

EMCORE CORP  
Form 10-Q  
May 10, 2010

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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 March 31, 2010

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 0-22175

EMCORE Corporation  
(Exact name of registrant as specified in its charter)

New Jersey 22-2746503  
(State or other jurisdiction of incorporation or (I.R.S. Employer Identification No.)  
organization)

10420 Research Road, SE, Albuquerque, New Mexico 87123  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (505) 332-5000

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any,

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every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).  Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definition 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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).  Yes  No

The number of shares outstanding of the registrant’s no par value common stock as of May 4, 2010 was 84,102,819.

CAUTIONARY STATEMENT  
FOR PURPOSES OF “SAFE HARBOR PROVISIONS”  
OF THE PRIVATE SECURITIES LITIGATION ACT OF 1995

This Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, and Section 21E of the Exchange Act of 1934. These forward-looking statements are largely based on our current expectations and projections about future events and financial trends affecting the financial condition of our business. Such forward-looking statements include, in particular, projections about our future results included in our Exchange Act reports, statements about our plans, strategies, business prospects, changes and trends in our business and the markets in which the Company operates. These forward-looking statements may be identified by the use of terms and phrases such as “anticipates”, “believes”, “can”, “could”, “estimates”, “expects”, “forecasts”, “intends”, “plans”, “projects”, “targets”, “will”, and similar expressions or variations of these terms and similar phrases. Additionally, statements concerning future matters such as the development of new products, enhancements or technologies, sales levels, expense levels and other statements regarding matters that are not historical are forward-looking statements. Management cautions that these forward-looking statements relate to future events or our future financial performance and are subject to business, economic, and other risks and uncertainties, both known and unknown, that may cause actual results, levels of activity, performance or achievements of our business or our industry to be materially different from those expressed or implied by any forward-looking statements. Factors that could cause or contribute to such differences in results and outcomes include without limitation those discussed under Item 1A - Risk Factors in our Annual Report on Form 10-K for the fiscal year ended September 30, 2009. The cautionary statements should be read as being applicable to all forward-looking statements wherever they appear in this Quarterly Report and they should also be read in conjunction with the consolidated financial statements, including the related footnotes.

Neither management nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. All forward-looking statements in this Quarterly Report are made as of the date hereof, based on information available to us as of the date hereof, and subsequent facts or circumstances may contradict, obviate, undermine, or otherwise fail to support or substantiate such statements. The Company cautions you not to rely on these statements without also considering the risks and uncertainties associated with these statements and our business that are addressed in our Annual Report. Certain information included in this Quarterly Report may supersede or supplement forward-looking statements in our other Exchange Act reports filed with the Securities and Exchange Commission. The Company assumes no obligation to update any forward-looking statement to conform such statements to actual results or to changes in our expectations, except as required by applicable law or regulation.

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EMCORE Corporation  
FORM 10-Q  
For The Quarterly Period Ended March 31, 2010

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PART I.  
ITEM I.FINANCIAL INFORMATION  
Financial StatementsEMCORE CORPORATION  
Condensed Consolidated Statements of Operations and Comprehensive Loss  
For the three and six months ended March 31, 2010 and 2009  
(in thousands, except loss per share)  
(unaudited)

|   | Three Months Ended |             | Six Months Ended |             |
|---|--------------------|-------------|------------------|-------------|
|   | March 31,          |             | March 31,        |             |
|   | 2010               | 2009        | 2010             | 2009        |
| Product revenue                               | \$ 46,567          | \$ 41,160   | \$ 87,506        | \$ 91,886   |
| Service revenue                               | 1,627              | 2,124       | 3,090            | 5,454       |
| Total revenue                                 | 48,194             | 43,284      | 90,596           | 97,340      |
| Cost of product revenue                       | 31,212             | 48,572      | 64,442           | 98,786      |
| Cost of service revenue                       | 1,488              | 1,717       | 2,656            | 3,970       |
| Total cost of revenue                         | 32,700             | 50,289      | 67,098           | 102,756     |
| Gross profit (loss)                           | 15,494             | (7,005)     | 23,498           | (5,416)     |
| Operating expenses:                           |                    |             |                  |             |
| Selling, general, and administrative          | 9,023              | 11,966      | 21,446           | 24,124      |
| Research and development                      | 7,596              | 6,891       | 15,109           | 15,001      |
| Impairments                                   | -                  | -           | -                | 33,781      |
| Total operating expenses                      | 16,619             | 18,857      | 36,555           | 72,906      |
| Operating loss                                | (1,125)            | (25,862)    | (13,057)         | (78,322)    |
| Other (income) expense:                       |                    |             |                  |             |
| Interest income                               | (17)               | (30)        | (19)             | (80)        |
| Interest expense                              | 103                | 143         | 219              | 338         |
| Foreign exchange loss                         | 729                | 908         | 961              | 1,380       |
| Change in fair value of financial instruments | (322)              | -           | 810              | -           |
| Cost of financing instruments                 | 108                | -           | 336              | -           |
| Impairment of investment                      | -                  | -           | -                | 367         |
| Gain from sale of investments                 | -                  | (3,144)     | -                | (3,144)     |
| Total other (income) expense                  | 601                | (2,123)     | 2,307            | (1,139)     |
| Net loss                                      | \$ (1,726)         | \$ (23,739) | \$ (15,364)      | \$ (77,183) |
| Foreign exchange translation adjustment       | 288                | 376         | 366              | 484         |
| Comprehensive loss                            | \$ (1,438)         | \$ (23,363) | \$ (14,998)      | \$ (76,699) |

