

EMBARCADERO TECHNOLOGIES INC

Form 10-Q/A

January 18, 2005

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q/A
Amendment No. 1 to Form 10-Q

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

For the quarterly period ended June 30, 2004.

.. 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 000-30293

EMBARCADERO TECHNOLOGIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

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Delaware
(State or other jurisdiction of
incorporation or organization)

68-0310015
(I.R.S. Employer
Identification No.)

100 CALIFORNIA STREET, SUITE 1200

SAN FRANCISCO, CA 94111

(415) 834-3131

(Address of principal executive offices)

Indicate by check mark whether the registrant (1) 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 shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2 of the Act). Yes No

The number of shares outstanding of the Registrant's Common Stock as of December 31, 2004 was 26,326,813.

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INTRODUCTORY NOTE

The Audit Committee of our Board of Directors recently completed an investigation focused on our revenue recognition practices related to transactions with certain distributors and resellers, principally those of our United Kingdom subsidiary, Embarcadero Europe Ltd. (Embarcadero Europe). Upon completion of this investigation, we concluded that it was necessary to restate certain financial data to properly reflect sales to certain international distributors and resellers on a sell-through basis, which is consistent with our revenue recognition policy, for the quarters ended March 31 and June 30, 2004.

We are today filing amended Forms 10-Q to restate our financial results with respect to the quarterly periods ended March 31 and June 30, 2004. We are also filing our Quarterly Report on Form 10-Q for the quarter ended September 30, 2004, which was delayed during the investigation into the issues surrounding this financial restatement.

Generally, no attempt has been made in this Form 10-Q/A to modify or update other disclosures presented in the original report on Form 10-Q except as required to reflect the effects of the restatement. This Form 10-Q/A generally does not reflect events occurring after the filing of the original Form 10-Q or modify or update those disclosures affected by subsequent events. Information not affected by the restatement is unchanged and reflects the disclosures made at the time of the original filing of the Form 10-Q. Accordingly, this Form 10-Q/A should be read in conjunction with our filings made with the Securities and Exchange Commission subsequent to the filing of the original Form 10-Q, including any amendments to those filings. The following items have been amended as a result of the restatement:

Part I, Item 1, Financial Information, has been revised to reflect the restatement;

Part I, Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations, has been revised to reflect the restatement;

Part I, Item 4, Controls and Procedures; and

Part II, Item 6, Exhibits and Reports on Form 8-K.

Our Chief Executive Officer and Chief Financial Officer have also reissued their certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act.

We are restating our financial results for the three and six months ended March 31 and June 30, 2004, to conform to our internal revenue recognition policies to recognize revenue from sales by distributors and resellers on a sell-through basis, and to correct an error in calculating the amortization of our deferred revenue related to maintenance contracts generated by Embarcadero Europe in the quarter ended June 30, 2004. The restatement excludes revenue previously recognized from certain distributors and resellers, and defers it until all criteria for the recognition of revenue have been satisfied. Further, the restatement corrects an error in calculating the amortization of our deferred revenue related to maintenance contracts generated by Embarcadero Europe. As a result of the restatement, total revenues have decreased by \$181,000 for the quarter ended March 31, 2004, \$366,000 for the quarter ended June 30, 2004, and \$547,000 for the six months ended June 30, 2004; net income has decreased by \$130,000 for the quarter ended March 31, 2004, net loss increased by \$326,000 for the quarter ended June 30, 2004, and net income has decreased by \$456,000 for the six months ended June 30, 2004; and diluted earnings per share has decreased \$0.01 for the quarter ended March 31, 2004, basic and diluted loss per share increased by \$0.01 for the quarter ended June 30, 2004, and basic and diluted earnings per share decreased by \$0.02 for the six months ended June 30, 2004.

None of the adjustments resulting from the restatement has any impact on cash balances for any period. However, our condensed consolidated statements of cash flows have been restated to reflect the restated income and revisions to certain balance sheet accounts. There were no other changes to the cash flows statements.

Additional detail regarding the restatement is discussed below in Note 1 of our Notes to Condensed Consolidated Financial Statements.

