit, a second step of the impairment test is performed in order to determine the implied fair value of a reporting unit s goodwill.

Our management has determined, in our preliminary first step goodwill impairment analysis, that our goodwill in our New Focus and Avalon reporting units was in fact impaired. In the second step, the measurement of the impairment, we hypothetically apply purchase accounting to these reporting units using the fair values from the first step. Due to the timing and complexity of step two, we have yet to complete this step. However, based upon preliminary calculations, we have recorded a preliminary estimate of $7.9 million for the impairment loss in our statements of operations for the three and six months ended December 27, 2008 as we concluded that the loss was probable and that the amount of loss was reasonably determinable. This is a preliminary estimate only. We are continuing to evaluate the impairment of our goodwill, and the amount of the actual impairment charge may vary from this initial estimate. We expect that we will complete the full evaluation of the impairment analysis during the quarter ending March 28, 2009. The impairment will not result in any current or future cash expenditures.

We also tested the intangible assets of these two reporting units during the second quarter in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. Based on this testing, we have determined that no impairment charge was necessary. At December 27, 2008, intangible assets subject to the amortization provisions of SFAS No. 142, net of accumulated amortization and impairment charges, were $6.2 million.

Recent Accounting Pronouncements

With the exception of those discussed below, there have been no recent accounting pronouncements or changes in accounting pronouncements during the six months ended December 27, 2008, as compared to the recent accounting pronouncements described in our 2008 Form 10-K, that are of significance, or potential significance, to us.

In December 2007, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 141R, *Business Combinations*. This standard establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any non-controlling interest in the acquiree and the goodwill acquired in a business combination. This standard also establishes disclosure requirements that will enable users to evaluate the nature and financial effects of a business combination. SFAS No. 141R is effective for us for acquisitions made after June 27, 2009. We do not anticipate that the adoption of this pronouncement will have a significant impact on our financial statements; however, the implementation of SFAS No. 141R may have a material impact on our accounting for businesses we acquire post-adoption.

In February 2008, the FASB issued FASB Staff Position (FSP) No. 157-2, *Effective Date of FASB Statement No. 157*. FSP No.157-2 delays the effective date of SFAS No. 157, *Fair Value Measurements* for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually), until the beginning of the first quarter of fiscal 2010. We are currently evaluating the impact that SFAS No. 157 will have on our consolidated financial statements when it is applied to non-financial assets and non-financial liabilities that are not measured at fair value on a recurring basis beginning in the first quarter of fiscal 2010. The major categories of non-financial assets and non-financial liabilities that are measured at fair value, for which we have not yet applied the provisions of SFAS No. 157, are goodwill and intangible assets.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities, an amendment of FASB Statement No. 133*. SFAS No. 161 requires enhanced disclosures for derivative instruments, including those used in hedging activities. It is effective for fiscal years and interim periods beginning after November 15, 2008, and will be applicable to us in the third quarter of fiscal 2009. We are currently evaluating the effect, if any, that the adoption of SFAS No. 161 may have on our consolidated results of operations and financial condition.

In April 2008, the FASB issued FSP No. 142-3, *Determination of the Useful Life of Intangible Assets*. FSP No. 142-3 amends the factors that should be considered in developing assumptions about renewal or extension used in estimating the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. FSP

No. 142-3 is intended to improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141R and other generally accepted accounting principles. FSP No.142-3 is effective for financial statements issued for fiscal years beginning after December 15, 2008. The measurement provisions of this standard will apply only to intangible assets we acquire after June 27, 2009.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 supersedes the existing hierarchy contained in the U.S. auditing standards. The existing hierarchy was carried over to SFAS No. 162 essentially unchanged. SFAS No. 162 becomes effective 60 days following the Securities and Exchange Commission s approval of the Public Company Accounting Oversight Board amendments to the auditing literature. The new hierarchy is not expected to change our current accounting practice in any area.

In October 2008, the FASB issued FSP No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*. FSP No. 157-3 clarifies the application of SFAS No. 157 for financial assets in a market that is not active. FSP No. 157-3 was effective upon issuance. SFAS No. 157 was adopted by us, as it applies to our financial instruments, in the first quarter of fiscal 2009. The impact of our adoption of SFAS No. 157 is discussed in Note 3 to the accompanying condensed consolidated financial statements.

Results of Operations

The following table sets forth our condensed consolidated results of operations for the three month periods indicated, along with amounts expressed as a percentage of net revenues, and comparative information regarding the absolute and percentage changes in these amounts:

	Three Months Ended					**Increase**
	December 27, 2008		**December 29, 2007**		**Change**	**(Decrease)**
	(thousands)	%	(thousands)	%	(thousands)	%
Revenues	$ 50,204	100.0	$ 58,956	100.0	$ (8,752)	(14.8)
Cost of revenues	41,499	82.7	45,522	77.2	(4,023)	(8.8)
Gross margin	8,705	17.3	13,434	22.8	(4,729)	(35.2)
Operating expenses:						
Research and development	6,897	13.7	8,168	13.9	(1,271)	(15.6)
Selling, general and administrative	9,282	18.5	12,162	20.6	(2,880)	(23.7)
Amortization of intangible assets	444	0.9	1,353	2.3	(909)	(67.2)
Restructuring and severance charges	482	0.9	562	0.9	(80)	(14.2)
Legal settlement			877	1.5	(877)	(100.0)
Impairment of goodwill	7,881	15.7			7,881	n/m(1)
(Gain) loss on sale of property and equipment	(8)		(1,481)	(2.5)	1,473	(99.5)
Total operating expenses	24,978	49.7	21,641	36.7	3,337	15.4
Operating loss	(16,273)	(32.4)	(8,207)	(13.9)	(8,066)	98.3
Other income (expense):						
Other expense	(95)	(0.2)			(95)	n/m(1)
Interest income	209	0.4	494	0.8	(285)	(57.7)
Interest expense	(132)	(0.3)	(253)	(0.4)	121	(47.8)
Gain on foreign exchange	9,866	19.7	2,732	4.6	7,134	261.1
Total other income (expense)	9,848	19.6	2,973	5.0	6,875	231.2

Loss before income taxes		(6,425)	(12.8)		(5,234)	(8.9)		(1,191)	22.8
Income tax provision (benefit)		36	0.1		(47)	(0.1)		83	n/m(1)
Net loss	$	(6,461)	(12.9)	$	(5,187)	(8.8)	$	(1,274)	24.6

(1) Not meaningful.

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The following table sets forth our condensed consolidated results of operations for the six month periods indicated, along with amounts expressed as a percentage of net revenues, and comparative information regarding the absolute and percentage changes in these amounts:

	Six Months Ended					Increase
	December 27, 2008		December 29, 2007		Change	(Decrease)
	(thousands)	%	(thousands)	%	(thousands)	%
Revenues	$ 116,735	100.0	$ 113,238	100.0	$ 3,497	3.1
Cost of revenues	91,401	78.3	87,467	77.2	3,934	4.5
Gross margin	25,334	21.7	25,771	22.8	(437)	(1.7)
Operating expenses:						
Research and development	14,832	12.7	16,860	14.9	(2,028)	(12.0)
Selling, general and administrative	19,966	17.1	23,488	20.7	(3,522)	(15.0)
Amortization of intangible assets	907	0.8	3,350	3.0	(2,443)	(72.9)
Restructuring and severance charges	1,968	1.7	1,779	1.6	189	10.6
Legal settlement	(184)	(0.2)	877	0.8	(1,061)	n/m(1)
Impairment of goodwill	7,881	6.8			7,881	n/m(1)
(Gain) loss on sale of property and equipment	8		(1,716)	(1.5)	1,724	n/m(1)
Total operating expenses	45,378	38.9	44,638	39.5	740	1.7
Operating loss	(20,044)	(17.2)	(18,867)	(16.7)	(1,177)	6.2
Other income (expense):						
Other expense	(695)	(0.6)			(695)	n/m(1)
Interest income	457	0.4	746	0.7	(289)	(38.7)
Interest expense	(324)	(0.3)	(387)	(0.3)	63	(16.3)
Gain on foreign exchange	16,362	14.0	2,320	2.0	14,042	605.3
Total other income (expense)	15,800	13.5	2,679	2.4	13,121	489.8
Loss before income taxes	(4,244)	(3.7)	(16,188)	(14.3)	11,944	(73.8)
Income tax provision (benefit)	24		(47)		71	n/m(1)
Net loss	$ (4,268)	(3.7)	$ (16,141)	(14.3)	$ 11,873	(73.6)

(1) *Not meaningful.*

Revenues

Revenues for the three months ended December 27, 2008 decreased by $8.8 million, or 14.8 percent, compared to the three months ended December 29, 2007. The decrease was largely due to a decrease in sales from our telecom segment of $7.4 million and a decrease in non-telecom segment sales of $1.4 million.

Our decrease in telecom sales for the three months ended December 27, 2008 was primarily attributable to a decrease in sales to Nortel Networks (including its contract manufacturers) of $3.4 million, due to the deferral of recognition of $5.4 million in billings during the period in accordance with our revenue recognition policy, and decreased sales to other telecom customers of $4.0 million which we believe was due to the uncertainty in the worldwide financial markets and resulting impact on the markets for our products, which was partially offset by increases in sales to Huawei Technologies of $2.3 million and smaller increases in sales from other customers. For the three months ended December 27, 2008, Nortel Networks accounted for $5.4 million, or 11 percent, of our total revenues, and Huawei Technologies accounted for $7.4 million, or 15 percent, of our total revenues. For the three months ended December 29, 2007, Nortel Networks accounted for $8.8 million, or 15 percent, of our revenues, and Cisco Systems accounted for $6.6 million, or 11 percent, of our total revenues.

Revenues for the six months ended December 27, 2008 increased by $3.5 million, or 3.1 percent, compared to the six months ended December 29, 2007. The increase was largely due to an increase in sales from our telecom segment of $4.1 million and a decrease in non-telecom segment sales of $0.6 million.

Our increase in telecom sales for the six months ended December 27, 2008 compared to the same period in the prior year was primarily attributable to increases in sales to Huawei Technologies of $7.5 million and Nortel Networks of $0.5 million. For the six months ended December 27, 2008, Nortel Networks accounted for $17.5 million, or 15 percent, of our total revenues, and Huawei Technologies accounted for $16.4 million, or 14 percent, of our total revenues. For the six months ended December 29, 2007, Nortel Networks accounted for $17.1 million, or 15 percent, of our revenues, and Cisco Systems accounted for $12.7 million, or 11 percent, of our total revenues.

As noted previously, we anticipate that our revenues, primarily our telecom revenues, will be negatively affected in our third quarter of fiscal 2009, and that our revenues in the next several quarters may be negatively impacted by the uncertainty in the worldwide financial markets and resulting impact on the markets for our products.

Cost of Revenues

Our cost of revenues consists of the costs associated with manufacturing our products and includes the costs to purchase raw materials and manufacturing-related labor costs and related overhead, including stock-based compensation expense. It also includes costs associated with under-utilized production facilities and resources. Charges for inventory obsolescence, the cost of product returns and warranty costs are also included in cost of revenues. Costs and expenses of the manufacturing resources which relate to the development of new products are included in research and development expense.

Our cost of revenues for the three months ended December 27, 2008 decreased $4.0 million, or 8.8 percent, from the three months ended December 29, 2007. This decrease was primarily due to lower costs associated with lower sales volumes, which was partially offset by $0.4 million in additional manufacturing overhead costs in connection with the transfer of manufacturing operations of our non-telecom segment from our San Jose, California facility to our facility in Shenzhen, China. Our cost of revenues for the three months ended December 27, 2008 included $0.3 million of stock-based compensation charges compared to $0.7 million for the three months ended December 29, 2007.

Our cost of revenues for the six months ended December 27, 2008 increased $3.9 million, or 4.5 percent, from the six months ended December 29, 2007. This increase was primarily due to higher costs associated with higher sales volumes and $0.9 million in additional manufacturing overhead costs in connection with the transfer of manufacturing operations of our non-telecom segment from our San Jose, California facility to our facility in Shenzhen, China. Our cost of revenues for the six months ended December 27, 2008 included $0.7 million of stock-based compensation charges compared to $1.3 million for the six months ended December 29, 2007.

The costs associated with the $5.4 million of products shipped to two customers in the second quarter of fiscal 2009, but for which revenue was deferred in accordance with our revenue recognition policy, as described above, are fully included in costs of revenues as title to the products passed to the customer upon shipment or delivery, depending on the terms of the individual sale.

Gross Margin

Gross margin is calculated as revenues less cost of revenues. The gross margin rate is gross margin reflected as a percentage of revenues.

Our gross margin decreased by $4.7 million, or 35.2 percent, for the three months ended December 27, 2008, compared to the three months ended December 29, 2007. Our gross margin rate decreased to 17.3 percent for the three months ended December 27, 2008, compared to 22.8 percent for the three months ended December 29, 2007. The decreases in gross margin and gross margin rate were primarily associated with (i) decreased sales volumes in both of our operating segments for the three months ended December 27, 2008 as compared to December 29, 2007 due to the fixed nature of certain overheads spread over lower volume, (ii) recognizing the costs associated with the $5.4 million of products shipped to two customers in the second quarter of fiscal 2009, but for which revenue was deferred in accordance with our revenue recognition policy; and (iii) increased expenses for the three months ended December 27, 2008 of $0.4 million of additional manufacturing overhead costs in connection with the transfer of manufacturing operations of our non-telecom segment from our San Jose, California facility to our facility in Shenzhen, China.

Our gross margin decreased by $0.4 million, or 1.7 percent, for the six months ended December 27, 2008, compared to the six months ended December 29, 2007. Our gross margin rate decreased to 21.7 percent for the six months ended December 27, 2008, compared to 22.8 percent in the six months ended December 29, 2007. The decreases in gross margin and gross margin rate were primarily associated with recognizing the costs associated with the $5.4 million of

products shipped to two

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customers in the second quarter of fiscal 2009, but for which revenue was deferred in accordance with our revenue recognition policy, and increased expenses for the six months ended December 27, 2008 of $0.9 million of additional manufacturing overhead costs in connection with the transfer of manufacturing operations of our non-telecom segment from our San Jose, California facility to our facility in Shenzhen, China.

The decrease in gross margin rate for the three and six months ended December 27, 2008, relative to the same periods of the previous year, included declines of 8.0 percentage points and 3.5 percentage points, respectively, due to recognizing the costs associated with the $5.4 million of products shipped to major customers in the second quarter of fiscal 2009, but for which revenue was deferred in accordance with our revenue recognition policy.

As previously noted, we anticipate our revenues to be lower in our third quarter of fiscal 2009, and accordingly we expect gross margins in the same quarter to be lower due to lower sales volumes associated with that revenue decrease, only partly offset by reductions in our manufacturing overhead expenses implemented in response to the expected revenue decrease.

Research and Development Expenses

Research and development expenses consist primarily of salaries and related costs of employees engaged in research and design activities, including stock-based compensation charges related to those employees, costs of design tools and computer hardware, costs related to prototyping and facilities costs for certain research and development focused sites.

Research and development expenses decreased to $6.9 million for the three months ended December 27, 2008 from $8.2 million for the three months ended December 29, 2007. The decrease was primarily due to decreases in personnel costs of $0.8 million and stock-based compensation of $0.4 million due to reductions in personnel and other miscellaneous decreases in spending of $0.9 million, as a result of our restructurings and cost reduction plans, which were partially offset by increased costs for materials used in research and development of $0.8 million.

Research and development expenses decreased to $14.8 million for the six months ended December 27, 2008 from $16.9 million for the six months ended December 29, 2007. The decrease was primarily due to decreases in personnel costs of $1.5 million and stock-based compensation of $0.6 million due to reductions in personnel and other miscellaneous decreases in spending of $1.3 million, as a result of our restructurings and cost reduction plans, which were partially offset by increased costs for materials used in research and development of $1.4 million.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist primarily of personnel-related expenses, including stock-based compensation charges related to employees engaged in sales, general and administrative functions, legal and professional fees, facilities expenses, insurance expenses and certain information technology costs.

Selling, general and administrative expenses decreased to $9.3 million for the three months ended December 27, 2008 from $12.2 million for the three months ended December 29, 2007. The decrease was primarily the result of decreases in personnel costs of $1.4 million and stock-based compensation of $0.8 million as a result of restructuring and cost reduction plans and a reduction of $0.7 million in other miscellaneous expenses.

Selling, general and administrative expenses decreased to $20.0 million for the six months ended December 27, 2008 from $23.5 million for the six months ended December 29, 2007. The decrease was primarily the result of decreases in personnel costs of $1.8 million and stock-based compensation of $0.9 million as a result of restructuring and cost reduction plans and a reduction of $0.8 million in other miscellaneous expenses.

Amortization of Intangible Assets

In previous years we acquired six optical components companies and businesses and one photonics and microwave company. Our last such acquisition was in March 2006. Each of these business combinations added to the balance of our purchased intangible assets, and the related amortization of these intangible assets was recorded as an expense in each of the three and six month periods ended December 27, 2008 and December 29, 2007. Subsequent to the three months ended December 29, 2007, the purchased intangible assets from certain of these business acquisitions became fully amortized, which reduced our expense for amortization of purchased intangible assets for the three and six months ended December 27, 2008 by $0.9 million and $2.4 million, respectively, as compared to the same three and six month periods in the prior year.

Restructuring and Severance Charges

In connection with earlier plans of restructuring, and the assumption of restructuring accruals upon the March 2004 acquisition of New Focus, we continue to make scheduled payments drawing down the related lease cancellations and commitments as well as making termination payments to employees and related costs. For the three months ended December 27, 2008 and December 29, 2007 we accrued $0.5 million and $0.6 million, respectively, in expenses for revised estimates related to these cancellations and commitments and termination payments to employees and related costs. For the six months ended December 27, 2008 and December 29, 2007 we accrued $2.0 million and $1.8 million, respectively, in expenses for the same items.

Impairment of Goodwill

During the three month period ended December 27, 2008, we saw indicators of potential impairment of our goodwill, including the impact of the current general economic downturn on our future prospects and the continued decline of our current market capitalization, which caused us to conduct a preliminary interim goodwill impairment analysis. Our management has determined, in our preliminary first step goodwill impairment analysis, that our goodwill in our New Focus and Avalon reporting units was in fact impaired. Based upon preliminary calculations, we have recorded a preliminary estimate of $7.9 million for the impairment loss in our statements of operations for the three and six months ended December 27, 2008 as we concluded that the loss was probable and that the amount of loss was reasonably determinable. This is a preliminary estimate only. We are continuing to evaluate the impairment of our goodwill, and the amount of the actual impairment charge may vary materially from this initial estimate. We expect that we will complete the full evaluation of the impairment analysis during the quarter ending March 28, 2009. The impairment will not result in any current or future cash expenditures.

Other Income (Expense)

The increase in other income (expense) for the three and six months ended December 27, 2008 when compared to the three and six months ended December 29, 2007 was primarily related to an increase of $7.1 million and $14.0 million, respectively, in income related to the re-measurement of short term balances between our international subsidiaries due to the strong appreciation of the dollar during the three and six months ended December 27, 2008 relative to our other local functional currencies during such periods and an expense for the three and six months ended December 27, 2008 of $0.1 million and $0.7 million, respectively, related to the fair value impairment of our short-term investment in a debt security of Lehman Brothers.

Income Tax Benefit

We have incurred substantial losses to date and expect to incur additional losses in the future, and accordingly our income tax provision is negligible in each period presented. Based upon the weight of available evidence, which includes our historical operating performance and the recorded cumulative net losses in prior periods, we have provided a full valuation allowance against our net deferred tax assets at December 27, 2008 and June 28, 2008.

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Liquidity and Capital Resources

Cash Flows from Operating Activities

	Six Months Ended	
	December 27, 2008	December 29, 2007
	(thousands)	
Net loss	$ (4,268)	$ (16,141)
Non-cash adjustments:		
Depreciation and amortization	6,720	9,604
Stock-based compensation	2,241	4,409
Amortization of deferred gain on sale-leaseback	(486)	(714)
Impairment of short-term investments	706	
Impairment of goodwill	7,881	
Accretion on short-term investments	(102)	
(Gain) loss on sale of property and equipment	8	(1,716)
Total non-cash adjustments	16,968	11,583
Increase in working capital	(3,010)	(4,383)
Net cash provided by (used in) operating activities	$ 9,690	$ (8,941)

Net cash provided by operating activities for the six months ended December 27, 2008 was $9.7 million, resulting from non-cash adjustments of $17.0 million, primarily consisting of a $7.9 million charge for impairment of goodwill, $6.7 million of expense related to depreciation and amortization of certain assets and $2.2 million of expense related to stock-based compensation. These were partially offset by a net loss of $4.3 million, and a decrease in cash from a net change in our operating assets and liabilities of $3.0 million due to an increase in inventories and a decrease in accounts payable, partially offset by decreases in accounts receivable and prepaid expenses and other current assets, and an increase in accrued expenses and other liabilities.

Net cash used in operating activities for the six months ended December 29, 2007 was $8.9 million, primarily resulting from the net loss of $16.1 million, offset by non-cash adjustments of $11.6 million, primarily consisting of $9.6 million of expense related to depreciation and amortization of certain assets, $4.4 million of expense related to stock-based compensation and a $1.7 million gain on sale of property and equipment. A net change in our operating assets and liabilities of $4.4 million due to increases in accounts receivable and inventories, both associated with our increasing revenues, as well as increases in accrued expenses and other liabilities, partially offset by decreases in accounts payable, prepaid expenses and other current assets, also contributed to the use of cash.

Cash Flows from Investing Activities

Net cash provided by investing activities for the six months ended December 27, 2008 was $2.1 million, primarily consisting of $15.4 million in sales and maturities of available-for-sale investments and $0.6 million from the release of restricted cash, which were partially offset by $6.9 million in purchases of available-for-sale investments and $6.9 million used in capital expenditures.

Net cash provided by investing activities for the six months ended December 29, 2007 was $0.6 million, primarily consisting of $4.5 million from the release of restricted cash which had been security on an unoccupied leased facility and $1.8 million in proceeds from the sale of fixed assets, which were partially offset by $5.7 million used in capital expenditures.

Cash Flows from Financing Activities

There were no significant cash flows from financing activities for the six months ended December 27, 2008.

Net cash provided by financing activities for the six months ended December 29, 2007 was $37.1 million, primarily consisting of $40.9 million in proceeds, net of expenses and commissions, from an underwritten public offering of 16 million shares of our common stock at a price to the public of $2.75 a share, offset by the repayment of $3.8 million, net, which had been previously drawn under our senior secured credit facility with Wells Fargo Foothill, Inc.

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Credit Facility

On August 2, 2006, we, with Bookham Technology plc, New Focus and Bookham (US) Inc., each a wholly-owned subsidiary, which we collectively refer to as the Borrowers, entered into a credit agreement, or Credit Agreement, with Wells Fargo Foothill, Inc. and other lenders regarding a three year $25.0 million senior secured revolving credit facility. Advances are available under the Credit Agreement based on 80 percent of qualified accounts receivable , as defined in the Credit Agreement, at the time the advance is requested.

The obligations of the Borrowers under the Credit Agreement are guaranteed by us, Ignis Optics, Inc., Bookham (Canada) Inc., Bookham Nominees Limited and Bookham International Ltd., each also a wholly-owned subsidiary (which we refer to collectively as the Guarantors and together with the Borrowers, as the Obligors), and are secured pursuant to a security agreement, or the Security Agreement, by the assets of the Obligors, including a pledge of the capital stock holdings of the Obligors in some of their direct subsidiaries. Any new direct subsidiary of the Obligors is required to execute a guaranty agreement in substantially the same form and join in the Security Agreement.

Pursuant to the terms of the Credit Agreement, borrowings made under the Credit Agreement bear interest at a rate based on either the London Interbank Offered Rate (LIBOR) plus 2.75 percentage points or the bank s prime rate plus 1.25 percentage points. In the absence of an event of default, any amounts outstanding under the Credit Agreement may be repaid and re-borrowed at any time until maturity, which is August 2, 2009.

The obligations of the Borrowers under the Credit Agreement may be accelerated upon the occurrence of an event of default under the Credit Agreement, which includes customary events of default, including payment defaults, defaults in the performance of affirmative and negative covenants, the inaccuracy of representations or warranties, a cross-default related to indebtedness in an aggregate amount of $1.0 million or more, bankruptcy and insolvency related defaults, defaults relating to such matters as ERISA and judgments and a change of control default. The Credit Agreement contains negative covenants applicable to the Borrowers and their subsidiaries, including financial covenants requiring the Borrowers to maintain a minimum level of earnings before interest, taxes, depreciation and amortization (EBITDA) if the Borrowers have not maintained minimum liquidity , defined as $30 million of qualified cash and excess availability, each as also defined in the Credit Agreement, as well as restrictions on liens, capital expenditures, investments, indebtedness, fundamental changes to the Borrower s business, dispositions of property, making certain restricted payments (including restrictions on dividends and stock repurchases), entering into new lines of business and transactions with affiliates. As of December 27, 2008 and June 28, 2008, there were no amounts outstanding under this line of credit. At December 27, 2008, we were in compliance with all covenants under the Credit Agreement and we had $0.3 million in an outstanding standby letter of credits with a vendor secured under this credit agreement which expires in February 2009. At June 28, 2008, we had $4.8 million in outstanding standby letters of credits with vendors secured under this credit agreement.

In connection with the Credit Agreement, we agreed to pay a monthly servicing fee of $3,000 and an unused line fee equal to 0.375 percentage points per annum, payable monthly on the unused amount of revolving credit commitments. To the extent there are letters of credit outstanding under the Credit Agreement, the Borrowers are obligated to pay the administrative agent a letter of credit fee at a rate equal to 2.75 percentage points per annum.

Future Cash Requirements

As of December 27, 2008, we held $35.3 million in cash and cash equivalents, $0.5 million in restricted cash and $8.9 million in short-term investments. We expect that our cash generated from operations, together with our current cash balances, short-term investments, and amounts expected to be available under our senior secured $25.0 million credit facility, which are based on a percentage of accounts receivable at the time the advance is requested, will provide us with sufficient financial resources in order to operate as a going concern through our next four fiscal quarters subsequent to the quarter ended December 27, 2008. To further strengthen our financial position, in the event of unforeseen circumstances, or in the event needed to fund growth in future financial periods, either as a standalone company or in connection with our combination with Avanex, we may raise additional funds by any one or a combination of the following: issuing equity, debt or convertible debt or the sale of certain product lines and/or portions of our business. There can be no guarantee that we will be able to raise additional funds on terms acceptable to us, or at all.

From time to time, we have engaged in discussions with third parties concerning potential acquisitions of product lines, technologies and businesses. In addition to our proposed merger with Avanex Corporation, as described above, we continue to consider potential acquisition candidates. Any of these transactions could involve the issuance of a significant number of new equity securities, debt, and/or cash consideration. We may also be required to raise additional funds to complete any

such acquisition, through either the issuance of equity securities or borrowings. If we raise additional funds or acquire businesses or technologies through the issuance of equity securities, our existing stockholders may experience significant dilution.

Contractual Obligations

During the quarter ended December 27, 2008 there have been no material changes to the contractual obligations disclosed as of June 28, 2008 in our 2008 Form 10-K.

Off-Balance Sheet Arrangements

In connection with the sale by New Focus of its passive component line to Finisar, Inc., New Focus agreed to indemnify Finisar for claims related to the intellectual property sold to Finisar. This indemnification obligation expires in May 2009 and has no limitation on maximum liability.

We indemnify our directors and certain employees as permitted by law, and have entered into indemnification agreements with our directors and executive officers. We have not recorded a liability associated with these indemnification arrangements as we historically have not incurred any costs associated with such indemnification arrangements and do not expect to in the future. Costs associated with such indemnification arrangements may be mitigated by insurance coverage that we maintain, however such insurance may not cover any, or may cover only a portion of, the amounts we may be required to pay. In addition, we may not be able to maintain such insurance coverage in the future.

We also have indemnification clauses in various contracts that we enter into in the normal course of business, such as those issued by our bankers in favor of several of our suppliers or indemnification clauses in favor of customers in respect of liabilities they may incur as a result of purchasing our products should such products infringe the intellectual property rights of a third party. We have not historically paid out any amounts related to these indemnification obligations and do not expect to in the future, therefore no accrual has been made for these indemnification obligations.

Other than as set forth above, we are not currently party to any material off-balance sheet arrangements.

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

We finance our operations through a mixture of the issuance of equity securities, finance leases, working capital and by drawing on a three year $25.0 million senior secured revolving credit facility under a credit agreement we entered into on August 2, 2006. Our only exposure to interest rate fluctuations is on our cash deposits and for amounts borrowed under the credit agreement. As of December 27, 2008 and June 28, 2008, there were no amounts outstanding under this line of credit. As of December 27, 2008, we had $0.3 million in outstanding standby letters of credits with a vendor secured under this credit agreement. We monitor our interest rate risk on cash balances primarily through cash flow forecasting. Cash that is surplus to immediate requirements is invested in short-term deposits with banks accessible with one day s notice and invested in overnight money market accounts. We believe our interest rate risk is immaterial.

Foreign currency

We are exposed to fluctuations in foreign currency exchange rates and interest rates. As our business has grown and become multinational in scope, we have become increasingly subject to fluctuations based upon changes in the exchange rates between the currencies in which we collect revenues and pay expenses. Despite our change in domicile from the United Kingdom to the United States in 2004, and our movement of certain functions, including assembly and test operations, from the United Kingdom to China, in the future we expect that a majority of our revenues will continue to be denominated in U.S. dollars, while a significant portion of our expenses will continue to be denominated in U.K. pounds sterling. Fluctuations in the exchange rate between the U.S. dollar and the U.K. pound sterling and, to a lesser extent, other currencies in which we collect revenues and pay expenses, could affect our operating results. This includes the Chinese yuan and the Swiss franc in which we pay expenses in connection with operating our facilities in Shenzhen, China, and Zurich, Switzerland. To the extent the exchange rate between the U.S. dollar and the Chinese yuan were to fluctuate more significantly than experienced to date, our exposure would increase. We enter into foreign currency forward exchange contracts in an effort to mitigate our exposure to such fluctuations between the U.S. dollar and the U.K. pound sterling, and

we may be required to convert currencies to meet our obligations. Under certain circumstances, foreign currency forward exchange contracts can have an adverse effect on our financial condition. As of December 27, 2008, we held nineteen foreign currency forward exchange contracts with a notional value of $22.0 million which include put and call options which expire, or expired, at various dates from January 2009 to December 2009 and we have recorded an unrealized loss of $3.3 million to accumulated other comprehensive income in connection with marking these contracts to fair value. It is estimated that a 10 percent fluctuation in the dollar between December 27, 2008 and the maturity dates of the put and call instruments underlying these contracts would lead to a profit of $1.3 million (U.S. dollar weakening), or loss of $1.0 million (U.S. dollar strengthening) on our outstanding foreign currency forward exchange contracts, should they be held to maturity.

Item 4. ***Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 27, 2008. The term disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, or the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 27, 2008, our Chief Executive Officer and Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

There was no change in our internal control over financial reporting during the quarter ended December 27, 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. ***Legal Proceedings***

On June 26, 2001, a putative securities class action captioned Lanter v. New Focus, Inc. et al., Civil Action No. 01-CV-5822 was filed against New Focus and several of its officers and directors, or the Individual Defendants, in the United States District Court for the Southern District of New York. Also named as defendants were Credit Suisse First Boston Corporation, Chase Securities, Inc., U.S. Bancorp Piper Jaffray, Inc. and CIBC World Markets Corp., or the Underwriter Defendants, the underwriters in New Focus s initial public offering. Three subsequent lawsuits were filed containing substantially similar allegations. These complaints have been consolidated.

On November 7, 2001, a Class Action Complaint was filed against Bookham Technology plc and others in the United States District Court for the Southern District of New York. On April 19, 2002, plaintiffs filed an Amended Class Action Complaint, described below. The Amended Class Action Complaint names as defendants Bookham Technology plc, Goldman, Sachs & Co. and FleetBoston Robertson Stephens, Inc., two of the underwriters of Bookham Technology plc s initial public offering in April 2000, and Andrew G. Rickman, Stephen J. Cockrell and David Simpson, each of whom was an officer and/or director at the time of Bookham Technology plc s initial public offering.

Various plaintiffs have filed similar actions asserting virtually identical allegations against more than 300 other public companies, their underwriters, and their officers and directors arising out of each company s initial public offering. These actions, including the action against New Focus and the action against Bookham Technology plc, have been coordinated for pretrial purposes and captioned In re Initial Public Offering Securities Litigation, 21 MC 92.

On April 19, 2002, plaintiffs filed a Consolidated Amended Class Action Complaint in the New Focus action and an Amended Class Action Complaint in the Bookham Technology plc action (together, the Amended Class Action Complaints). The Amended Class Action Complaints assert claims under certain provisions of the securities laws of

the United States. They allege, among other things, that the prospectuses for Bookham Technology plc s and New Focus s initial public offerings were materially false and misleading in describing the compensation to be earned by the underwriters in

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connection with the offerings, and in not disclosing certain alleged arrangements among the underwriters and initial purchasers of ordinary shares, in the case of Bookham Technology plc, or common stock, in the case of New Focus, from the underwriters. The Amended Class Action Complaints seek unspecified damages (or, in the alternative, rescission for those class members who no longer hold our or New Focus common stock), costs, attorneys fees, experts fees, interest and other expenses. In October 2002, the Individual Defendants were dismissed, without prejudice, from the action subject to their execution of tolling agreements. In July 2002, all defendants filed Motions to Dismiss the Amended Class Action Complaints. The motions were denied as to Bookham Technology plc and New Focus in February 2003. Special committees of the board of directors authorized the companies to negotiate a settlement of pending claims substantially consistent with a memorandum of understanding negotiated among class plaintiffs, all issuer defendants and their insurers.

The plaintiffs and most of the issuer defendants and their insurers entered into a stipulation of settlement for the claims against the issuer defendants, including Bookham Technology plc and New Focus. This stipulation of settlement was subject to, among other things, certification of the underlying class of plaintiffs. Under the stipulation of settlement, the plaintiffs would dismiss and release all claims against participating defendants in exchange for a payment guaranty by the insurance companies collectively responsible for insuring the issuers in the related cases, and the assignment or surrender to the plaintiffs of certain claims the issuer defendants may have against the underwriters. On February 15, 2005, the District Court issued an Opinion and Order preliminarily approving the settlement provided that the defendants and plaintiffs agree to a modification narrowing the scope of the bar order set forth in the original settlement agreement. The parties agreed to the modification narrowing the scope of the bar order, and on August 31, 2005, the District Court issued an order preliminarily approving the settlement.

On December 5, 2006, following an appeal from the underwriter defendants the United States Court of Appeals for the Second Circuit overturned the District Court s certification of the class of plaintiffs who are pursuing the claims that would be settled in the settlement against the underwriter defendants. Plaintiffs filed a Petition for Rehearing and Rehearing En Banc with the Second Circuit on January 5, 2007 in response to the Second Circuit s decision and have informed the District Court that they would like to be heard as to whether the settlement may still be approved even if the decision of the Court of Appeals is not reversed. The District Court indicated that it would defer consideration of final approval of the settlement pending plaintiffs request for further appellate review.

On April 6, 2007, the Second Circuit denied plaintiffs petition for rehearing, but clarified that the plaintiffs may seek to certify a more limited class in the District Court. In light of the overturned class certification on June 25, 2007, the District Court signed an Order terminating the settlement. The actions against Bookham Technology plc and New Focus remain stayed while litigation proceeds in six test cases against other companies which involve claims virtually identical to those that have been asserted against Bookham Technology plc and New Focus. On November 13, 2007, the issuer defendants in certain designated focus cases filed a motion to dismiss the second consolidated amended class action complaints that were filed in those cases. On March 26, 2008, the District Court issued an Opinion and Order denying, in large part, the motions to dismiss the amended complaints in the focus cases.

It is uncertain if the litigations will settle. If settlement of the litigations does not occur and litigation against Bookham Technology plc and New Focus continues, the Company believes that both Bookham Technology plc and New Focus have meritorious defenses to the claims made in the Amended Class Action Complaints and therefore believes that such claims will not have a material effect on its financial position, results of operations or cash flows.

On March 4, 2008, Bookham filed a declaratory judgment complaint captioned *Bookham, Inc. v. JDS Uniphase Corp. and Agility Communications, Inc.*, Civil Action No. 5:08-CV-01275-RMW, in the United States District Court for the Northern District of California, San Jose Division. Bookham s complaint seeks declaratory judgments that its tunable laser products do not infringe any valid, enforceable claim of U.S. Patent Nos. 6,658,035, 6,654,400 and 6,687,278, and that all claims of the aforementioned patents are invalid and unenforceable. Bookham s complaint also contains affirmative claims for relief against JDS Uniphase Corp. and Agility Communications, Inc. for statutory unfair competition, and for intentional interference with economic advantage.

On July 21, 2008, JDS Uniphase Corp. and Agility Communications, Inc. answered Bookham s complaint and asserted counterclaims against Bookham for infringement of U.S. Patent Nos. 6,658,035, 6,654,400 and 6,687,278, which JDS Uniphase Corp. acquired from Agility Communications Inc. On October 6, 2008, JDS Uniphase Corp. indicated that

its infringement claims are directed at Bookham s LamdaFlex™ TL500 VCJ; TL5000VLJ; TL3000; TL7000; TL8000 and TL9000 products. JDS Uniphase Corp. seeks unspecified compensatory damages, treble damages and attorneys fees from Bookham, and an order enjoining Bookham from future infringement of the patents-in-suit. This litigation has been stayed due to JDS Uniphase Corp. s commencement of a U.S. International Trade Commission Investigation, which is described below.

On November 7, 2008, JDS Uniphase Corp. petitioned the U.S. International Trade Commission to commence an investigation into alleged violations by Bookham of Section 337 of the Tariff Act of 1930. On December 8, 2008, the U.S. International Trade Commission commenced investigation No. 337-TA-662 into Bookham s alleged importation into the United States, sale for importation, and sale within the United States after importation of tunable laser chips, assemblies, and products containing the same that infringe U.S. Patent Nos. 6,658,035 and 6,687,278. JDS Uniphase Corp. seeks a general exclusion order prohibiting the importation of any Bookham tunable laser chip, assembly, or product containing the same that infringes any claim of the aforementioned patents, as well as an order prohibiting sales after importation into the United States of any allegedly infringing products. The U.S. International Trade Commission has adopted a target completion date of March 19, 2010 for the investigation, and indicated that a final initial determination should be filed by November 19, 2009. Any adverse ruling by the U.S. International Trade Commission, including an exclusion order that could prohibit us from importing into the United States tunable laser chips, assemblies, or products containing the same, or prolonged litigation may have an adverse effect on our business, financial condition and results of operations and any resolution may not be in our favor.

The Company has become aware that on February 3, 2009, a complaint was filed in the Alameda County Superior Court of the State of California naming, among others, the Company and Ultraviolet Acquisition Sub, Inc., a wholly-owned subsidiary of the Company, or Merger Sub, in a purported class action lawsuit on behalf of the stockholders of Avanex Corporation. The case is captioned Charlene McCune and Mary Cooksey, individually, and on behalf of all others similarly situated, v. Giovanni Barbarossa, Paul Smith, Vinton Cerf, Joel Smith, Susan Wang, Gregory Dougherty, Dennis Wolf, Avanex Corporation, Bookham, Inc. and Ultraviolet Acquisition Sub, Inc., Case No. RG09434156. The complaint relates to the proposed business combination of the Company and Avanex through a merger of Merger Sub with and into Avanex announced on January 27, 2009. The complaint alleges, among other things, that the individual Avanex director defendants are acting in their own interests at the expense of the Avanex stockholders and that they failed to adequately disclose all material information concerning the proposed transaction. The complaint further alleges that the individual Avanex director defendants failed to secure adequate consideration in the proposed transaction, are acting contrary to their duty to maximize stockholder value and are violating their fiduciary duties, including their duties of loyalty, good faith, independence and candor. The complaint further alleges that defendants Avanex, the Company and Merger Sub aided and abetted the individual Avanex director defendants breaches of fiduciary duties. The plaintiffs seek, among other things, to enjoin the proposed transaction as well as unspecified damages and costs. An unfavorable outcome in this lawsuit could prevent or delay the consummation of the proposed transaction, result in substantial costs to the Company, or both. It is also possible that other, similar stockholder lawsuits may yet be filed. The Company cannot estimate any possible loss from this or future litigation at this time.

Item 1A. ***Risk Factors***

Investing in our securities involves a high degree of risk. You should carefully consider the risks and uncertainties described below in addition to the other information included or incorporated by reference in this Quarterly Report on Form 10-Q. If any of the following risks actually occur, our business, financial condition or results of operations would likely suffer. In that case, the trading price of our common stock could fall.

Risks Related to Our Business

We have a history of large operating losses and we may not be able to achieve profitability in the future.

We have historically incurred losses and negative cash flows from operations since our inception. As of December 27, 2008, we had an accumulated deficit of $1,063.8 million. We do not expect to be profitable in the quarter ending March 29, 2009.

Our net loss for the six months ended December 27, 2008 was $4.3 million. Our net loss for the year ended June 28, 2008 was $23.4 million. Our net loss for the year ended June 30, 2007 was $82.2 million. We may not be able to achieve profitability in any future period, and if we are unable to do so, we may need additional financing to execute on our current or future business strategies, which may not be available to us on commercially acceptable terms or at all.

We may not consummate our proposed merger with Avanex Corporation or realize any benefits if we do complete the transaction.

On January 27, 2009, we announced that we had entered into a merger agreement with Avanex Corporation, a global provider of Intelligent Photonic Solutions( ) designed to meet the needs of fiber optic communications networks for greater capacity, longer distance transmissions, improved connectivity, higher speeds and lower costs. In connection with the merger, which is subject to customary closing conditions, we will acquire all of the outstanding equity of Avanex and, in exchange, Avanex shareholders will receive, at a fixed exchange ratio, 5.426 shares of our common stock for every share of Avanex common stock. We expect to issue approximately 88.6 million shares of our common stock in the proposed transaction. Upon the close of the transaction, our shareholders will own approximately 53.25 percent and Avanex shareholders will own approximately 46.75 percent of the combined company. The board of directors and the management team of the combined entity will consist of individuals from both us and Avanex. We cannot provide any assurances that the proposed merger will be consummated. If we are unable to complete the proposed merger, we will have incurred substantial expenses and diverted significant management time and resources from our ongoing business without any benefit. Even if we consummate the proposed merger with Avanex Corporation, we may not realize any of the anticipated benefits of the acquisition, and we may encounter difficulties in the integration of the operations of Avanex and require our management to devote significant time and resources to the integration efforts, which could adversely affect our combined business and financial performance. In addition, we may incur restructuring costs in connection with the merger that exceed our current expectations. Finally, the new members of the board of directors and management team of the combined entity, which have had limited exposure to each other, may not be able to work together effectively, which also would have an adverse effect on the business of the combined entity.

We may not be able to maintain current levels of gross margins.

We may not be able to maintain positive gross margin to the extent that current economic uncertainty affects our overall revenue, and we are unable to adjust expenses as necessary. We must, in any event, continue to reduce our costs and improve our product mix to offset price erosion on certain product categories. In particular, over the last twelve to eighteen months we have introduced a family of tunable products that account for an increasing percentage of our overall product revenues. In the quarter ended September 27, 2008, we were capacity constrained in our delivery of these products due to component supply and production limitations, and we are only beginning to achieve margins on these products approaching our long-term target margins as we introduce them into large-scale production. Although we have plans in place both to address production constraints, and to maintain and further improve margins in our tunable products, any failure to do so will adversely affect our financial results, including our goal to achieve sustainable cash flow positive operations. Our gross margins in the three months ended December 27, 2008 were also adversely impacted by the deferral of revenue for $5.4 million in products shipped to two customers that were not reasonably assured of collectability in accordance with our revenue recognition policy.

Our business and results of operations may be negatively impacted by general economic and financial market conditions and such conditions may increase the other risks that affect our business.

The world s financial markets are currently experiencing significant turmoil, resulting in reductions in available credit, dramatically increased costs of credit, extreme volatility in security prices, potential changes to existing credit terms, rating downgrades of investments and reduced valuations of securities generally. In light of these economic conditions, certain of our telecom customers have reduced their spending plans, leading them to draw down their existing inventory and reducing anticipated orders for optical components. Furthermore, it is possible that these customers, or others, will continue to significantly reduce capital expenditures in the near term, draw down their inventories, reduce production levels of existing products, defer introduction of new products or place orders and accept delivery for products for which they do not pay us due to their economic difficulties or other reasons. These actions have, and we expect that they will continue to have an adverse impact on our own revenues, which we anticipate will in any event be reduced in the third quarter of fiscal 2009 as compared to the preceding quarter. In addition, the financial downturn has affected the financial strength of certain of our customers, and could adversely affect others. In particular, Nortel Networks filed for bankruptcy relief on January 14, 2009, and, as a consequence, we have deferred $4.1 million in revenues that might otherwise have been recognized. There can be no assurance that Nortel Networks will continue to purchase our products at previously or currently anticipated levels while it is in insolvency proceedings for reasons including, but not limited to, Nortel s distractions from its core business execution and the reaction of its own customers.

In addition, our suppliers may also be adversely affected by economic conditions that may impact their ability to provide important components used in our manufacturing processes on a timely basis, or at all.

These conditions could also result in reduced capital resources because of reduced credit availability, higher costs of credit and the stretching of payables by creditors seeking to preserve their own cash resources. We are unable to predict the likely duration and severity of the current disruption in financial markets and adverse economic conditions in the U.S. and other countries, but the longer the duration the greater risks we face in operating our business.

Our success will depend on our ability to anticipate and respond to evolving technologies and customer requirements.

The market for telecommunications equipment is characterized by substantial capital investment and diverse and evolving technologies. For example, the market for optical components is currently characterized by a trend toward the adoption of pluggable components and tunable transmitters that do not require the customized interconnections of traditional fixed wavelength gold box devices and the increased integration of components on subsystems. Our ability to anticipate and respond to these and other changes in technology, industry standards, customer requirements and product offerings and to develop and introduce new and enhanced products will be significant factors in our ability to succeed. We expect that new technologies will continue to emerge as competition in the telecommunications industry increases and the need for higher and more cost efficient bandwidth expands. The introduction of new products embodying new technologies or the emergence of new industry standards could render our existing products or products in development uncompetitive from a pricing standpoint, obsolete or unmarketable.

The market for optical components continues to be characterized by excess capacity and intense price competition which has had, and will continue to have, a material adverse effect on our results of operations.

There continues to be excess capacity for many optical components companies, intense price competition among optical component manufacturers and continued consolidation in the industry. As a result of this excess capacity and other industry factors, pricing pressure remains intense. The continued uncertainties in the telecommunications industry and the global economy make it difficult for us to anticipate revenue levels and therefore to make appropriate estimates and plans relating to cost management. Continued uncertain demand for optical components has had, and will continue to have, a material adverse effect on our results of operations.

We depend on a limited number of customers for a significant percentage of our revenues.

Historically, we have generated most of our revenues from a limited number of customers. For example, in the six months ended December 27, 2008, our three largest customers accounted for 36 percent of our revenues. In the fiscal year ended June 28, 2008 and the fiscal year ended June 30, 2007, our three largest customers accounted for 33 percent and 41 percent of our revenues, respectively. Revenues from any of our major customers may decline or fluctuate significantly in the future, which could have an adverse impact on our business and results of operations. For example, we expect that the revenues that we receive from the sale of products to Nortel Networks, which accounted for $5.4 million, or 11 percent, of our total revenues for the three months ended December 27, 2008, may decline in the future as a result of its bankruptcy filing on January 14, 2009. We may not be able to offset any decline in revenues from our existing major customers with revenues from new customers or other existing customers.

We and our telecom customers depend upon a limited number of major telecommunications carriers.

Our dependence on a limited number of customers is due to the fact that the optical telecommunications systems industry is dominated by a small number of large companies. These customers in turn depend primarily on a limited number of major telecommunications carrier customers to purchase their products that incorporate our optical components. Many major telecommunication systems companies and telecommunication carriers are reducing inventories and experiencing losses from operations in light of the current economic conditions. The further consolidation of the industry, coupled with declining revenues from our major customers, may have a material adverse impact on our business.

We typically do not enter into long-term contracts with our customers and our customers may decrease, cancel or delay their buying levels at any time with little or no advance notice to us.

Our customers typically purchase our products pursuant to individual purchase orders. While our customers generally provide us with their expected forecasts for our products several months in advance, in most cases they are not contractually committed to buy any quantity of products beyond those in purchase orders previously submitted to us. Our customers may decrease, cancel or delay purchase orders already in place. If any of our major customers decrease, stop or delay purchasing our products for any reason, our business and results of operations would be harmed. Cancellation or delays of such orders may cause us to fail to achieve our short-term and long-term financial and operating goals and result in excess and obsolete inventory.

As a result of our global operations, our business is subject to currency fluctuations that have adversely affected our results of operations in recent quarters and may continue to do so in the future.

Our financial results have been materially impacted by foreign currency fluctuations and our future financial results may also be materially impacted by foreign currency fluctuations. At certain times in our history, declines in the value of the U.S. dollar versus the U.K. pound sterling have had a major negative effect on our profit margins and our cash flow. Despite our change in domicile from the United Kingdom to the United States in 2004 and the transfer of our assembly and test operations from Paignton, U.K. to Shenzhen, China, a significant portion of our expenses are still denominated in U.K. pounds sterling and substantially all of our revenues are denominated in U.S. dollars. Fluctuations in the exchange rate between these two currencies and, to a lesser extent, other currencies in which we collect revenues and or pay expenses will continue to have a material effect on our operating results. For example, from the end of our fiscal quarter ended December 29, 2007 to the end of our fiscal quarter ended December 27, 2008, the U.S. dollar has appreciated 25.9 percent relative to the U.K. pound sterling, which has favorably impacted our results. If the U.S dollar stays the same or depreciates relative to the U.K. pound sterling in the future, our future financial results may also be materially impacted. Additional exposure could also result should the exchange rate

between the U.S. dollar and the Chinese yuan or Swiss franc vary more significantly than they have to date.

We engage in currency hedging transactions in an effort to cover some of our exposure to U.S. dollar to U.K. pound sterling currency fluctuations, and we may be required to convert currencies to meet our obligations. Under certain circumstances, these transactions could have an adverse effect on our financial condition.

We have significant manufacturing operations in China, which exposes us to risks inherent in doing business in China.

We are taking advantage of the comparatively low costs of operating in China. We have recently transferred substantially all of our assembly and test operations, chip-on-carrier operations and manufacturing and supply chain management operations to our facility in Shenzhen, China, and have also transferred certain iterative research and development related activities from the U.K. to Shenzhen, China. We are also transferring certain non-telecom manufacturing operations from our San Jose, California facility to our Shenzhen facility, which is almost complete. The substantial portions of our assembly and test and related manufacturing operations are now concentrated in our single facility in China. To be successful in China we will need to:

- qualify our manufacturing lines and the products we produce in Shenzhen, as required by our customers;
- attract qualified personnel to operate our Shenzhen facility; and
- retain employees at our Shenzhen facility.

There can be no assurance we will be able to do any of these.

Employee turnover in China is high due to the intensely competitive and fluid market for skilled labor. To operate the facility, and to the extent we are unable to retain our existing workforce, we will need to continue to hire direct manufacturing personnel, administrative personnel and technical personnel; obtain and retain required legal authorization to hire such personnel and incur the time and expense to hire and train such personnel.

Operations in China are subject to greater political, legal and economic risks than our operations in other countries. In particular, the political, legal and economic climate in China, both nationally and regionally, is fluid and unpredictable. Our ability to operate in China may be adversely affected by changes in Chinese laws and regulations such as those related to taxation, import and export tariffs, environmental regulations, land use rights, intellectual property and other matters. In addition, we may not obtain or retain the requisite legal permits to continue to operate in China and costs or operational limitations may be imposed in connection with obtaining and complying with such permits.

We have, in the past, been advised that power may be rationed in the location of our Shenzhen facility, and were power rationing to be implemented, it could have an adverse impact on our ability to complete manufacturing commitments on a timely basis or, alternatively, could require significant investment in generating capacity to sustain uninterrupted operations at the facility, which we may not be able to do successfully.

We intend to continue to export the majority of the products manufactured at our Shenzhen facility. Under current regulations, upon application and approval by the relevant governmental authorities, we will not be subject to certain Chinese taxes and will be exempt from certain duties on imported materials that are used in the manufacturing process and subsequently exported from China as finished products. However, Chinese trade regulations are in a state of flux, and we may become subject to other forms of taxation and duties in China or may be required to pay export fees in the future. In the event that we become subject to new forms of taxation or export fees in China, our business and results of operations could be materially adversely affected. We may also be required to expend greater amounts than we currently anticipate in connection with increasing production at the Shenzhen facility. Any one of the factors cited above, or a combination of them, could result in unanticipated costs, which could materially and adversely affect our business.

Fluctuations in operating results could adversely affect the market price of our common stock.

Our revenues and operating results are likely to fluctuate significantly in the future. The timing of order placement, size of orders and satisfaction of contractual customer acceptance criteria, as well as order or shipment delays or deferrals, with respect to our products, may cause material fluctuations in revenues. Our lengthy sales cycle, which may extend to more than one year for our telecom products, may cause our revenues and operating results to vary from period to period and it may be difficult to predict the timing and amount of any variation. Delays or deferrals in

purchasing decisions by our customers may increase as we develop new or enhanced products for new markets, including data communications, industrial, research, semiconductor capital equipment, military and biotechnology markets. Our current and anticipated future dependence on a small number of customers increases the revenue impact of each such customer s decision to delay or defer purchases from us. Our expense levels in the future will be based, in large part, on our expectations regarding future revenue sources and, as

a result, operating results for any quarterly period in which material orders fail to occur, or are delayed or deferred could vary significantly.

Because of these and other factors, quarter-to-quarter comparisons of our results of operations may not be an indication of future performance. In future periods, results of operations may differ from the estimates of public market analysts and investors. Such a discrepancy could cause the market price of our common stock to decline.

The investment of our cash balance and our investments in marketable debt securities are subject to risks which may cause losses and affect the liquidity of these investments.

At December 27, 2008, we had $35.8 million in cash and cash equivalents (including restricted cash of $0.5 million) and $8.9 million in investments in marketable debt securities. We have historically invested these amounts in U.S. treasury securities and U.S. government agency securities, corporate debt, money market funds, commercial paper and municipal bonds. Certain of these investments are subject to general credit, liquidity, market and interest rate risks. While we do not hold any investments whose value is directly correlated to sub-prime debt, the risks associated with holding certain investments, including some of the investments we hold, have been and may further be exacerbated by U.S. sub-prime mortgage defaults, which have affected various sectors of the financial markets and caused credit and liquidity issues.

In September 2008, Lehman Brothers Holdings Inc., or Lehman, filed a petition under Chapter 11 of the U.S. Bankruptcy Code. At December 27, 2008, we held a Lehman security with par value of $0.8 million. As of January 30, 2008, we do not have an estimate of the recovery value of this security, but we have reduced the carrying value of this security to $0.1 million. For the three and six months ended December 27, 2008, we have recorded impairment charges for the Lehman security of $0.1 million and $0.7 million, respectively, which are included in other expense in our accompanying condensed consolidated statement of operations.

There may be further declines in the value of our short-term investments, which we may determine to be other-than-temporary. These market risks associated with our investment portfolio may have a negative adverse effect on our results of operations, liquidity and financial condition.

We may record impairment charges which would adversely impact our results of operations.

We review our goodwill, intangible assets and long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amounts of these assets may not be recoverable, and also review goodwill annually in accordance with SFAS No. 142, Goodwill and Other Intangibles. During the six month period ended December 27, 2008, we observed indicators of potential impairment of our goodwill, including the impact of the current general economic downturn on our future prospects and the continued decline of our current market capitalization, which caused us to conduct a preliminary interim goodwill impairment analysis. Our management has determined, in our preliminary goodwill impairment analysis, that our goodwill was in fact impaired, and as a result we have recorded a preliminary estimate of $7.9 million for the impairment loss in our statements of operations for the three and six months ended December 27, 2008. The goodwill was derived from our previous acquisitions. This $7.9 million is only a preliminary estimate. We are continuing to evaluate the impairment of our goodwill, and the amount of the actual impairment charge may vary materially from this initial estimate. We expect that we will complete the full evaluation of the impairment analysis during the quarter ending March 28, 2009.

During the year ended June 30, 2007, we designated the assets underlying our Paignton, U.K. manufacturing site as held for sale and subsequently sold the site to a third party for proceeds of £4.8 million (approximately $9.4 million based on an exchange rate of $1.96 to £1.00 in effect on the date of sale), net of selling costs. In connection with this designation we recorded an impairment charge of $1.9 million. During the fiscal year ended July 1, 2006, in connection with a review of our long-lived assets for impairment, we recorded $433,000 of impairment charges.

In the event that we determine in a future period that impairment of our intangible assets or long-lived assets exists for any reason, we would record an impairment charge in the period such determination is made, which would adversely impact our financial position and results of operations.

We may incur additional significant restructuring charges that will adversely affect our results of operations.

Over the past eight years, we have enacted a series of restructuring plans and cost reduction plans designed to reduce our manufacturing overhead and our operating expenses. In 2001, we reduced manufacturing overhead and our operating expenses in response to the initial decline in demand in the optical components industry. In connection with

our acquisitions of the optical components business of Nortel Networks in November 2002 and New Focus in March 2004, we enacted

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restructuring plans related to the consolidation of our operations, which we expanded in September 2004 to include the transfer of our main corporate functions, including consolidated accounting, financial reporting, tax and treasury, from Abingdon, U.K. to our U.S. headquarters in San Jose, California.

In May, September and December 2004, we announced restructuring plans, including the transfer of our assembly and test operations from Paignton, U.K. to Shenzhen, China, along with reductions in research and development and selling, general and administrative expenses. These cost reduction efforts were expanded in November 2005 to include the transfer of our chip-on-carrier assembly from Paignton to Shenzhen. The transfer of these operations was completed in the quarter ended March 31, 2007. In May 2006, we announced further cost reduction plans, which included transitioning all remaining manufacturing support and supply chain management, along with pilot line production and production planning, from Paignton to Shenzhen. This was substantially completed in the quarter ended June 30, 2007. We have spent an aggregate of $32.8 million on these restructuring programs.

On January 31, 2007, we adopted an overhead cost reduction plan which included workforce reductions, facility and site consolidation of our Caswell, U.K. semiconductor operations within our existing U.K. facilities and the transfer of certain research and development activities to our Shenzhen facility. We have incurred expenses of $7.7 million with respect to this cost reduction plan, the substantial portion being personnel severance and retention related expenses.

We plan on taking further advantage of the relatively lower operating costs in our Shenzhen facility by completing the transfer of most of the manufacturing operations from our San Jose, California non-telecom facility to Shenzhen over the next quarter. The substantial portion of the restructuring charges incurred were for personnel related severance and retention costs.

We may incur charges in excess of amounts currently estimated for these restructuring and cost reduction plans. We may incur additional charges in the future in connection with future restructurings and cost reduction plans. Additionally, if the merger with Avanex is completed, we expect that we will incur an aggregate of approximately $7.0 million in restructuring expenses. These charges, along with any other charges, have adversely affected, and will continue to adversely affect, our results of operations for the periods in which such charges have been, or will be, incurred.

Our results of operations may suffer if we do not effectively manage our inventory, and we may incur inventory-related charges.

We need to manage our inventory of component parts and finished goods effectively to meet changing customer requirements. Accurately forecasting customers product needs is difficult. Some of our products and supplies have in the past, and may in the future, become obsolete while in inventory due to rapidly changing customer specifications or a decrease in customer demand. If we are not able to manage our inventory effectively, we may need to write down the value of some of our existing inventory or write off non-saleable or obsolete inventory, which would adversely affect our results of operations. We have from time to time incurred significant inventory-related charges. Any such charges we incur in future periods could significantly adversely affect our results of operations.

Bookham Technology plc may not be able to utilize tax losses and other tax attributes against the receivables that arise as a result of its transaction with Deutsche Bank.

On August 10, 2005, Bookham Technology plc purchased all of the issued share capital of City Leasing (Creekside) Limited, a subsidiary of Deutsche Bank. Creekside was entitled to receivables of £73.8 million (approximately $135.8 million, based on an exchange rate of $1.84 to £1.00 on September 2, 2005) from Deutsche Bank in connection with certain aircraft subleases and these payments have been applied over a two-year term to obligations of £73.1 million (approximately $134.5 million) owed to Deutsche Bank. As a result of the completion of these transactions, Bookham Technology plc has had available through Creekside cash of approximately £6.63 million (approximately $12.2 million). We expect Bookham Technology plc to utilize certain expected tax losses and other tax attributes to reduce the taxes that might otherwise be due by Creekside as the receivables are paid. In the event that Bookham Technology plc is not able to utilize these tax losses and other tax attributes when U.K. tax returns are filed for the relevant periods (or these tax losses and other tax attributes do not arise), Creekside may have to pay taxes, reducing the cash available from Creekside. In the event there is a future change in applicable U.K. tax law, Creekside and in turn Bookham Technology plc, would be responsible for any resulting tax liabilities, which amounts could be material to our financial condition or operating results.

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Our products are complex and may take longer to develop than anticipated and we may not recognize revenues from new products until after long field testing and customer acceptance periods.

Many of our new products must be tailored to customer specifications. As a result, we are developing new products and using new technologies in those products. For example, while we currently manufacture and sell discrete gold box technology, we expect that many of our sales of gold box technology will soon be replaced by pluggable modules. New products or modifications to existing products often take many quarters to develop because of their complexity and because customer specifications sometimes change during the development cycle. We often incur substantial costs associated with the research and development and sales and marketing activities in connection with products that may be purchased long after we have incurred the costs associated with designing, creating and selling such products. In addition, due to the rapid technological changes in our market, a customer may cancel or modify a design project before we begin large-scale manufacture of the product and receive revenue from the customer. It is unlikely that we would be able to recover the expenses for cancelled or unutilized design projects. It is difficult to predict with any certainty, particularly in the present economic climate, the frequency with which customers will cancel or modify their projects, or the effect that any cancellation or modification would have on our results of operations.

If our customers do not qualify our manufacturing lines or the manufacturing lines of our subcontractors for volume shipments, our operating results could suffer.

Most of our customers do not purchase products, other than limited numbers of evaluation units, prior to qualification of the manufacturing line for volume production. Our existing manufacturing lines, as well as each new manufacturing line, must pass through varying levels of qualification with our customers. Our manufacturing lines have passed our qualification standards, as well as our technical standards. However, our customers also require that we pass their specific qualification standards and that we, and any subcontractors that we may use, be registered under international quality standards. In addition, we have in the past, and may in the future, encounter quality control issues as a result of relocating our manufacturing lines or introducing new products to fill production. We may be unable to obtain customer qualification of our manufacturing lines or we may experience delays in obtaining customer qualification of our manufacturing lines. Such delays or failure to obtain qualifications would harm our operating results and customer relationships.

Delays, disruptions or quality control problems in manufacturing could result in delays in product shipments to customers and could adversely affect our business.

We may experience delays, disruptions or quality control problems in our manufacturing operations or the manufacturing operations of our subcontractors. As a result, we could incur additional costs that would adversely affect gross margins, and product shipments to our customers could be delayed beyond the shipment schedules requested by our customers, which would negatively affect our revenues, competitive position and reputation. Furthermore, even if we are able to deliver products to our customers on a timely basis, we may be unable to recognize revenues at the time of delivery based on our revenue recognition policies. For example, at December 27, 2008, we have deferred an aggregate of $5.4 million in revenue for products delivered to two of our customers due our uncertainty about the collectability of these amounts.

We may experience low manufacturing yields.

Manufacturing yields depend on a number of factors, including the volume of production due to customer demand and the nature and extent of changes in specifications required by customers for which we perform design-in work. Higher volumes due to demand for a fixed, rather than continually changing, design generally results in higher manufacturing yields, whereas lower volume production generally results in lower yields. In addition, lower yields may result, and have in the past resulted, from commercial shipments of products prior to full manufacturing qualification to the applicable specifications. Changes in manufacturing processes required as a result of changes in product specifications, changing customer needs and the introduction of new product lines have historically caused, and may in the future cause, significantly reduced manufacturing yields, resulting in low or negative margins on those products. Moreover, an increase in the rejection rate of products during the quality control process, before, during or after manufacture, results in lower yields and margins. Finally, manufacturing yields and margins can also be lower if we receive or inadvertently use defective or contaminated materials from our suppliers.

We depend on a limited number of suppliers who could disrupt our business if they stopped, decreased or delayed shipments.

We depend on a limited number of suppliers of raw materials and equipment used to manufacture our products. Some of these suppliers are sole sources. We typically have not entered into long-term agreements with our suppliers and, therefore,

these suppliers generally may stop supplying us materials and equipment at any time. Our reliance on a sole supplier or limited number of suppliers could result in delivery problems, reduced control over product pricing and quality, and an inability to identify and qualify another supplier in a timely manner. In addition, given the current macroeconomic downturn, some of our suppliers that may be small or undercapitalized may experience financial difficulties that could prevent them from supplying us materials and equipment. Any supply deficiencies relating to the quality or quantities of materials or equipment we use to manufacture our products could adversely affect our ability to fulfill customer orders and our results of operations.

Our intellectual property rights may not be adequately protected.

Our future success will depend, in large part, upon our intellectual property rights, including patents, copyrights, design rights, trade secrets, trademarks, know-how and continuing technological innovation. We maintain an active program of identifying technology appropriate for patent protection. Our practice is to require employees and consultants to execute non-disclosure and proprietary rights agreements upon commencement of employment or consulting arrangements. These agreements acknowledge our exclusive ownership of all intellectual property developed by the individuals during their work for us and require that all proprietary information disclosed will remain confidential. Although such agreements may be binding, they may not be enforceable in full or in part in all jurisdictions and any breach of a confidentiality obligation could have a very serious effect on our business and the remedy for such breach may be limited.

Our intellectual property portfolio is an important corporate asset. The steps we have taken and may take in the future to protect our intellectual property may not adequately prevent misappropriation or ensure that others will not develop competitive technologies or products. We cannot assure investors that our competitors will not successfully challenge the validity of our patents or design products that avoid infringement of our proprietary rights with respect to our technology. There can be no assurance that other companies are not investigating or developing other similar technologies, that any patents will be issued from any application pending or filed by us or that, if patents are issued, the claims allowed will be sufficiently broad to deter or prohibit others from marketing similar products. In addition, we cannot assure investors that any patents issued to us will not be challenged, invalidated or circumvented, or that the rights under those patents will provide a competitive advantage to us. Further, the laws of certain regions in which our products are or may be developed, manufactured or sold, including Asia-Pacific, Southeast Asia and Latin America, may not protect our products and intellectual property rights to the same extent as the laws of the United States, the U.K. and continental European countries. This is especially relevant now that we have transferred certain non-telecom manufacturing activities from our San Jose, California facility and transferred all of our assembly and test operations and chip-on-carrier operations, including certain engineering related functions, from our facilities in the U.K. to Shenzhen, China and as our competitors establish manufacturing operations in China to take advantage of comparatively low manufacturing costs.

Our products may infringe the intellectual property rights of others which could result in expensive litigation or require us to obtain a license to use the technology from third parties, or we may be prohibited from selling certain products in the future.

Companies in the industry in which we operate frequently receive claims of patent infringement or infringement of other intellectual property rights. We have, from time to time, received such claims, including from competitors and from companies that have substantially more resources than us.

For example, on March 4, 2008, we filed a declaratory judgment complaint captioned *Bookham, Inc. v. JDS Uniphase Corp. and Agility Communications, Inc.*, Civil Action No. 5:08-CV-01275-RMW, in the United States District Court for the Northern District of California, San Jose Division. Our complaint seeks declaratory judgments that our tunable laser products do not infringe any valid, enforceable claim of U.S. Patent Nos. 6,658,035, 6,654,400 and 6,687,278, and that all claims of the aforementioned patents are invalid and unenforceable. Our complaint also contains affirmative claims for relief against JDS Uniphase Corp. and Agility Communications, Inc. for statutory unfair competition, and for intentional interference with economic advantage.

On July 21, 2008, JDS Uniphase Corp. and Agility Communications, Inc. answered our complaint and asserted counterclaims against Bookham for infringement of U.S. Patent Nos. 6,658,035, 6,654,400 and 6,687,278, which JDS Uniphase Corp. acquired from Agility Communications, Inc. On October 6, 2008, JDS Uniphase Corp. indicated that

its infringement claims are directed at Bookham s LamdaFlex™ TL500 VCJ; TL5000VLJ; TL3000; TL7000; TL8000 and TL9000 products. JDS Uniphase Corp. seeks unspecified compensatory damages, treble damages and attorneys fees from Bookham, and an order enjoining Bookham from future infringement of the patents-in-suit. This litigation has been stayed due to JDS Uniphase Corp. s commencement of a U.S. International Trade Commission Investigation, which is described below.

On November 7, 2008, JDS Uniphase Corp. petitioned the U.S. International Trade Commission to commence an investigation into alleged violations by Bookham of Section 337 of the Tariff Act of 1930. On December 8, 2008, the U.S. International Trade Commission commenced investigation No. 337-TA-662 into Bookham s alleged importation into the United States, sale for importation, and sale within the United States after importation of tunable laser chips, assemblies, and products containing the same that infringe U.S. Patent Nos. 6,658,035 and 6,687,278. JDS Uniphase Corp. seeks a general exclusion order prohibiting the importation of any Bookham tunable laser chip, assembly, or product containing the same that infringes any claim of the aforementioned patents, as well as an order prohibiting sales after importation into the United States of any allegedly infringing products. The U.S. International Trade Commission has adopted a target completion date of March 19, 2010 for the investigation, and indicated that a final initial determination should be filed by November 19, 2009. Any adverse ruling by the U.S. International Trade Commission, including an exclusion order that could prohibit us from importing into the United States tunable laser chips, assemblies, or products containing the same, or prolonged litigation may have an adverse effect on our business and any resolution may not be in our favor.

Third parties may in the future assert claims against us concerning our existing products or with respect to future products under development. We have entered into and may in the future enter into indemnification obligations in favor of some customers that could be triggered upon an allegation or finding that we are infringing other parties proprietary rights. If we do infringe a third party s rights, we may need to negotiate with holders of those rights relevant to our business. We have from time to time received notices from third parties alleging infringement of their intellectual property and where appropriate have entered into license agreements with those third parties with respect to that intellectual property. We may not in all cases be able to resolve allegations of infringement through licensing arrangements, settlement, alternative designs or otherwise. We may take legal action to determine the validity and scope of the third-party rights or to defend against any allegations of infringement. In times of economic turmoil, such as we are currently experiencing, holders of intellectual property rights have been more aggressive in alleging infringement of those intellectual property rights and we may be the subject to such claims asserted by a third party. In the course of pursuing any of these means or defending against any lawsuits filed against us, we could incur significant costs and diversion of our resources. Due to the competitive nature of our industry, it is unlikely that we could increase our prices to cover such costs. In addition, such claims could result in significant penalties or injunctions that could prevent us from selling some of our products in certain markets or result in settlements that require payment of significant royalties that could adversely affect our ability to price our products profitably.

If we fail to obtain the right to use the intellectual property rights of others necessary to operate our business, our ability to succeed will be adversely affected.

Certain companies in the telecommunications and optical components markets in which we sell our products have experienced frequent litigation regarding patent and other intellectual property rights. Numerous patents in these industries are held by others, including academic institutions and our competitors. Optical component suppliers may seek to gain a competitive advantage or other third parties, inside or outside our market, may seek an economic return on their intellectual property portfolios by making infringement claims against us. In the future, we may need to obtain license rights to patents or other intellectual property held by others to the extent necessary for our business. Unless we are able to obtain such licenses on commercially reasonable terms, patents or other intellectual property held by others could be used to inhibit or prohibit our production and sale of existing products and our development of new products for our markets. Licenses granting us the right to use third-party technology may not be available on commercially reasonable terms, if at all. Generally, a license, if granted, would include payments of up-front fees, ongoing royalties or both. These payments or other terms could have a significant adverse impact on our operating results. In addition, in the event we are granted such a license it is likely such license would be non-exclusive and other parties, including competitors, may be able to utilize such technology. Our larger competitors may be able to obtain licenses or cross-license their technology on better terms than we can, which could put us at a competitive disadvantage.

The markets in which we operate are highly competitive, which could result in lost sales and lower revenues.

The market for fiber optic components and modules is highly competitive and such competition could result in our existing customers moving their orders to competitors. We are aware of a number of companies that have developed

or are developing optical component products, including tunable lasers, pluggables and thin film filter products, among others, that compete directly with our current and proposed product offerings. Certain of our competitors may be able to more quickly and effectively:

- respond to new technologies or technical standards;
- react to changing customer requirements and expectations;

devote needed resources to the development, production, promotion and sale of products; and

deliver competitive products at lower prices.

Many of our current competitors, as well as a number of our potential competitors, have longer operating histories, greater name recognition, broader customer relationships and industry alliances and substantially greater financial, technical and marketing resources than we do. In addition, market leaders in industries such as semiconductor and data communications, who may also have significantly more resources than we do, may in the future enter our market with competing products. All of these risks may be increased if the market were to further consolidate through mergers or other business combinations between competitors.

We may not be able to compete successfully with our competitors and aggressive competition in the market may result in lower prices for our products or decreased gross margins. Any such development would have a material adverse effect on our business, financial condition and results of operations.

We generate a significant portion of our revenues internationally and therefore are subject to additional risks associated with the extent of our international operations.

For the six months ended December 27, 2008 and for the years ended June 28, 2008 and June 30, 2007, 27 percent, 25 percent and 23 percent of our revenues, respectively, were derived in the United States and 73 percent, 75 percent and 77 percent of our revenues, respectively, were derived outside the United States. We are subject to additional risks related to operating in foreign countries, including:

currency fluctuations, which could result in increased operating expenses and reduced revenues;

greater difficulty in accounts receivable collection and longer collection periods;

difficulty in enforcing or adequately protecting our intellectual property;

foreign taxes;

political, legal and economic instability in foreign markets; and

foreign regulations.

Any of these risks, or any other risks related to our foreign operations, could materially adversely affect our business, financial condition and results of operations.

We may be faced with product liability claims.

Despite quality assurance measures, defects may occur in our products. The occurrence of any defects in our products could give rise to liability for damages caused by such defects, including consequential damages. Such defects could, moreover, impair the market s acceptance of our products. Both could have a material adverse effect on our business and financial condition. In addition, we may assume product warranty liabilities related to companies we acquire, which could have a material adverse effect on our business and financial condition. In order to mitigate the risk of liability for damages, we carry product liability insurance with a $26 million aggregate annual limit and errors and omissions insurance with a $5 million annual limit. We cannot assure investors that this insurance would adequately cover any or a portion of our costs arising from any defects in our products or otherwise.

If we fail to attract and retain key personnel, our business could suffer.

Our future depends, in part, on our ability to attract and retain key personnel. Competition for highly skilled technical people is extremely intense and we continue to face difficulty identifying and hiring qualified engineers in many areas of our business. We may not be able to hire and retain such personnel at compensation levels consistent with our existing compensation and salary structure. Our future success also depends on the continued contributions of our executive management team and other key management and technical personnel, each of whom would be difficult to replace. The loss of services of these or other executive officers or key personnel or the inability to continue to attract qualified personnel could have a material adverse effect on our business.

Similar to other technology companies, we rely upon stock options and other forms of equity-based compensation as key components of our executive and employee compensation structure. Historically, these components have been critical to our ability to retain important personnel and offer competitive compensation packages. Without these components, we would be required to significantly increase cash compensation levels (or develop alternative compensation structures) in order to retain our key employees. Accounting rules relating to the expensing of equity compensation may cause us to substantially reduce, modify, or even eliminate, all or portions of our equity compensation programs which may, in turn, prevent us from retaining or hiring qualified employees and declines in our stock price could reduce or eliminate the retentive effects of our equity compensation programs.

We may not be able to raise capital when desired on favorable terms, or at all, or without dilution to our stockholders.

The rapidly changing industry in which we operate, the length of time between developing and introducing a product to market and frequent changing customer specifications for products, among other things, makes our prospects difficult to evaluate. It is possible that we may not generate sufficient cash flow from operations or otherwise have sufficient capital resources to meet our future capital needs. If this occurs, we may need additional financing to execute on our current or future business strategies.

In the past, we have sold shares of our common stock in public offerings, private placements or otherwise in order to fund our operations. On November 13, 2007, we completed a public offering of 16,000,000 shares of common stock that generated $40.9 million of cash, net of underwriting commissions and expenses. On March 22, 2007, pursuant to a private placement, we issued 13,640,224 shares of common stock and warrants to purchase up to 4,092,066 shares of common stock. In September 2006, pursuant to a private placement, we issued an aggregate of 11,594,667 shares of common stock and warrants to purchase an aggregate of 2,898,667 shares of common stock.

If we raise funds through the issuance of equity or convertible debt securities, our stockholders may be significantly diluted, and these newly-issued securities may have rights, preferences or privileges senior to those of securities held by existing stockholders. We cannot assure you that additional financing will be available on terms favorable to us, or at all. If adequate funds are not available or are not available on acceptable terms, if and when needed, our ability to fund our operations, develop or enhance our products, or otherwise respond to competitive pressures could be significantly limited.

Risks Related to Regulatory Compliance and Litigation

Our business involves the use of hazardous materials, and we are subject to environmental and import/export laws and regulations that may expose us to liability and increase our costs.

We historically handled small amounts of hazardous materials as part of our manufacturing activities and now handle more and different hazardous materials as a result of the manufacturing processes related to the New Focus division of our non-telecom segment, the optical components business acquired from Nortel Networks and the product lines we acquired from Marconi. Consequently, our operations are subject to environmental laws and regulations governing, among other things, the use and handling of hazardous substances and waste disposal. We may incur costs to comply with current or future environmental laws. As with other companies engaged in manufacturing activities that involve hazardous materials, a risk of environmental liability is inherent in our manufacturing activities, as is the risk that our facilities will be shut down in the event of a release of hazardous waste, or that we would be subject to extensive monetary liability. The costs associated with environmental compliance or remediation efforts or other environmental liabilities could adversely affect our business. Under applicable EU regulations, we, along with other electronics component manufacturers, are prohibited from using lead and certain other hazardous materials in our products. We have incurred unanticipated expenses in connection with the related reconfiguration of our products, and could lose business or face product returns if we failed to implement these requirements properly or on a timely basis.

In addition, the sale and manufacture of certain of our products require on-going compliance with governmental security and import/export regulations. Our New Focus division has, in the past, been notified of potential violations of certain export regulations which on one occasion resulted in the payment of a fine to the U.S. federal government. We may, in the future, be subject to investigation which may result in fines for violations of security and import/export regulations. Furthermore, any disruptions of our product shipments in the future, including disruptions as a result of efforts to comply with governmental regulations, could adversely affect our revenues, gross margins and

results of operations.

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Litigation regarding Bookham Technology plc s and New Focus initial public offering and follow-on offering and any other litigation in which we become involved, including as a result of acquisitions or the arrangements we have with suppliers and customers, may substantially increase our costs and harm our business.

On June 26, 2001, a putative securities class action captioned Lanter v. New Focus, Inc. et al., Civil Action No. 01-CV-5822 was filed against New Focus and several of its officers and directors, or the Individual Defendants, in the United States District Court for the Southern District of New York. Also named as defendants were Credit Suisse First Boston Corporation, Chase Securities, Inc., U.S. Bancorp Piper Jaffray, Inc. and CIBC World Markets Corp., or the Underwriter Defendants, the underwriters in New Focus s initial public offering. Three subsequent lawsuits were filed containing substantially similar allegations. These complaints have been consolidated.

On November 7, 2001, a Class Action Complaint was filed against Bookham Technology plc and others in the United States District Court for the Southern District of New York. On April 19, 2002, plaintiffs filed an Amended Class Action Complaint, described below. The Amended Class Action Complaint names as defendants Bookham Technology plc, Goldman, Sachs & Co. and FleetBoston Robertson Stephens, Inc., two of the underwriters of Bookham Technology plc s initial public offering in April 2000, and Andrew G. Rickman, Stephen J. Cockrell and David Simpson, each of whom was an officer and/or director at the time of Bookham Technology plc s initial public offering.

Various plaintiffs have filed similar actions asserting virtually identical allegations against more than 300 other public companies, their underwriters, and their officers and directors arising out of each company s public offering. These actions, including the action against New Focus and the action against Bookham Technology plc, have been coordinated for pretrial purposes and captioned In re Initial Public Offering Securities Litigation, 21 MC 92.

On April 19, 2002, plaintiffs filed a Consolidated Amended Class Action Complaint in the New Focus action and an Amended Class Action Complaint in the Bookham Technology plc action (together, the Amended Class Action Complaints). The Amended Class Action Complaints assert claims under certain provisions of the securities laws of the United States. They allege, among other things, that the prospectuses for Bookham Technology plc s and New Focus s initial public offerings were materially false and misleading in describing the compensation to be earned by the underwriters in connection with the offerings, and in not disclosing certain alleged arrangements among the underwriters and initial purchasers of ordinary shares, in the case of Bookham Technology plc, or common stock, in the case of New Focus, from the underwriters. The Amended Class Action Complaints seek unspecified damages (or, in the alternative, rescission for those class members who no longer hold our or New Focus common stock), costs, attorneys fees, experts fees, interest and other expenses. In October 2002, the Individual Defendants were dismissed, without prejudice, from the action subject to their execution of tolling agreements. In July 2002, all defendants filed Motions to Dismiss the Amended Class Action Complaints. The motions were denied as to Bookham Technology plc and New Focus in February 2003. Special committees of the board of directors authorized the companies to negotiate a settlement of pending claims substantially consistent with a memorandum of understanding negotiated among class plaintiffs, all issuer defendants and their insurers.