Per share data:

Basic and diluted per share data:

|   |           |           |           |           |
|---|-----------|-----------|-----------|-----------|
| Net loss  | \$ (0.02) | \$ (0.30) | \$ (0.19) | \$ (0.99) |
| Weighted-average number of basic and diluted shares outstanding | 82,459    | 78,384    | 81,758    | 78,097    |

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

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EMCORE CORPORATION  
Condensed Consolidated Balance Sheets  
As of March 31, 2010 and September 30, 2009  
(in thousands)  
(unaudited)

|   | As of<br>March 31,<br>2010 | As of<br>September 30,<br>2009 |
|---|----------------------------|--------------------------------|
| ASSETS  |                            |                                |
| Current assets:   |                            |                                |
| Cash and cash equivalents   | \$ 17,181                  | \$ 14,028                      |
| Restricted cash   | 588                        | 1,521                          |
| Available-for-sale securities   | 1,250                      | 1,350                          |
| Accounts receivable, net of allowance of \$5,450 and \$7,125,<br>respectively | 42,732                     | 39,417                         |
| Inventory, net  | 32,583                     | 34,221                         |
| Prepaid expenses and other current assets                                     | 4,462                      | 4,712                          |
| Total current assets  | 98,796                     | 95,249                         |
| Property, plant and equipment, net  | 50,374                     | 55,028                         |
| Goodwill  | 20,384                     | 20,384                         |
| Other intangible assets, net  | 11,910                     | 12,982                         |
| Long-term restricted cash   | -                          | 163                            |
| Other non-current assets, net   | 689                        | 753                            |
| Total assets  | \$ 182,153                 | \$ 184,559                     |
| LIABILITIES and SHAREHOLDERS' EQUITY  |                            |                                |
| Current liabilities:  |                            |                                |
| Borrowings from credit facility   | \$ 9,662                   | \$ 10,332                      |
| Short-term debt   | 728                        | 842                            |
| Accounts payable  | 30,259                     | 24,931                         |
| Accrued expenses and other current liabilities                                | 20,230                     | 21,687                         |
| Total current liabilities   | 60,879                     | 57,792                         |
| Warrant liability   | 810                        | -                              |
| Other long-term liabilities   | 102                        | 104                            |
| Total liabilities   | 61,791                     | 57,896                         |
| Commitments and contingencies   |                            |                                |

## Shareholders' equity:

|   |            |            |
|---|------------|------------|
| Preferred stock, \$0.0001 par, 5,882 shares authorized; no shares outstanding   | -          | -          |
| Common stock, no par value, 200,000 shares authorized; 84,212 shares issued and 84,053 shares outstanding as of March 31, 2010; 80,982 shares issued and 80,823 shares outstanding as of September 30, 2009 | 697,541    | 688,844    |
| Accumulated deficit   | (576,197)  | (560,833)  |
| Accumulated other comprehensive income  | 1,101      | 735        |
| Treasury stock, at cost; 159 shares as of March 31, 2010 and September 30, 2009   | (2,083)    | (2,083)    |
| Total shareholders' equity  | 120,362    | 126,663    |
| Total liabilities and shareholders' equity  | \$ 182,153 | \$ 184,559 |