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(in thousands, except par value)

(unaudited)

	June 30, 2004	December 31, 2003
	<u> </u>	<u> </u>
	(restated)	
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 51,152	\$ 45,066
Short-term marketable securities	14,592	12,901
Trade accounts receivable, net	7,340	8,237
Prepaid expenses and other current assets	2,026	1,670
Deferred income taxes	465	465
	<u> </u>	<u> </u>
Total current assets	75,575	68,339
Property and equipment, net	3,132	3,259
Goodwill	10,337	10,337
Other intangible assets, net	288	692
Deferred income taxes	3,711	3,711
Other assets, net	2,689	3,692
	<u> </u>	<u> </u>
Total assets	\$ 95,732	\$ 90,030
	<u> </u>	<u> </u>
LIABILITIES AND STOCKHOLDERS EQUITY		
Current Liabilities:		
Accounts payable	\$ 180	\$ 1,011
Accrued liabilities	5,361	5,098
Capital lease obligations	176	
Deferred revenue	13,756	13,219
	<u> </u>	<u> </u>
Total current liabilities	19,473	19,328
Long-term deferred revenue	252	251
Long-term capital lease obligations	309	
Long-term restructuring accrual	2,067	203
	<u> </u>	<u> </u>

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Total liabilities	22,101	19,782
	<u> </u>	<u> </u>
Stockholders' Equity:		
Common stock at \$0.001 par value	28	28
Treasury stock	(6,875)	(6,287)
Additional paid-in capital	84,631	80,145
Accumulated other comprehensive income	304	374
Deferred stock-based compensation	(2,880)	(1,519)
Accumulated deficit	(1,577)	(2,493)
	<u> </u>	<u> </u>
Total stockholders' equity	73,631	70,248
	<u> </u>	<u> </u>
Total liabilities and stockholders' equity	\$ 95,732	\$ 90,030
	<u> </u>	<u> </u>

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

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EMBARCADERO TECHNOLOGIES, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share data)

(unaudited)

	Three months ended		Six months ended	
	June 30,		June 30,	
	2004	2003	2004	2003
	(restated)		(restated)	
Revenues:				
License	\$ 6,260	\$ 6,421	\$ 13,467	\$ 12,768
Maintenance	7,227	6,024	14,264	11,885
Total revenues	13,487	12,445	27,731	24,653
Cost of revenues:				
License	213	105	422	205
Amortization of acquired technology	556	556	1,111	1,111
Maintenance	620	565	1,242	1,153
Total cost of revenues	1,389	1,226	2,775	2,469
Gross profit	12,098	11,219	24,956	22,184
Operating expenses:				
Research and development	3,906	4,016	7,680	7,806
Sales and marketing	5,096	4,844	10,207	9,739
General and administrative	1,543	1,308	2,756	2,610
Restructuring and impairment charges	4,068		4,068	
Total operating expenses	14,613	10,168	24,711	20,155
Income (loss) from operations	(2,515)	1,051	245	2,029
Other income, net	168	159	319	285
Income (loss) before provision for income taxes	(2,347)	1,210	564	2,314
Benefit from (provision for) income taxes	1,167	(463)	352	(671)
Net income (loss)	\$ (1,180)	\$ 747	\$ 916	\$ 1,643
Net income (loss) per share:				
Basic	\$ (0.04)	\$ 0.03	\$ 0.03	\$ 0.06

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Diluted	\$ (0.04)	\$ 0.03	\$ 0.03	\$ 0.06
Shares used in per share calculation:				
Basic	27,394	26,488	27,260	26,569
Diluted	27,394	28,212	29,124	28,244
Non-cash stock-based compensation included in the above expenses:				
Cost of revenues	\$ 2	\$	\$ 2	\$
Research and development	55	3	55	6
Sales and marketing	181	77	330	182
General and administrative	171	97	317	247
	\$ 409	\$ 177	\$ 704	\$ 435

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

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EMBARCADERO TECHNOLOGIES, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)

**Six Months
Ended**

June 30,

2004 2003

(restated)

Cash from Operating Activities: