

Ocean Power Technologies, Inc.

Form 10-Q

December 10, 2008

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
Form 10-Q**

(Mark One)

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

**For the Quarterly Period Ended October 31, 2008**

**Or**

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

**For the Transition Period From \_\_\_\_\_ to \_\_\_\_\_**

**Commission file number: 001-33417**

**OCEAN POWER TECHNOLOGIES, INC.**

*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**

*(State or Other Jurisdiction of  
Incorporation or Organization)*

**22-2535818**

*(I.R.S. Employer  
Identification No.)*

**1590 Reed Road, Pennington, NJ 08534**

*(Address of Principal Executive Offices, Including Zip Code)*

**(609) 730-0400**

*(Registrant's Telephone Number, Including Area Code)*

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

Indicate by check mark whether the registrant is 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  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(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  No

As of November 28, 2008, the number of outstanding shares of common stock of the registrant was 10,210,354.

**OCEAN POWER TECHNOLOGIES, INC.**  
**INDEX TO FORM 10-Q**  
**FOR THE THREE AND SIX MONTHS ENDED OCTOBER 31, 2008**

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PowerBuoy® is a registered trademark of Ocean Power Technologies, Inc. and the Ocean Power Technologies logo is a trademark of Ocean Power Technologies, Inc. All other trademarks appearing in this report are the property of their respective holders.

**Special Note Regarding Forward-Looking Statements**

We have made statements in this Quarterly Report on Form 10-Q that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words may, continue, estimate, intend, plan, will, believe, project, expect, anticipate, expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking.

Any or all of our forward-looking statements in this report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A, Risk Factors, of our Annual Report on Form 10-K for the year ended April 30, 2008 and elsewhere in this report. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events.

**Table of Contents****PART I FINANCIAL INFORMATION****Item 1. FINANCIAL STATEMENTS****Ocean Power Technologies, Inc. and Subsidiaries  
Consolidated Balance Sheets**

|                             | <b>April 30, 2008</b> | <b>October 31,<br/>2008<br/>(Unaudited)</b> |
|-----------------------------|-----------------------|---|
| <b>ASSETS</b>               |                       |   |
| Current assets:             |                       |   |
| Cash and cash equivalents   | \$ 88,836,304         | 11,390,768                                  |
| Short-term investments      |                       | 45,934,653                                  |
| Accounts receivable         | 1,728,637             | 988,285                                     |
| Unbilled receivables        | 577,452               | 951,321                                     |
| Other current assets        | 1,375,249             | 1,343,664                                   |
| Total current assets        | 92,517,642            | 60,608,691                                  |
| Property and equipment, net | 628,454               | 808,307                                     |
| Patents, net                | 717,288               | 785,274                                     |
| Restricted cash             | 1,123,848             | 939,960                                     |
| Long-term investments       | 12,233,437            | 32,285,422                                  |
| Other noncurrent assets     | 330,296               | 1,237,328                                   |
| Total assets                | \$ 107,550,965        | 96,664,982                                  |

**LIABILITIES AND STOCKHOLDERS EQUITY**

|                           |              |           |
|---------------------------|--------------|-----------|
| Current liabilities:      |              |           |
| Accounts payable          | \$ 1,457,575 | 1,231,338 |
| Accrued expenses          | 4,490,008    | 3,616,379 |
| Unearned revenues         | 699,752      | 375,888   |
| Total current liabilities | 6,647,335    | 5,223,605 |
| Long-term debt            | 188,784      | 126,491   |
| Deferred rent             | 16,237       | 18,943    |
| Deferred credits          | 600,000      | 600,000   |
| Total liabilities         | 7,452,356    | 5,969,039 |

Commitments and contingencies (note 11)

Stockholders' equity:

Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding

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|  |                |              |
|--|----------------|--------------|
| Common stock, \$0.001 par value; authorized 105,000,000 shares, issued and outstanding 10,210,354 shares | 10,210         | 10,210       |
| Additional paid-in capital   | 153,057,265    | 153,896,651  |
| Accumulated deficit  | (52,927,641)   | (62,936,507) |
| Accumulated other comprehensive loss   | (41,225)       | (274,411)    |
| Total stockholders' equity   | 100,098,609    | 90,695,943   |
| Total liabilities and stockholders' equity   | \$ 107,550,965 | 96,664,982   |

See accompanying notes to consolidated financial statements (unaudited).

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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Operations**  
**(Unaudited)**

|  | <b>Three Months Ended October</b> |             | <b>Six Months Ended October</b> |              |
|--|-----------------------------------|-------------|---------------------------------|--------------|
|  | <b>31,</b>                        |             | <b>31,</b>                      |              |
|  | <b>2007</b>                       | <b>2008</b> | <b>2007</b>                     | <b>2008</b>  |
| Revenues   | \$ 1,686,212                      | 667,124     | 2,241,916                       | 2,453,752    |
| Cost of revenues   | 1,923,196                         | 1,369,578   | 2,728,188                       | 3,317,724    |
| Gross loss   | (236,984)                         | (702,454)   | (486,272)                       | (863,972)    |
| Operating expenses:  |                                   |             |                                 |              |
| Product development costs  | 1,942,713                         | 2,330,073   | 3,758,447                       | 4,033,022    |
| Selling, general and administrative costs                                    | 1,371,160                         | 2,393,738   | 3,367,762                       | 4,945,554    |
| Total operating expenses   | 3,313,873                         | 4,723,811   | 7,126,209                       | 8,978,576    |
| Operating loss   | (3,550,857)                       | (5,426,265) | (7,612,481)                     | (9,842,548)  |
| Interest income  | 1,343,877                         | 514,446     | 2,788,163                       | 1,062,038    |
| Foreign exchange gain (loss)   | 336,164                           | (1,203,882) | 515,658                         | (1,228,355)  |
| Net loss   | \$ (1,870,816)                    | (6,115,701) | (4,308,660)                     | (10,008,865) |
| Basic and diluted net loss per share   | \$ (0.18)                         | (0.60)      | (0.42)                          | (0.98)       |
| Weighted average shares used to compute basic and diluted net loss per share | 10,192,854                        | 10,210,354  | 10,191,104                      | 10,210,354   |

See accompanying notes to consolidated financial statements (unaudited).

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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Cash Flows**  
**(Unaudited)**

|   | <b>Six Months Ended October 31,</b> |              |
|---|-------------------------------------|--------------|
|   | <b>2007</b>                         | <b>2008</b>  |
| Cash flows from operating activities:                                       |                                     |              |
| Net loss  | \$ (4,308,660)                      | (10,008,865) |
| Adjustments to reconcile net loss to net cash used in operating activities: |                                     |              |
| Foreign exchange (gain) loss  | (515,658)                           | 1,228,355    |
| Depreciation and amortization   | 121,135                             | 144,233      |
| Loss on disposal of equipment   |                                     | 256,378      |
| Treasury note premium amortization  |                                     | 128,093      |
| Compensation expense related to stock option grants and restricted stock    | 1,154,516                           | 879,371      |
| Deferred rent   | 2,706                               | 2,706        |
| Changes in operating assets and liabilities:                                |                                     |              |
| Accounts receivable   | 298,673                             | 538,254      |
| Unbilled receivables  | (810,042)                           | (561,703)    |
| Other current assets  | (673,999)                           | (98,392)     |
| Other noncurrent assets   |                                     | (779,718)    |
| Accounts payable  | (285,200)                           | (56,328)     |
| Accrued expenses  | (1,295,886)                         | (784,535)    |
| Unearned revenues   | 601,082                             | (323,864)    |
| Net cash used in operating activities                                       | (5,711,333)                         | (9,436,015)  |
| Cash flows from investing activities:                                       |                                     |              |
| Purchases of short-term investments   | (8,968,170)                         | (52,845,078) |
| Maturities of short-term investments  | 17,358,316                          | 6,910,425    |
| Purchases of long-term investments  |                                     | (20,180,078) |
| Purchases of equipment  | (98,271)                            | (611,324)    |
| Payments of patent costs  | (36,376)                            | (97,188)     |
| Investments in joint ventures and other noncurrent assets                   | (16,739)                            |              |
| Net cash provided by (used in) investing activities                         | 8,238,760                           | (66,823,243) |
| Cash flows from financing activities:                                       |                                     |              |
| Common stock issuance costs   | (870,116)                           |              |
| Proceeds from exercise of stock options                                     | 53,296                              |              |
| Repayment of long-term debt   |                                     | (42,801)     |
| Net cash used in financing activities                                       | (816,820)                           | (42,801)     |



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|  |                |              |
|--|----------------|--------------|
| Effect of exchange rate changes on cash and cash equivalents | 464,992        | (1,143,477)  |
| Net increase (decrease) in cash and cash equivalents         | 2,175,599      | (77,445,536) |
| Cash and cash equivalents, beginning of period               | 107,505,473    | 88,836,304   |
| Cash and cash equivalents, end of period                     | \$ 109,681,072 | 11,390,768   |

Supplemental disclosure of noncash investing and financing activities:

|  |           |         |
|--|-----------|---------|
| Capitalized purchases of equipment financed through accounts payable and accrued expenses, at period end | \$ 15,181 | 36,906  |
| Capitalized patent costs financed through accounts payable, at period end                                | 18,172    | 25,587  |
| Capitalized investment in joint ventures financed through accrued expenses, at period end                |           | 173,703 |

See accompanying notes to consolidated financial statements (unaudited).