The plaintiffs and most of the issuer defendants and their insurers entered into a stipulation of settlement for the claims against the issuer defendants, including Bookham Technology plc and New Focus. This stipulation of settlement was subject to, among other things, certification of the underlying class of plaintiffs. Under the stipulation of settlement, the plaintiffs would dismiss and release all claims against participating defendants in exchange for a payment guaranty by the insurance companies collectively responsible for insuring the issuers in the related cases, and the assignment or surrender to the plaintiffs of certain claims the issuer defendants may have against the underwriters. On February 15, 2005, the District Court issued an Opinion and Order preliminarily approving the settlement provided that the defendants and plaintiffs agree to a modification narrowing the scope of the bar order set forth in the original settlement agreement. The parties agreed to the modification narrowing the scope of the bar order, and on August 31, 2005, the District Court issued an order preliminarily approving the settlement.

On December 5, 2006, following an appeal from the underwriter defendants the United States Court of Appeals for the Second Circuit overturned the District Court s certification of the class of plaintiffs who are pursuing the claims that would be settled in the settlement against the underwriter defendants. Plaintiffs filed a Petition for Rehearing and Rehearing En Banc with the Second Circuit on January 5, 2007 in response to the Second Circuit s decision and have

informed the District Court that they would like to be heard as to whether the settlement may still be approved even if the decision of the Court of Appeals is not reversed. The District Court indicated that it would defer consideration of final approval of the settlement pending plaintiffs request for further appellate review.

On April 6, 2007, the Second Circuit denied plaintiffs petition for rehearing, but clarified that the plaintiffs may seek to certify a more limited class in the District Court. In light of the overturned class certification on June 25, 2007, the District Court signed an Order terminating the settlement. The actions against Bookham Technology plc and New Focus remain stayed while litigation proceeds in six test cases against other companies which involve claims virtually identical to those that have been asserted against Bookham Technology plc and New Focus. On November 13, 2007, the issuer defendants in certain designated focus cases filed a motion to dismiss the second consolidated amended class action complaints that were filed in those cases. On March 26, 2008, the District Court issued an Opinion and Order denying, in large part, the motions to dismiss the amended complaints in the focus cases.

It is uncertain if the litigations will settle. If settlement of the litigations do not occur and litigation against Bookham Technology plc and New Focus continues, the Company believes that both Bookham Technology plc and New Focus have meritorious defenses to the claims made in the Amended Class Action Complaints and therefore believes that such claims will not have a material effect on its financial position, results of operations or cash flows.

The Company has become aware that on February 3, 2009, a complaint was filed in the Alameda County Superior Court of the State of California naming, among others, the Company and Ultraviolet Acquisition Sub, Inc., a wholly-owned subsidiary of the Company, or Merger Sub, in a purported class action lawsuit on behalf of the stockholders of Avanex Corporation. The case is captioned Charlene McCune and Mary Cooksey, individually, and on behalf of all others similarly situated, v. Giovanni Barbarossa, Paul Smith, Vinton Cerf, Joel Smith, Susan Wang, Gregory Dougherty, Dennis Wolf, Avanex Corporation, Bookham, Inc. and Ultraviolet Acquisition Sub, Inc., Case No. RG09434156. The complaint relates to the proposed business combination of the Company and Avanex through a merger of Merger Sub with and into Avanex announced on January 27, 2009. The complaint alleges, among other things, that the individual Avanex director defendants are acting in their own interests at the expense of the Avanex stockholders and that they failed to adequately disclose all material information concerning the proposed transaction. The complaint further alleges that the individual Avanex director defendants failed to secure adequate consideration in the proposed transaction, are acting contrary to their duty to maximize stockholder value and are violating their fiduciary duties, including their duties of loyalty, good faith, independence and candor. The complaint further alleges that defendants Avanex, the Company and Merger Sub aided and abetted the individual Avanex director defendants breaches of fiduciary duties. The plaintiffs seek, among other things, to enjoin the proposed transaction as well as unspecified damages and costs. An unfavorable outcome in this lawsuit could prevent or delay the consummation of the proposed transaction, result in substantial costs to the Company, or both. It is also possible that other, similar stockholder lawsuits may yet be filed. The Company cannot estimate any possible loss from this or future litigation at this time.

Litigation is subject to inherent uncertainties, and an adverse result in these or other matters that may arise from time to time could have a material adverse effect on our business, results of operations and financial condition. Any litigation to which we are subject may be costly and, further, could require significant involvement of our senior management and may divert management s attention from our business and operations.

Some anti-takeover provisions contained in our charter, by-laws and under Delaware law could hinder business combinations with third parties.

We are subject to the provisions of Section 203 of the General Corporation Law of the State of Delaware prohibiting, under some circumstances, publicly-held Delaware corporations from engaging in business combinations with some stockholders for a specified period of time without the approval of the holders of substantially all of our outstanding voting stock. Our certificate of incorporation and bylaws contain provisions relating to the limitations of liability and indemnification of our directors and officers, dividing our board of directors into three classes of directors serving staggered three year terms and providing that our stockholders can take action only at a duly called annual or special meeting of stockholders. In addition, our certificate of incorporation authorizes us to issue up to 5,000,000 shares of preferred stock with designations, rights and preferences determined from time-to-time by our board of directors. All of these provisions could delay or impede the removal of incumbent directors and could make more difficult a merger, tender offer or proxy contest involving us, even if such events could be beneficial, in the short-term, to the interests of the stockholders. In addition, such provisions could limit the price that some investors might be willing to pay in the future for shares of our common stock.

These provisions also may have the effect of deterring hostile takeovers or delaying changes in control or management of us.

Risks Related to Our Common Stock

A variety of factors could cause the trading price of our common stock to be volatile or decline.

The trading price of our common stock has been, and is likely to continue to be, highly volatile. Many factors could cause the market price of our common stock to rise and fall. In addition to the matters discussed in other risk factors included herein, some of the reasons for the fluctuations in our stock price are:

- fluctuations in our results of operations;
- changes in our business, operations or prospects;
- hiring or departure of key personnel;
- new contractual relationships with key suppliers or customers by us or our competitors;
- proposed acquisitions by us or our competitors;
- financial results that fail to meet public market analysts expectations and changes in stock market analysts recommendations regarding us, other optical technology companies or the telecommunication industry in general;
- future sales of common stock, or securities convertible into or exercisable for common stock;
- adverse judgments or settlements obligating us to pay damages;
- acts of war, terrorism, or natural disasters;

industry, domestic and international market and economic conditions, including the global macroeconomic downturn we are currently experiencing;

low trading volume in our stock;

developments relating to patents or property rights; and

government regulatory changes.

Since Bookham Technology plc s initial public offering in April 2000, Bookham Technology plc s American Depository Shares (ADSs) and ordinary shares, our shares of common stock and the shares of our customers and competitors have experienced substantial price and volume fluctuations, in many cases without any direct relationship to the affected company s operating performance. An outgrowth of this market volatility is the significant vulnerability of our stock price and the stock prices of our customers and competitors to any actual or perceived fluctuation in the strength of the markets we serve, regardless of the actual consequence of such fluctuations. As a result, the market prices for these companies are highly volatile. These broad market and industry factors caused the market price of Bookham Technology plc s ADSs, ordinary shares, and our common stock to fluctuate, and may in the future cause the market price of our common stock to fluctuate, regardless of our actual operating performance or the operating performance of our customers.

If we do not meet the NASDAQ Global Market continued listing requirements, our common stock may be delisted.

As of January 27, 2009, the closing bid price of the Company s common stock on the NASDAQ Global Market was $0.40, which is below the minimum $1.00 per share requirement for continued inclusion on the NASDAQ Global Market pursuant to NASDAQ Marketplace Rule 4450(a)(5), or the Rule. In accordance with the Rule, if the Company s stock price were to remain below $1.00 for a period of 30 consecutive business days, NASDAQ would provide written notification that the Company s securities may be delisted unless the bid price of the Company s common stock closes at $1.00 per share or more for a minimum of 10 consecutive business days within 180 calendar days from such notification.

Given the current extraordinary market conditions, NASDAQ has determined to suspend the bid price and market value of publicly held shares requirements through April 17, 2009. In that regard, on October 16, 2008, NASDAQ filed an immediately effective rule change with the Securities and Exchange Commission, which was subsequently extended by NASDAQ on December 18, 2009, such that companies will not be cited for any new concerns related to bid price or market value of publicly held shares deficiencies. According to NASDAQ, the bid price and market value of publicly held shares requirements will be reinstated on April 20, 2009.

When the Rule is reinstated on April 20, 2009, there can be no assurance that the bid price of the Company s common stock will be above $1.00 per share, or that we will be able to achieve compliance with the Rule within the given compliance period.

We may incur significant costs from class action litigation due to our expected stock volatility.

Our stock price may fluctuate for many reasons, including as a result of public announcements regarding the progress of our product development efforts, the addition or departure of key personnel, variations in our quarterly operating results and changes in market valuations of companies in our industry. Recently, when the market price of a stock has been volatile, as our stock price may be, holders of that stock have occasionally brought securities class action litigation against the company that issued the stock. If any of our stockholders were to bring a lawsuit of this type against us, even if the lawsuit were without merit, we could incur substantial costs defending the lawsuit. The lawsuit could also divert the time and attention of our management. In addition, if the suit were resolved in a manner adverse to us, the damages we could be required to pay may be substantial and would have an adverse impact on our ability to operate our business.

Because we do not intend to pay dividends, stockholders will benefit from an investment in our common stock only if it appreciates in value.

We have never declared or paid any dividends on our common stock. We anticipate that we will retain any future earnings to support operations and to finance the development of our business and do not expect to pay cash dividends

in the foreseeable future. As a result, the success of an investment in our common stock will depend entirely upon any future appreciation in its value. There is no guarantee that our common stock will appreciate in value or even maintain the price at which stockholders have purchased their shares.

We can issue shares of preferred stock that may adversely affect your rights as a stockholder of our common stock.
Our certificate of incorporation authorizes us to issue up to 5,000,000 shares of preferred stock with designations, rights and preferences determined from time-to-time by our board of directors. Accordingly, our board of directors is empowered, without stockholder approval, to issue preferred stock with dividend, liquidation, conversion, voting or other rights superior to those of holders of our common stock. For example, an issuance of shares of preferred stock could:

- adversely affect the voting power of the holders of our common stock;
- make it more difficult for a third party to gain control of us;
- discourage bids for our common stock at a premium;
- limit or eliminate any payments that the holders of our common stock could expect to receive upon our liquidation; or
- otherwise adversely affect the market price of our common stock.

We may in the future issue additional shares of authorized preferred stock at any time.

Item 6. ***Exhibits***

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this Quarterly Report on Form 10-Q, which Exhibit Index is incorporated herein by reference.

SIGNATURE

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

BOOKHAM, INC.

Date: February 5, 2009

By: **/s/ Jerry Turin**
Jerry Turin
Chief Financial Officer
(Principal Financial and Accounting Officer)

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EXHIBIT INDEX

Exhibit Number	Description of Exhibit
2.1(1)	Agreement and Plan of Merger and Reorganization dated January 27, 2009 by and among Bookham Inc., Ultraviolet Acquisition Sub, Inc., and Avanex Corporation
3.1(2)	Amended and Restated By-laws of Bookham, Inc., as amended
3.2(3)	Restated Certificate of Incorporation of Bookham, Inc.
31.1	Certification of Chief Executive Officer Pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer Pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350.
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350.

(1) Previously filed as Exhibit 2.1 to the Registrant s Current Report on Form 8-K (File No. 000-30684) on January 29, 2009, and incorporated herein by reference.

(2) Previously filed as Exhibit 3.1 to the Registrant s 2007 Annual Report on Form 10-K (File No. 000-30684) for the year ended June 30, 2007, and incorporated herein by reference.

(3) Previously filed as Exhibit 3.1 to

the Registrant s Current Report on Form 8-K (File No. 000-30684) on September 10, 2004, and incorporated herein by reference.