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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements**  
**(Unaudited)**

**(1) Background and Basis of Presentation**

Ocean Power Technologies, Inc. (the Company) was incorporated on April 19, 1984 in New Jersey, commenced active operations in 1994 and re-incorporated in Delaware in April 2007. The Company develops and is commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The Company markets and sells its products in the United States and internationally.

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company's financial results can be found in the Company's Annual Report on Form 10-K for the year ended April 30, 2008 filed with the Securities and Exchange Commission (SEC) and elsewhere in this Form 10-Q.

**(2) Summary of Significant Accounting Policies**

**(a) Consolidation**

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

In addition, the Company evaluates its relationships with other entities to identify whether they are variable interest entities as defined by Financial Accounting Standards Board (FASB) Interpretation No. 46R, *Consolidation of Variable Interest Entities* (FIN 46R), and to assess whether it is the primary beneficiary of such entities. If the determination is made that the Company is the primary beneficiary, then that entity is included in the consolidated financial statements in accordance with FIN 46R.

**(b) Use of Estimates**

The preparation of consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include the recoverability of the carrying amount of property and equipment and patents; valuation allowances for receivables and deferred income tax assets; and percentage of completion of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates.

**(c) Revenue Recognition**

The Company recognizes revenue on government and commercial contracts under the percentage-of-completion method. The percentage of completion is determined by relating the costs incurred to date to the estimated total costs. The cumulative effects resulting from revisions of estimated total contract costs and revenues are recorded in the period in which the facts requiring revision become known. Upon anticipating a loss on a contract, the Company recognizes the full amount of the anticipated loss in the current period. The Company recorded additional provisions related to anticipated losses on contracts of \$221,000 and \$452,000 during the three and six months ended October 31, 2008, respectively. Reserves related to loss contracts in the amounts of approximately \$2,070,000 and \$1,210,000 are included in accrued expenses in the accompanying consolidated balance sheets as of April 30, 2008 and October 31, 2008, respectively.

Unbilled receivables represent expenditures on contracts, plus applicable profit margin, not yet billed. Unbilled receivables are normally billed and collected within one year. Billings made on contracts are recorded as a reduction of unbilled receivables, and to the extent that such billings exceed costs incurred plus applicable profit margin, they are recorded as unearned revenues.



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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**(d) Cash Equivalents**

Cash equivalents consist of investments in short-term financial instruments with maturities of three months or less from the date of purchase. Cash and cash equivalents include \$15,617,000 and \$3,066,000 of certificates of deposit with an initial term of less than three months at April 30, 2008 and October 31, 2008, respectively; \$1,251,000 and \$1,115,000 invested in a money market fund as of April 30, 2008 and October 31, 2008, respectively; and \$70,881,000 and \$4,500,000 invested in Treasury bills as of April 30, 2008 and October 31, 2008, respectively.

**(e) Restricted Cash and Credit Facility**

As of October 31, 2008, the Company had \$939,960 in cash restricted under the terms of a security agreement with Barclays Bank. Under this agreement, the cash is on deposit at Barclays Bank and serves as security for letters of credit which are expected to be issued by Barclays Bank on behalf of Ocean Power Technologies Ltd., the Company's UK subsidiary, under a \$800,000 credit facility established by Barclays Bank for such subsidiary. The credit facility is for the issuance of letters of credit and bank guarantees, and carries a fee of 1% per annum of the amount of any such obligations issued by Barclays Bank. The credit facility does not have an expiration date, and is cancelable at the discretion of the bank.

**(f) Investment Securities**

Short-term investments consist primarily of certificates of deposits and Treasury bills with fixed maturity dates of more than 90 days but less than one year from the date of purchase. Short-term investments included \$6,219,000 of certificates of deposit and \$39,716,000 of Treasury bills at October 31, 2008. Long-term investments consist of Treasury notes with fixed maturity dates of more than one year from the date of purchase. Long-term investments included \$12,233,000 and \$32,285,000 of Treasury notes as of April 30, 2008 and October 31, 2008, respectively.

The Company classifies all of its short-term and long-term investment securities as being held-to-maturity. Held-to-maturity securities are those securities in which the Company has the ability and intent to hold the security until maturity. Held-to-maturity securities are recorded at amortized cost, adjusted for the amortization or accretion of premiums or discounts. A decline in the market value of any held-to-maturity security below cost that is deemed to be other-than-temporary results in an impairment to reduce the carrying amount to fair value. The impairment is charged to earnings and a new cost basis for the security is established. To determine whether an impairment is other-than-temporary, the Company considers whether it has the ability and intent to hold the investment until a market price recovery and considers whether evidence indicating the cost of the investment is recoverable outweighs evidence to the contrary. Premiums and discounts are amortized or accreted over the life of the related security as an adjustment to yield. Such amortization and accretion is included in the Interest income line item in the consolidated statements of operations. Interest income is recognized when earned.

**(g) Property and Equipment**

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives (three to seven years) of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful life of the asset or the remaining lease term. Expenses for maintenance and repairs are charged to operations as incurred. Depreciation expense was \$49,717 and \$63,889 for the three months ended October 31, 2007 and 2008, respectively, and \$108,677 and \$124,491 for the six months ended October 31, 2007 and 2008, respectively.

**(h) Foreign Exchange Gains and Losses**

The Company has invested in certain certificates of deposit and has maintained cash accounts that are denominated in British pound sterling, Euros and Australian dollars. Such certificates of deposit and cash accounts had a balance of approximately \$9,646,000 and \$4,469,000 as of April 30, 2008 and October 31, 2008, respectively. Such positions may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in foreign exchange gain (loss) in the accompanying consolidated statements of operations.

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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**(i) Patents**

External costs related to the filing of patents, including legal and filing fees, are capitalized. Amortization is calculated using the straight-line method over the life of the patents (17 years). Expenses for the development of technology are charged to operations as incurred. Amortization expense was \$7,509 and \$10,818 for the three months ended October 31, 2007 and 2008, respectively, and \$12,458 and \$19,693 for the six months ended October 31, 2007 and 2008, respectively. Amortization expense for the next five fiscal years related to amounts capitalized for patents as of October 31, 2008 is estimated to be approximately \$50,000 per year.

**(j) Long-Lived Assets**

In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment and purchased intangible assets subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, then an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented in the consolidated balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposal group classified as held for sale would be presented separately in the appropriate asset and liability sections of the consolidated balance sheet. The Company reviewed its long-lived assets for indicators of impairment in accordance with SFAS No. 144 and determined that no impairment review of its long-lived assets was necessary for the six months ended October 31, 2008.

**(k) Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash and cash equivalents, bank certificates of deposit and trade receivables. The Company invests its excess cash in highly liquid investments (principally short-term bank deposits, money market funds, commercial paper and Treasury bills) and does not believe that it is exposed to any significant risks related to such investments.

The table below shows the percentage of the Company's revenues derived from customers whose revenues accounted for at least 10% of the Company's consolidated revenues in any of the periods indicated:

| Customer                | Three Months Ended |      | Six Months Ended |      |
|-------------------------|--------------------|------|------------------|------|
|                         | October 31,        |      | October 31,      |      |
|                         | 2007               | 2008 | 2007             | 2008 |
| US Navy                 | 67%                | 65%  | 61%              | 47%  |
| Iberdrola and Total     | 27%                | 14%  | 27%              | 40%  |
| Scottish Executive      | 6%                 | 10%  | 12%              | 9%   |
| US Department of Energy |                    | 11%  |                  | 3%   |

The loss of, or a significant reduction in revenues from, any of these customers could significantly impact the Company's financial position or results of operations. The Company does not require collateral from its customers.

**(l) Net Loss per Common Share**

Basic and diluted net loss per share for all periods presented is computed by dividing net loss by the weighted average number of shares of common stock outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of outstanding stock options, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share, options to purchase 1,531,404 shares of common stock for the three and six months ended October 31, 2007 and 1,653,938 shares of common stock for the three and six months ended October 31, 2008 were excluded from the computations.



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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**(m) Stock-Based Compensation**

On May 1, 2006, the Company adopted the provisions of SFAS No. 123 (revised 2004), *Share-Based Payment* (SFAS No. 123R), which requires that the costs resulting from all share-based payment transactions be recognized in the consolidated financial statements at their fair values. The Company adopted SFAS No. 123R using the modified prospective application method under which the provisions of SFAS No. 123R apply to new awards and to awards modified, repurchased, or canceled after the adoption date. Additionally, compensation cost for the portion of the awards for which the requisite service had not been rendered that were outstanding as of May 1, 2006 will be recognized in the consolidated statements of operations over the remaining service period after such date based on the award's original estimated fair value. The aggregate share-based compensation expense, related to stock options, recorded in the consolidated statements of operations under SFAS No. 123R was approximately \$402,000 and \$379,000 for the three months ended October 31, 2007 and 2008, respectively and \$1,155,000 and \$839,000 for the six months ended October 31, 2007 and 2008, respectively.

**Valuation Assumptions for Options Granted During the Six Months Ended October 31, 2008**

The fair value of each stock option granted during the six months ended October 31, 2008 was estimated at the date of grant using the Black-Scholes option pricing model, assuming no dividends and using the weighted average valuation assumptions noted in the following table. The risk-free rate is based on the US Treasury yield curve in effect at the time of grant. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the simplified method as permitted by the SEC's Staff Accounting Bulletin No. 107, *Share-Based Payment*. Expected volatility was based on historical volatility for a peer group of companies for a period equal to the stock option's expected life, calculated on a daily basis.

|                         |           |           |
|-------------------------|-----------|-----------|
| Valuation Assumptions:  | 2007      | 2008      |
| Risk-free interest rate | 5.0%      | 3.7%      |
| Expected dividend yield | 0.0%      | 0.0%      |
| Expected life           | 6.0 years | 6.2 years |
| Expected volatility     | 77.8%     | 79.4%     |

The above assumptions were used to determine the weighted average per share fair value of \$11.41 and \$6.73 for stock options granted during the six months ended October 31, 2007 and 2008, respectively.

During the six months ended October 31, 2008, 4,992 shares of common stock were awarded to non-employee directors pursuant to annual retainer arrangements. The aggregate share-based compensation expense recorded in the consolidated statement of operations for the six months ended October 31, 2008 related to the shares was approximately \$40,000, which represents the fair value on the date of grant. The shares were not issued as of October 31, 2008, and accordingly the liability was included in accrued expenses.

**(n) Accounting for Income Taxes**

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences and operating loss and tax credit carryforwards are expected to be recovered, settled or utilized. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the statement of operations in the period that includes the enactment date.

**(o) Accumulated Other Comprehensive Loss**

The functional currency for the Company's foreign operations is the applicable local currency. The translation from the applicable foreign currencies to US dollars is performed for balance sheet accounts using the exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The unrealized gains or losses resulting from such translation are included in accumulated other

comprehensive loss within stockholders' equity.



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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
**(Unaudited)**

***(p) Recent Accounting Pronouncements***

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which establishes a framework for reporting fair value and expands disclosures about fair value measurements. SFAS No. 157 as issued is effective for fiscal years beginning after November 15, 2007. On February 12, 2008, FASB Staff Position (FSP) FAS 157-2, *Effective Date of FASB Statement No. 157*, was issued, which delays the effective date to fiscal years beginning after November 15, 2008 for certain nonfinancial assets and liabilities. The Company adopted SFAS No. 157 on May 1, 2008, except for the items covered by FSP FAS 157-2. The adoption of SFAS No. 157 did not have any impact on the Company's consolidated financial statements.

SFAS No. 157 establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

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

Level 2: Inputs, other than the 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 reporting entity to develop its own assumptions.

In February 2008, the FASB issued FSP FAS 157-1, *Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13*. FSP FAS 157-1 amends SFAS No. 157 to exclude certain leasing transactions accounted for under previously existing accounting guidance. This exclusion, however, does not apply to assets acquired and liabilities assumed in a business combination, regardless of whether those assets and liabilities are related to leases. The adoption of FSP FAS 157-1 did not have any impact on the Company's consolidated financial statements.

In October 2008, the FASB issued FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*. FSP FAS 157-3 clarifies the application of SFAS No. 157 when the market for a financial asset is not active. FSP FAS 157-3 was effective upon issuance, including reporting for prior periods for which financial statements have not been issued. The adoption of FSP FAS 157-3 for reporting as of October 31, 2008 did not have any impact on the Company's consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. SFAS No. 159 allows companies to elect to measure certain assets and liabilities at fair value and is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 159 on May 1, 2008 did not have any impact on the Company's consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), *Business Combinations* (SFAS No. 141R), which establishes the principles and requirements for how an acquirer recognizes the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquirer at the acquisition date, measured at their fair values as of that date, with limited exceptions. This statement applies to business combinations for which the acquisition date is after the beginning of the first annual reporting period beginning after December 15, 2008. Earlier adoption is not permitted. The Company will adopt SFAS No. 141R upon its effective date as appropriate for any future business combinations.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. SFAS No. 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be recorded as a component of equity in the consolidated financial statements. This statement also requires that consolidated net income shall be adjusted to include the net income attributed to the noncontrolling interest. Disclosure on the face of the statement of operations of the amounts

of consolidated net income attributable to the parent and to the noncontrolling interest is required. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. Earlier adoption is not permitted. The Company is currently evaluating the impact of SFAS No. 160.

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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
**(Unaudited)**

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities*, which enhances the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) the location and amounts of derivative instruments in an entity's financial statements, (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. The guidance in SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. This statement encourages, but does not require, comparative disclosures for earlier periods at initial adoption. The Company is currently evaluating the impact of SFAS No. 161.

In April 2008, the FASB issued FSP FAS 142-3, *Determination of the Useful Life of Intangible Assets*. FSP FAS 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. FSP FAS 142-3 also adds certain disclosures to those already prescribed in SFAS No. 142. FSP FAS 142-3 is effective as of the beginning of the first fiscal year beginning after December 15, 2008, and early adoption is prohibited. The guidance for determining useful lives must be applied prospectively to intangible assets acquired after the effective date. The disclosure requirements must be applied prospectively to all intangible assets recognized as of the effective date. The Company is currently evaluating the impact of FSP FAS 142-3.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles in the United States. This statement is effective November 15, 2008. The Company does not expect the adoption of SFAS No. 162 to have any impact on its consolidated financial statements.

In September 2008, the FASB issued FSP FAS 133-1 and FIN 45-4, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161*. FSP FAS 133-1 and FIN 45-4 amends SFAS No. 133 to require disclosures by entities that assume credit risk through the sale of credit derivatives including credit derivatives embedded in a hybrid instrument. The intent of these enhanced disclosures is to enable users of financial statements to assess the potential effect on its financial position, financial performance, and cash flows from these credit derivatives. This FSP also amends FASB Interpretation No. 45, *Guarantors Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, to require an additional disclosure about the current status of the payment/performance risk of a guarantee. FSP FAS 133-1 and FIN 45-4 is effective for financial statements issued for fiscal years and interim periods ending after November 15, 2008, with early application encouraged. FSP FAS 133-1 and FIN 45-4 encourages, but does not require, comparative disclosures. The Company expects to adopt FSP FAS 133-1 and FIN 45-4 on January 31, 2009 and does not expect a material impact on its consolidated financial statements.

**(3) Accrued Expenses**

Included in accrued expenses at April 30, 2008 and October 31, 2008 were contract loss reserves of approximately \$2,070,000 and \$1,210,000, respectively, and accrued employee incentive payments of approximately \$572,000 and \$155,000, respectively. Accrued expenses at April 30, 2008 and October 31, 2008 also included legal and accounting fees of approximately \$556,000 and \$327,000, respectively, and accrued employee vacation of \$143,000 and \$167,000, respectively.

**(4) Related-Party Transactions**

In August 1999, the Company entered into a consulting agreement with an individual for marketing services, which currently provides for a rate of \$800 per day of services provided. The individual became a member of the board of directors in June 2006. Under this consulting agreement, the Company expensed approximately \$15,000 and \$21,000

during the three months ended October 31, 2007 and 2008, respectively, and \$31,000 during each of the six-month periods ended October 31, 2007 and 2008.

Also see note 7 for an additional related-party transaction.

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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**(5) Debt**

During the year ended April 30, 2000, the Company received an award of \$250,000 from the State of New Jersey Commission on Science and Technology for the development of a wave power system that was deployed off the coast of New Jersey. The award contract was assigned to the New Jersey Economic Development Authority in fiscal 2008. Under the terms of this award, the Company must repay the amount funded, without interest, by July 15, 2012. The amounts to be repaid each year are determined as a percentage of revenues (as defined in the loan agreement) the Company receives that year from its customer contracts that meet criteria specified in the loan agreement, with any remaining amount due on July 15, 2012. Based upon the terms of the award, the Company has repaid approximately \$61,000 and was required to repay an additional amount of approximately \$63,000 as of October 31, 2008. The total amount of approximately \$124,000 has reduced the Company's long-term debt balance. The current payment required is included in accrued expenses in the accompanying consolidated balance sheet as of October 31, 2008.

**(6) Income Taxes**

The Company adopted the provisions of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, on May 1, 2007. During the six months ended October 31, 2008, the Company had no changes in uncertain tax positions. At October 31, 2008, the Company did not have any unrecognized tax benefits as a result of uncertain tax positions. The Company has net operating loss carryforwards that originated in years dating back to the tax year ended April 30, 1994. The tax years April 30, 1994 through April 30, 2008 remain open to examination by the major taxing jurisdictions to which the Company is subject.

**(7) Deferred Credits**

During the year ended April 30, 2001, in connection with the sale of common stock to an investor, the Company received \$600,000 from the investor in exchange for an option to purchase up to 500,000 metric tons of carbon emissions credits generated by the Company during the years 2008 through 2012, at a 30% discount from the then-prevailing market rate. This amount has been recorded as a deferred credit in the accompanying consolidated balance sheets as of April 30, 2008 and October 31, 2008. If, by December 31, 2012, the Company does not become entitled under applicable laws to the full amount of emission credits covered by the option, the Company is obligated to return the option fee of \$600,000, less the aggregate discount on any emission credits sold to the investor prior to such date. If the Company receives emission credits under applicable laws and fails to sell to the investor the credits up to the full amount of emission credits covered by the option, the investor is entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits). The Company has not received or sold any emission credits as of October 31, 2008.

**(8) Common Stock**

On April 30, 2007, the Company completed an initial public offering in the United States on The NASDAQ Global Market by issuing 5,000,000 shares of its common stock for a purchase price of \$20.00 per share, resulting in net proceeds to the Company of approximately \$89,900,000.

**(9) Preferred Stock**

In September 2003, the Company's stockholders authorized 5,000,000 shares of undesignated preferred stock with a par value of \$0.001 per share. At April 30, 2008 and October 31, 2008, no shares of preferred stock had been issued.

**(10) Stock Options**

Prior to August 2001, the Company maintained qualified and nonqualified stock option plans. The Company had reserved 467,640 shares of common stock for issuance under these plans. There are no options available for future grant under these plans as of October 31, 2008.

In August 2001, the Company approved the 2001 Stock Plan, which provides for the grant of incentive stock options and nonqualified stock options. A total of 1,000,000 shares were authorized for issuance under the 2001 Stock Plan. As of October 31, 2008, the Company had issued or reserved 643,302 shares for issuance under the 2001 Stock Plan. After the effectiveness of the 2006 Stock Incentive Plan, no further options or other awards have been or will be granted under the 2001 Stock Plan.



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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
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On April 24, 2007, the Company's 2006 Stock Incentive Plan became effective. A total of 803,215 shares are authorized for issuance under the 2006 Stock Incentive Plan. As of October 31, 2008, the Company had issued options for 542,996 shares of common stock and had reserved an additional 260,219 shares of common stock available for future issuance under the 2006 Stock Incentive Plan. The Company's employees, officers, directors, consultants and advisors are eligible to receive awards under the 2006 Stock Incentive Plan; however, incentive stock options may only be granted to employees. The maximum number of shares of common stock with respect to which awards may be granted to any participant under the 2006 Stock Incentive Plan is 200,000 per calendar year. Members of the board of directors who are not full-time employees receive, as part of their annual compensation, a choice of either (a) an option to purchase 2,000 shares of common stock that is fully vested at the time of grant, or (b) shares of common stock worth \$10,000, which vests 50% at the time of grant and 50% one year later. Vesting provisions of stock options are determined by the board of directors. The contractual term of these stock options is up to ten years. The 2006 Stock Incentive Plan is administered by the Company's board of directors who may delegate authority to one or more committees or subcommittees of the board of directors or to the Company's officers. If the board of directors delegates authority to an officer, the officer has the power to make awards to all of the Company's employees, except to executive officers. The board of directors will fix the terms of the awards to be granted by such officer. No award may be granted under the 2006 Stock Incentive Plan after December 7, 2016, but the vesting and effectiveness of awards granted before that date may extend beyond that date.

Transactions under these option plans during the six months ended October 31, 2008 are as follows:

|                              | Shares Under<br>Option | Weighted<br>Average<br>Exercise<br>Price | Weighted<br>Average<br>Remaining<br>Contractual<br>Term<br>(In Years) |
|------------------------------|------------------------|--|---|
| Outstanding April 30, 2008   | 1,445,302              | \$ 14.61                                 |   |
| Forfeited                    | (29,625)               | 13.69                                    |   |
| Expired                      | (20,710)               | 16.76                                    |   |
| Exercised                    |                        |  |   |
| Granted                      | 258,971                | 9.43                                     |   |
| Outstanding October 31, 2008 | 1,653,938              | 13.79                                    | 5.5   |
| Exercisable October 31, 2008 | 1,126,771              | 14.50                                    | 4.0   |

The total intrinsic value of outstanding and exercisable options as of October 31, 2008 was zero. As of October 31, 2008, approximately 464,000 additional options were expected to vest, which had zero intrinsic value and a weighted average remaining contractual term of 8.6 years. As of October 31, 2008, there was approximately \$3,593,000 of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a remaining weighted average period of 2.6 years. The Company normally issues new shares of common stock to satisfy option exercises under these plans.

**(11) Commitments and Contingencies****Litigation**

The Company is involved from time to time in certain legal actions arising in the ordinary course of business. Management believes that the outcome of such actions will not have a material adverse effect on the Company's financial position or results of operations.





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**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**(12) Operating Segments and Geographic Information**

The Company's business consists of one segment as this represents management's view of the Company's operations. The Company operates on a worldwide basis with one operating company in the US, one operating subsidiary in the UK and one operating subsidiary in Australia, which are categorized below as North America, Europe and Australia, respectively. Revenues are generally attributed to the operating unit that bills the customers.

Geographic information is as follows:

|                                  | <b>Three Months Ended October 31, 2007</b> |               |                  |              |
|----------------------------------|--|---------------|------------------|--------------|
|                                  | <b>North America</b>                       | <b>Europe</b> | <b>Australia</b> | <b>Total</b> |
| Revenues from external customers | \$ 1,129,904                               | 556,308       |                  | 1,686,212    |
| Operating loss                   | (2,573,605)                                | (933,469)     | (43,783)         | (3,550,857)  |
| Long-lived assets                | 276,017                                    | 118,880       | 1,404            | 396,301      |
| Total assets                     | 113,073,249                                | 1,732,803     | 41,347           | 114,847,399  |
|                                  | <b>Three Months Ended October 31, 2008</b> |               |                  |              |
|                                  | <b>North America</b>                       | <b>Europe</b> | <b>Australia</b> | <b>Total</b> |
| Revenues from external customers | \$ 506,670                                 | 160,454       |                  | 667,124      |
| Operating loss                   | (4,680,636)                                | (621,037)     | (124,592)        | (5,426,265)  |
| Long-lived assets                | 520,328                                    | 287,598       | 381              | 808,307      |
| Total assets                     | 91,551,813                                 | 5,056,006     | 57,163           | 96,664,982   |
|                                  | <b>Six Months Ended October 31, 2007</b>   |               |                  |              |
|                                  | <b>North America</b>                       | <b>Europe</b> | <b>Australia</b> | <b>Total</b> |
| Revenues from external customers | \$ 1,376,606                               | 865,310       |                  | 2,241,916    |
| Operating loss                   | (5,740,196)                                | (1,755,962)   | (116,323)        | (7,612,481)  |
| Long-lived assets                | 276,017                                    | 118,880       | 1,404            | 396,301      |
| Total assets                     | 113,073,249                                | 1,732,803     | 41,347           | 114,847,399  |
|                                  | <b>Six Months Ended October 31, 2008</b>   |               |                  |              |
|                                  | <b>North America</b>                       | <b>Europe</b> | <b>Australia</b> | <b>Total</b> |
| Revenues from external customers | \$ 1,254,969                               | 1,198,783     |                  | 2,453,752    |
| Operating loss                   | (8,333,191)                                | (1,303,695)   | (205,662)        | (9,842,548)  |
| Long-lived assets                | 520,328                                    | 287,598       | 381              | 808,307      |
| Total assets                     | 91,551,813                                 | 5,056,006     | 57,163           | 96,664,982   |

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

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. References to a fiscal year in this Form 10-Q refer to the year ended April 30 of that year (e.g., fiscal 2009 refers to the year ending April 30, 2009).

**Overview**

We develop and are commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. Our PowerBuoy systems use proprietary technologies to convert the mechanical energy created by the rising and falling of ocean waves into electricity. We currently offer two PowerBuoy products, which consist of our utility PowerBuoy system and our autonomous PowerBuoy system.

We market our utility PowerBuoy system, which is designed to supply electricity to a local or regional power grid, to utilities and other electrical power producers seeking to add electricity generated by wave energy to their existing electricity supply. We market our autonomous PowerBuoy system, which is designed to generate power for use independent of the power grid, to customers that require electricity in remote locations. We believe there are a variety of potential applications for our autonomous PowerBuoy system, including sonar and radar surveillance, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture. We also offer our customers operations and maintenance services for our PowerBuoy systems, which are expected to provide a source of recurring revenues.

We were incorporated in New Jersey in April 1984, began commercial operations in 1994, and were re-incorporated in Delaware in 2007. We currently have six wholly-owned subsidiaries, which include Ocean Power Technologies Ltd., Reedsport OPT Wave Park LLC, Oregon Wave Energy Partners I, LLC, Oregon Wave Energy Partners II, LLC, California Wave Energy Partners I, LLC and Fairhaven OPT OceanPower LLC, and we own approximately 88% of the ordinary shares of Ocean Power Technologies (Australasia) Pty. Ltd. Our revenues have been generated from research contracts and development and construction contracts relating to our wave energy technology. The development of our technology has been funded by capital we raised and by development engineering contracts we received starting in fiscal 1995. In fiscal 1996, we received the first of several research contracts with the US Navy to study the feasibility of wave energy. As a result of those research contracts, we entered into our first development and construction contract with the US Navy in fiscal 2002 under a still on-going project for the development and testing of our wave power systems at the US Marine Corps Base in Oahu, Hawaii. We generated our first revenue relating to our autonomous PowerBuoy system from contracts with Lockheed Martin Corporation in fiscal 2003, and we entered into our first development and construction contract with Lockheed Martin in fiscal 2004 for the development and construction of a prototype demonstration autonomous PowerBuoy system. In fiscal 2005, we entered into a development agreement with an affiliate of Iberdrola S.A., a large electric utility company located in Spain and one of the largest renewable energy producers in the world, and other parties to jointly study the possibility of developing a wave power station off the coast of northern Spain. An affiliate of Total S.A., which is one of the world's largest oil and gas companies, also entered into the development agreement in June 2005. In January 2006, we completed the assessment phase of the project, and in July 2006 we entered into an agreement with Iberdrola Energias Marinas de Cantabria, S.A. to complete the first phase of the construction of a 1.39 megawatt (MW) wave power station. In addition, we have entered into a contract with affiliates of Iberdrola and Total to assess the viability of a 2 to 5MW power station off the coast of France. In 2007, we received a \$1.8 million contract from the Scottish Executive for the construction of a 150 kilowatt (kW) PowerBuoy demonstration system at Orkney, Scotland. In June 2007, we received a \$1.7 million contract from the US Navy to provide our PowerBuoy technology to a unique program for data gathering in the ocean. Under this 18-month program, the US Navy conducted an ocean test of our autonomous PowerBuoy as the power source for the Navy's Deep Water Active Detection System. In October 2008, we received a \$3.0 million contract from the US Navy to expand the program and ocean-test an advanced version of our autonomous PowerBuoy for the Deep Water Active Detection System. In August 2007, we announced the award of a \$0.5 million contract from PNGC Power, an Oregon-based electric power cooperative, providing funding toward the fabrication and installation of a 150kW PowerBuoy system off the coast of Oregon. In October 2008, we received

a \$2.0 million award from the US Department of Energy in support of the Oregon project. As of October 31, 2008, our backlog was \$8.0 million, an increase of \$4.3 million from July 31, 2008.

For the three months ended October 31, 2008, we generated revenues of \$0.7 million and incurred a net loss of \$6.1 million, compared to revenues of \$1.7 million and a net loss of \$1.9 million for the three months ended October 31, 2007. For the six months ended October 31, 2008, we generated revenues of \$2.5 million and incurred a net loss of \$10.0 million, compared to revenues of \$2.2 million and a net loss of \$4.3 million for the six months ended October 31, 2007. As of October 31, 2008, our accumulated deficit was \$62.9 million. We have not been profitable since inception, and we do not know whether or when we will become profitable because of the significant uncertainties with respect to our ability to successfully commercialize our PowerBuoy systems in the emerging renewable energy market. Since fiscal 2002, the US Navy has accounted for a significant portion of our revenues. We expect that over time, revenues derived from utilities and other non-government commercial customers will increase more rapidly than revenues from government customers and will, within a few years, represent the majority of our revenues.

**Table of Contents****Financial Operations Overview**

The following describes certain line items in our consolidated statement of operations and some of the factors that affect our operating results.

*Revenues*

We have historically generated revenues primarily from the development and construction of our PowerBuoy systems for demonstration purposes and, to a lesser extent, from customer-sponsored research and development. For the three months ended October 31, 2008 and 2007, we derived approximately 78% and 94%, respectively, of our revenues from government and commercial development and construction contracts and 22% and 6%, respectively, of our revenues from customer-sponsored research and development. For both of the six months ended October 31, 2008 and 2007, we derived approximately 88% of our revenues from government and commercial development and construction contracts and 12% of our revenues from customer-sponsored research and development. Generally, we recognize revenue under the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion. Because we have a small number of contracts, revisions to the percentage of completion determination or delays in meeting performance criteria or in completing projects may have a significant effect on our revenue for the periods involved.

Under our agreement for the current phase of construction of a wave power station off the coast of Santoña, Spain, our revenues are limited to reimbursement for our construction costs without any mark-up and we are required to bear a portion of any cost overruns and to absorb certain other costs as set forth in the agreement. During the fourth quarter of fiscal 2008, we made the decision to absorb additional costs related to the current phase of the project beyond our obligation for the initial cost overruns and certain other costs as set forth in the agreement. This decision was based primarily on the progress of the project to date, the benefits to be derived from a successful initial project and the prospect of incremental contract value to be received in connection with additional work under this contract.

Our revenues for the three months ended October 31, 2008 decreased compared to the revenues for the three months ended October 31, 2007. The revenue decrease reflected a lower level of activity in connection with our Spain construction contract and our project with the US Navy at the US Marine Corps base in Oahu, Hawaii, as these projects neared completion. The Spain and Hawaii PowerBuoys were deployed in September and October 2008, respectively. For the six-month period ended October 31, 2008, revenue increased slightly compared to the same period in the prior year. The revenue increase reflected increases in revenue related to the autonomous PowerBuoy contract with the US Navy and the Spain construction project, which were partially offset by revenue decreases on the US Navy projects at the US Marine Corps base in Hawaii.

Since fiscal 2002, the US Navy has accounted for a significant portion of our revenues. The US Navy accounted for 65% and 47% of our revenues for the three and six months ended October 31, 2008, respectively, and 67% and 61% of our revenues for the three and six months ended October 31, 2007, respectively. Iberdrola and Total accounted for 14% and 40% and of our revenues for the three and six months ended October 31, 2008, respectively, and 27% of our revenues for both the three and six months ended October 31, 2007. We expect that over time, revenues derived from utilities and other non-government commercial customers will increase more rapidly than revenues from government customers and will, within a few years, represent the majority of our revenues.

We currently focus our sales and marketing efforts on coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. During the three months ended October 31, 2008 and 2007, we derived 24% and 33%, respectively, of our revenues from outside the United States. During the six months ended October 31, 2008 and 2007, we derived 49% and 39%, respectively, of our revenues from outside the United States.

*Cost of revenues*

Our cost of revenues consists primarily of material, labor and manufacturing overhead expenses, such as engineering expense, equipment depreciation and maintenance and facility related expenses, and includes the cost of PowerBuoy parts and services supplied by third-party suppliers. Cost of revenues also includes PowerBuoy system delivery and deployment expenses and an anticipated loss at completion on our contract for a wave power station off

the coast of Spain.

We operated at a gross loss of \$0.7 million and \$0.2 million in the three months ended October 31, 2008 and 2007, respectively. We operated at a gross loss of \$0.9 million and \$0.5 million in the six months ended October 31, 2008 and 2007, respectively. Our ability to operate at a gross profit will depend on the nature of future contracts and on our success at increasing sales of our PowerBuoy systems and our ability to manage costs incurred on fixed price commercial contracts.

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*Product development costs*

Our product development costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product development and unfunded research activities. Our product development costs primarily relate to our efforts to increase the output of our utility PowerBuoy system, including the 150kW PowerBuoy system and, to our research and development of new products, product applications and complementary technologies. We expense all of our product development costs as incurred, except for external patent costs, which we capitalize and amortize over a 17-year period commencing with the issuance date of each patent.

Our product development costs increased in the three and six months ended October 31, 2008 compared to the three and six months ended October 31, 2007, primarily as a result of our work to continue to increase the output and efficiency of our PowerBuoy systems.

*Selling, general and administrative costs*

Our selling, general and administrative costs consist primarily of professional fees, salaries and other personnel-related costs for employees and consultants engaged in sales and marketing and support of our PowerBuoy systems, and costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

Our selling, general and administrative costs increased in the three and six months ended October 31, 2008 compared to the three and six months ended October 31, 2007. This increase is due to increased costs related to company growth and the expansion of our sales, marketing and business development capabilities. We expect our selling, general and administrative costs will continue to increase as we further grow the company and expand our sales operations and our marketing capabilities.

*Interest income*

Interest income consists of interest received on cash and cash equivalents, investments in commercial bank-issued certificates of deposit and US Treasury bills and notes. Prior to April 30, 2007, most of our cash, cash equivalents and bank-issued certificates of deposit resulted from the remaining proceeds of our October 2003 common stock offering on the AIM market of the London Stock Exchange. On April 30, 2007, we completed our initial public offering in the United States, which resulted in net proceeds to us of \$89.9 million. Total cash, cash equivalents and short-term and long-term investments were \$89.6 million as of October 31, 2008, compared to \$109.7 million as of October 31, 2007. We anticipate that our interest income reported in fiscal 2009 will continue to be lower than the comparable periods of the prior fiscal year as a result of the decrease in cash, cash equivalents and investments, and lower interest rates.

*Foreign exchange gain (loss)*

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Foreign exchange gains and losses arise in the translation of foreign-denominated assets and liabilities, which may result in realized and unrealized gains or losses from exchange rate fluctuations. Since we conduct our business in US dollars and our functional currency is primarily the US dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the US dollar and the British pound sterling, the Euro and the Australian dollar.

We invest in certificates of deposit and maintain cash accounts that are denominated in British pounds, Euros and Australian dollars. These foreign-denominated certificates of deposit and cash accounts had a balance of \$4.5 million as of October 31, 2008 and \$14.3 million as of October 31, 2007, compared to our total cash, cash equivalents and short-term and long-term investments of \$89.6 million as of October 31, 2008 and \$109.7 million as of October 31, 2007. These foreign currency balances are translated at each month end to the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the three and six months ended October 31, 2008 and 2007 were recorded in Euros, British pound sterling or Australian dollars.

We currently do not hedge our exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash, cash equivalents and certificates of deposit denominated in foreign currencies sufficient to satisfy these anticipated requirements. We also assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

**Table of Contents****Results of Operations****Three Months Ended October 31, 2007 Compared to Three Months Ended October 31, 2008**

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended October 31, 2007 and 2008:

|   | Three Months Ended<br>October 31, 2007 |                          | Three Months Ended<br>October 31, 2008 |                          | Change 2008 Period to<br>2007 Period |             |
|---|--|--------------------------|--|--------------------------|--------------------------------------|-------------|
|   | Amount                                 | As a %<br>of<br>Revenues | Amount                                 | As a %<br>of<br>Revenues | \$ Change                            | %<br>Change |
| Revenues                                  | \$ 1,686,212                           | 100%                     | \$ 667,124                             | 100%                     | \$ (1,019,088)                       | (60)%       |
| Cost of revenues                          | 1,923,196                              | 114                      | 1,369,578                              | 205                      | (553,618)                            | (29)        |
| Gross loss                                | (236,984)                              | (14)                     | (702,454)                              | (105)                    | (465,470)                            | 196         |
| Operating expenses:                       |  |                          |  |                          |                                      |             |
| Product development costs                 | 1,942,713                              | 115                      | 2,330,073                              | 349                      | 387,360                              | 20          |
| Selling, general and administrative costs | 1,371,160                              | 81                       | 2,393,738                              | 359                      | 1,022,578                            | 75          |
| Total operating expenses                  | 3,313,873                              | 197                      | 4,723,811                              | 708                      | 1,409,938                            | 43          |
| Operating loss                            | (3,550,857)                            | (211)                    | (5,426,265)                            | (813)                    | (1,875,408)                          | 53          |
| Interest income                           | 1,343,877                              | 80                       | 514,446                                | 77                       | (829,431)                            | (62)        |
| Foreign exchange gain (loss)              | 336,164                                | 20                       | (1,203,882)                            | (180)                    | (1,540,046)                          | (458)       |
| Net loss                                  | \$ (1,870,816)                         | (111)%                   | \$ (6,115,701)                         | (917)%                   | \$ (4,244,885)                       | 227         |

**Revenues**

Revenues decreased by \$1.0 million in the three months ended October 31, 2008, or 60%, to \$0.7 million as compared to \$1.7 million in the three months ended October 31, 2007. The change in revenues was primarily attributable to the following factors:

Revenues relating to our utility PowerBuoy system decreased by \$1.1 million due primarily to a decrease in work on our Hawaii project for the US Navy and a wave power station off the coast of Spain, as these projects neared completion. The PowerBuoys related to the projects in Spain and Hawaii were deployed in September and October 2008, respectively.

Revenues relating to our autonomous PowerBuoy system increased \$0.1 million as a result of work on our \$1.7 million contract with the US Navy to provide our PowerBuoy technology to a program for data gathering in the ocean. The in-ocean test of the PowerBuoy under this contract was completed in October 2008.

Also, higher than expected costs upon completion of the autonomous PowerBuoy system for the US Navy's data gathering program and the Hawaii project had an adverse effect on revenues for the three months ended October 31, 2008 which contributed to the gross loss.

**Cost of revenues**



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Cost of revenues decreased by \$0.6 million, or 29%, to \$1.4 million in the three months ended October 31, 2008, as compared to \$1.9 million in the three months ended October 31, 2007. This decrease in cost of revenues reflected the decreased level of activity on the wave power station off the coast of Spain and the Hawaii project for the US Navy. The decrease in cost of revenues was partially offset by an increase in cost of revenues related to the autonomous PowerBuoy project for the US Navy and an additional \$0.2 million of anticipated loss at completion on the contract for the wave power station off the coast of Spain. The additional anticipated loss was recognized based on a change in estimated costs associated with this contract and our decision in the fourth quarter of fiscal 2008 to absorb additional costs beyond our contractual obligation for initial cost overruns and certain other costs as set forth in the contract.

**Table of Contents***Product development costs*

Product development costs increased by \$0.4 million, or 20% to \$2.3 million in the three months ended October 31, 2008, as compared to \$1.9 million in the three months ended October 31, 2007. The increase in product development costs was primarily attributable to our work to increase the power output of our utility PowerBuoy system, including the 150kW PowerBuoy system. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years and that the amount of these expenditures will not necessarily be affected by the level of revenue generated over that time period.

*Selling, general and administrative costs*

Selling, general and administrative costs increased \$1.0 million, or 75%, to \$2.4 million for the three months ended October 31, 2008, as compared to \$1.4 million for the three months ended October 31, 2007. The increase was attributable to an increase of \$0.2 million in professional fees, franchise taxes and costs incurred as a result of our being a public company in the United States, a \$0.2 million increase in sales, marketing and business development activity and \$0.6 million in additional payroll and incentive-based costs related to company growth.

*Interest income*

Interest income decreased by \$0.8 million, or 62%, to \$0.5 million for the three months ended October 31, 2008, compared to \$1.3 million for the three months ended October 31, 2007, due to a decrease in cash, cash equivalents and investments, and lower interest rates.

*Foreign exchange gain (loss)*

Foreign exchange loss was \$1.2 million for the three months ended October 31, 2008, compared to a foreign exchange gain of \$0.3 million for the three months ended October 31, 2007. The difference was primarily attributable to the relative change in value of the British pound sterling compared to the US dollar during the two periods.

**Six Months Ended October 31, 2007 Compared to Six Months Ended October 31, 2008**

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the six months ended October 31, 2007 and 2008:

|   | Six Months Ended<br>October 31, 2007 |                          | Six Months Ended<br>October 31, 2008 |                          | Change 2008 Period to<br>2007 Period |             |
|---|--------------------------------------|--------------------------|--------------------------------------|--------------------------|--------------------------------------|-------------|
|   | Amount                               | As a %<br>of<br>Revenues | Amount                               | As a %<br>of<br>Revenues | \$ Change                            | %<br>Change |
| Revenues                                  | \$ 2,241,916                         | 100%                     | \$ 2,453,752                         | 100%                     | \$ 211,836                           | 9%          |
| Cost of revenues                          | 2,728,188                            | 122                      | 3,317,724                            | 135                      | 589,536                              | 22          |
| Gross loss                                | (486,272)                            | (22)                     | (863,972)                            | (35)                     | (377,700)                            | 78          |
| Operating expenses:                       |                                      |                          |                                      |                          |                                      |             |
| Product development costs                 | 3,758,447                            | 168                      | 4,033,022                            | 164                      | 274,575                              | 7           |
| Selling, general and administrative costs | 3,367,762                            | 150                      | 4,945,554                            | 202                      | 1,577,792                            | 47          |
| Total operating expenses                  | 7,126,209                            | 318                      | 8,978,576                            | 366                      | 1,852,367                            | 26          |
| Operating loss                            | (7,612,481)                          | (340)                    | (9,842,548)                          | (401)                    | (2,230,067)                          | 29          |
| Interest income                           | 2,788,163                            | 124                      | 1,062,038                            | 43                       | (1,726,125)                          | (62)        |
|   | 515,658                              | 23                       | (1,228,355)                          | (50)                     | (1,744,013)                          | (338)       |

Foreign exchange gain  
(loss)

|          |                |        |                 |        |                |     |
|----------|----------------|--------|-----------------|--------|----------------|-----|
| Net loss | \$ (4,308,660) | (192)% | \$ (10,008,865) | (408)% | \$ (5,700,205) | 132 |
|----------|----------------|--------|-----------------|--------|----------------|-----|

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### *Revenues*

Revenues increased by \$0.2 million in the six months ended October 31, 2008, or 9%, to \$2.5 million, as compared to \$2.2 million in the six months ended October 31, 2007. The change in revenues was primarily attributable to the following factors:

Revenues relating to our utility PowerBuoy system decreased by \$0.3 million primarily due to a decrease in work on our Hawaii project for the US Navy, partially offset by an increase in work on the first phase of construction of a 1.39MW wave power station off the coast of Spain.

Revenues relating to our autonomous PowerBuoy system increased \$0.5 million as a result of work on our \$1.7 million contract with the US Navy to provide our PowerBuoy technology to a program for data gathering in the ocean.

Also, higher than expected costs upon completion of the autonomous PowerBuoy system for the US Navy's data gathering program and the Hawaii project had an adverse effect on revenues for the six months ended October 31, 2008 which contributed to the gross loss.

### *Cost of revenues*

Cost of revenues increased by \$0.6 million, or 22%, to \$3.3 million in the six months ended October 31, 2008, as compared to \$2.7 million in the six months ended October 31, 2007. This increase in cost of revenues reflected the higher level of activity on the first phase of construction of a 1.39MW wave power station off the coast of Spain and on the autonomous PowerBuoy for the US Navy, partially offset by a decrease in activity on the Hawaii project for the US Navy. The increase in costs also reflects the recognition of an additional \$0.4 million of anticipated loss at completion on our contract for a wave power station off the coast of Spain. The additional anticipated loss was recognized based on a change in estimated costs associated with this contract and our decision in the fourth quarter of fiscal 2008 to absorb additional costs beyond our contractual obligation for initial cost overruns and certain other costs as set forth in the contract.

### *Product development costs*

Product development costs increased by \$0.3 million, or 7% to \$4.0 million in the six months ended October 31, 2008, as compared to \$3.8 million in the six months ended October 31, 2007. The increase in product development costs was primarily attributable to our work to increase the power output of our utility PowerBuoy system, including the 150kW PowerBuoy system. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years and that the amount of these expenditures will not necessarily be affected by the level of revenue generated over that time period.

### *Selling, general and administrative costs*

Selling, general and administrative costs increased \$1.6 million, or 47%, to \$4.9 million for the six months ended October 31, 2008, as compared to \$3.4 million for the six months ended October 31, 2007. The increase was attributable to an increase of \$0.3 million in professional fees, franchise taxes and costs incurred as a result of our being a public company in the United States, a \$0.3 million increase in sales marketing and business development activity and \$1.0 million in additional payroll and incentive-based costs related to company growth.

### *Interest income*

Interest income decreased by \$1.7 million, or 62%, to \$1.1 million for the six months ended October 31, 2008, compared to \$2.8 million for the six months ended October 31, 2007, due to a decrease in cash, cash equivalents and investments, and lower interest rates.

### *Foreign exchange gain (loss)*

Foreign exchange loss was \$1.2 million for the six months ended October 31, 2008, compared to a foreign exchange gain of \$0.5 million for the six months ended October 31, 2007. The difference was primarily attributable to the relative change in value of the British pound sterling compared to the US dollar during the two periods.

## **Liquidity and Capital Resources**

Since our inception, the cash flows from customer revenues have not been sufficient to fund our operations and provide the capital resources for the planned growth of our business. For the three years ended April 30, 2008, our revenues were \$9.1 million, our net losses were \$31.4 million and our net cash used in operating activities was

\$26.2 million. Over that same period, we raised

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\$90.4 million in financing activities, including \$89.9 million from the closing of our United States initial public offering on April 30, 2007.

At October 31, 2008, our total cash, cash equivalents and short-term and long-term investments were \$89.6 million. Our cash and cash equivalents are highly liquid investments with maturities of three months or less at the date of purchase and consist primarily of term deposits with large commercial banks, Treasury bills and an investment in a money market fund. Our short-term investments consist primarily of certificates of deposits and Treasury bills with fixed maturity dates of more than 90 days but less than one year from the date of purchase, and other investments with current maturities of less than one year. Long-term investments consist of Treasury notes with maturities upon purchase in excess of one year.

The primary drivers of our cash flows have been our ability to generate revenues and decrease losses related to our contracts, as well as our ability to obtain and invest the capital resources needed to fund our development.

Net cash used in operating activities was \$9.4 million for the six months ended October 31, 2008 and \$5.7 million for the six months ended October 31, 2007. The change was primarily the result of an increase in net loss of \$5.7 million, partially offset by a change in foreign exchange gain (loss) of \$1.7 million.

Net cash used in investing activities was \$66.8 million for the six months ended October 31, 2008 compared to net cash provided by investing activities of \$8.2 million for the six months ended October 31, 2007. The change was primarily the result of a net increase in purchases of investments with maturities longer than 90 days during the six months ended October 31, 2008. Also, there was a \$0.5 million increase in purchases of equipment during the six months ended October 31, 2008 as compared to the six months ended October 31, 2007.

Net cash used in financing activities was approximately \$43,000 for the six months ended October 31, 2008, compared to net cash used in financing activities of \$0.8 million for the six months ended October 31, 2007. The cash used during the six months ended October 31, 2007 was primarily to pay accrued expenses related to our initial public offering in the United States.

We expect to devote substantial resources to continue our development efforts for our PowerBuoy systems and to expand our sales, marketing and manufacturing programs associated with the commercialization of the PowerBuoy system. Our future capital requirements will depend on a number of factors, including:

the cost of development efforts for our PowerBuoy systems;

the success of our commercial relationships with Iberdrola, Total and the US Navy;

the cost of manufacturing activities;

the cost of commercialization activities, including demonstration projects, product marketing and sales;

our ability to establish and maintain additional commercial relationships;

the implementation of our expansion plans, including the hiring of new employees;

potential acquisitions of other products or technologies; and

the costs involved in preparing, filing, prosecuting, maintaining and enforcing patent claims and other patent-related costs.

We believe that our current cash, cash equivalents and investments will be sufficient to meet our anticipated cash needs for working capital and capital expenditures at least through fiscal 2010. If existing resources are insufficient to satisfy our liquidity requirements or if we acquire or license rights to additional product technologies, we may seek to sell additional equity or debt securities or obtain a credit facility. The sale of additional equity or convertible securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities would have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Financing may not be available in amounts or on terms acceptable to us. If we are unable to

obtain required financing, we may be required to reduce the scope of our planned product development and marketing efforts, which could harm our financial condition and operating results.

**Off-Balance Sheet Arrangements**

Since inception, we have not engaged in any off-balance sheet financing activities.

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**Item 3. *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK***

We generally place our investments in money market funds, Treasury bills and notes, and certificates of deposit with maturities of less than one year. We actively manage our portfolio of cash equivalents and investments, but in order to ensure liquidity, we will only invest in instruments with high credit quality where a secondary market exists. We have not held and do not hold any derivatives related to our interest rate exposure. Due to the average maturity and conservative nature of our investment portfolio, a change in interest rates would not have a material effect on the value of the portfolio. We do not have market risk exposure on our long-term debt because it consists of an interest-free loan from the New Jersey Economic Development Authority.

Management estimates that had the average yield on our cash, cash equivalents and investments decreased by 100 basis points, our interest income for the six months ended October 31, 2008 would have decreased by approximately \$0.5 million. This estimate assumes that the decrease occurred on the first day of the fiscal year and reduced the yield of each investment by 100 basis points. The impact on our future interest income of future changes in investment yields will depend largely on the gross amount of our cash, cash equivalents and investments.

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Foreign exchange gains and losses arise in the translation of foreign-denominated assets and liabilities, which may result in realized and unrealized gains or losses from exchange rate fluctuations. Since we conduct our business in US dollars and our functional currency is primarily the US dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the US dollar and the British pound sterling, the Euro and the Australian dollar.

We maintain cash accounts that are denominated in British pound sterling, Euros and Australian dollars. These foreign-denominated cash accounts had a balance of \$4.5 million as of October 31, 2008, compared to our total cash, cash equivalents and investment account balances of \$89.6 million as of October 31, 2008. These foreign currency balances are translated at each month end to the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the six months ended October 31, 2008 were recorded in Euros, British pound sterling or Australian dollars. If foreign currency exchange rates had fluctuated by 10% as of October 31, 2008, the impact on our foreign exchange gains and losses would have been approximately \$0.5 million.

We currently do not hedge exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash, cash equivalents and certificates of deposit denominated in foreign currencies sufficient to satisfy these anticipated requirements. We also assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.



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**Item 4. CONTROLS AND PROCEDURES**

*Evaluation of Disclosure Controls and Procedures*

Disclosure controls and procedures are our controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 (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 us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b). Based upon that evaluation, as of October 31, 2008, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective in timely alerting them to material information relating to the Company required to be included in our periodic SEC filings.

*Changes in Internal Control over Financial Reporting*

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended October 31, 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**

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our financial position, results of operations or cash flows.

**Item 1A. RISK FACTORS**

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2008. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on July 14, 2008.

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

**Use of Proceeds**

On April 30, 2007, we sold 5,000,000 shares of our common stock in our initial public offering in the United States at a price of \$20.00 per share, pursuant to a registration statement on Form S-1 (File No. 333-138595), which was declared effective by the SEC on April 24, 2007. The managing underwriters in the offering were UBS Securities LLC, Banc of America Securities LLC, and Bear, Stearns & Co., Inc. The underwriting discounts and commissions and offering expenses payable by us aggregated \$10.1 million, resulting in net proceeds to us of \$89.9 million.

From the effective date of the registration statement through October 31, 2008, we used \$0.8 million to construct demonstration wave power stations, \$5.7 million to fund the continued development and commercialization of our PowerBuoy system, \$2.4 million to expand our sales and marketing capabilities and \$0.5 million to fund the expansion of assembly, test and field service facilities. We have invested the balance of the net proceeds from the offering in investment grade interest-bearing instruments, in accordance with our investment policy. We have not used any of the net proceeds from the offering to make payments, directly or indirectly, to any director or officer of ours, or any of their associates, to any person owning ten percent or more of our common stock or to any affiliate of ours. There has been no material change in our planned use of the balance of the net proceeds from the offering as described in our final prospectus filed with the SEC pursuant to Rule 424(b) under the Securities Act of 1933.

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

None.



**Table of Contents****Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

The Company's annual meeting of shareholders was held on October 2, 2008. At the annual meeting, the shareholders voted on the following proposals:

**Election of Directors**

Each nominee for director was elected by a vote of shareholders as follows:

| <b>Name</b>            | <b>For</b> | <b>Withheld</b> |
|------------------------|------------|-----------------|
| Seymour S. Preston III | 6,772,168  | 200,533         |
| Paul F. Lozier         | 6,800,002  | 172,699         |
| Thomas J. Meaney       | 6,210,510  | 762,191         |
| George W. Taylor       | 6,212,721  | 759,980         |
| Charles F. Dunleavy    | 6,212,996  | 759,705         |

**Ratification of the Selection of KPMG LLP as Independent Registered Public Accounting Firm**

|                          | <b>For</b> | <b>Against</b> | <b>Abstain</b> |
|--------------------------|------------|----------------|----------------|
| Ratification of KPMG LLP | 6,858,260  | 36,798         | 77,643         |

**Item 5. OTHER INFORMATION**

None.

**Item 6. EXHIBITS**

- 10.1 \*\* Financial Assistance Award agreement between Ocean Power Technologies, Inc. and US Department of Energy dated September 23, 2008
- 10.2 \*\* Modification of Financial Assistance Award agreement between Ocean Power Technologies, Inc. and US Department of Energy dated October 16, 2008
- 10.3 \*\* Agreement between Ocean Power Technologies, Inc. and the Office of Naval Research of the US Navy dated October 31, 2008
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 32.2 Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

\*\* Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.



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**SIGNATURES**

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.

OCEAN POWER TECHNOLOGIES, INC.  
(Registrant)

By: /s/ George W. Taylor  
George W. Taylor  
Chief Executive Officer  
(Principal Executive Officer)

Date: December 10, 2008

By: /s/ Charles F. Dunleavy  
Charles F. Dunleavy  
Chief Financial Officer  
(Principal Financial Officer)

Date: December 10, 2008

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**EXHIBITS INDEX**

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- 32.2 Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

\*\* Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.