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



EMCORE CORPORATION  
Condensed Consolidated Statements of Cash Flows  
For the six months ended March 31, 2010 and 2009  
(in thousands)  
(unaudited)

|   | For the Six Months Ended March |             |
|---|--------------------------------|-------------|
|   | 31,                            |             |
|   | 2010                           | 2009        |
| Cash flows from operating activities:                                       |                                |             |
| Net loss  | \$ (15,364)                    | \$ (77,183) |
| Adjustments to reconcile net loss to net cash used in operating activities: |                                |             |
| Impairments   | -                              | 33,781      |
| Stock-based compensation expense  | 5,250                          | 3,636       |
| Depreciation and amortization expense                                       | 6,236                          | 8,509       |
| Provision for inventory reserves  | 913                            | 6,262       |
| Net (recovery of) provision for doubtful accounts                           | (411)                          | 2,662       |
| Provision for product warranty  | 726                            | -           |
| Impairment of investment  | -                              | 367         |
| Loss on disposal of equipment   | 89                             | 167         |
| Compensatory stock issuances  | 403                            | 267         |
| Gain from sale of unconsolidated affiliate                                  | -                              | (3,144)     |
| Change in fair value of financial instruments                               | 810                            | -           |
| Cost of financing instruments   | 322                            | -           |
| Total non-cash adjustments  | 14,338                         | 52,507      |
| Changes in operating assets and liabilities:                                |                                |             |
| Accounts receivable   | (3,472)                        | 7,885       |
| Inventory   | 715                            | 10,993      |
| Other assets  | 236                            | 2,876       |
| Accounts payable  | 5,333                          | (24,398)    |
| Accrued expenses and other current liabilities                              | (1,957)                        | (3,293)     |
| Total change in operating assets and liabilities                            | 855                            | (5,937)     |
| Net cash used in operating activities                                       | (171)                          | (30,613)    |
| Cash flows from investing activities:                                       |                                |             |
| Purchase of plant and equipment   | (243)                          | (1,133)     |
| Investments in patents  | (358)                          | -           |
| Proceeds from the sale of available-for-sale securities                     | 100                            | 2,679       |
| Proceeds from the sale of an unconsolidated affiliate                       | -                              | 11,017      |
| Release of restricted cash  | 1,096                          | 1,487       |
| Net cash provided by investing activities                                   | \$ 595                         | \$ 14,050   |

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

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EMCORE CORPORATION  
Condensed Consolidated Statements of Cash Flows  
For the six months ended March 31, 2010 and 2009  
(in thousands)  
(unaudited)

(Continued from previous page)

|   | For the Six Months Ended March 31, |           |
|---|------------------------------------|-----------|
|   | 2010                               | 2009      |
| Cash flows from financing activities:                           |                                    |           |
| Net (payments on) proceeds from borrowings from credit facility | \$ (670)                           | \$ 6,202  |
| Net (payments on) proceeds from borrowings of short-term debt   | (114)                              | 888       |
| Proceeds from exercise of employee stock options                | -                                  | 32        |
| Proceeds from employee stock purchase plan                      | 505                                | 613       |
| Net proceeds from the equity line of credit facility            | 1,980                              | -         |
| Net cash provided by financing activities                       | 1,701                              | 7,735     |
| Effect of foreign currency on cash                              | 1,028                              | 1,215     |
| Net increase (decrease) in cash and cash equivalents            | 3,153                              | (7,613)   |
| Cash and cash equivalents at beginning of period                | 14,028                             | 18,227    |
| Cash and cash equivalents at end of period                      | \$ 17,181                          | \$ 10,614 |

SUPPLEMENTAL DISCLOSURE OF CASH FLOW  
INFORMATION

|  |        |        |
|--|--------|--------|
| Cash paid during the period for interest     | \$ 148 | \$ 393 |
| Cash paid during the period for income taxes | \$ -   | \$ -   |

NON-CASH INVESTING AND FINANCING ACTIVITIES

|  |        |      |
|--|--------|------|
| Issuance of common stock related to equity line of credit facility | \$ 228 | \$ - |
|--|--------|------|

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



EMCORE Corporation  
Notes to Consolidated Financial Statements

NOTE 1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements include the accounts of EMCORE Corporation and its subsidiaries (the "Company" or "EMCORE"). All intercompany accounts and transactions have been eliminated in consolidation.

These statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim information, and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X of the Securities and Exchange Commission ("SEC"). Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for annual financial statements. In the opinion of management, the interim financial statements reflect all normal adjustments that are necessary to provide a fair presentation of the financial results for the interim periods presented. Operating results for interim periods are not necessarily indicative of results that may be expected for an entire fiscal year. The condensed consolidated balance sheet as of September 30, 2009 has been derived from the audited consolidated financial statements as of such date. For a more complete understanding of the Company's financial position, operating results, risk factors and other matters, please refer to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2009.

Certain prior period information has been reclassified to conform to this current period's presentations.

We have evaluated subsequent events from March 31, 2010 through the date that these financial statements were issued.

**Use of Estimates.** The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management of the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, as of the date of the financial statements, and the reported amounts of revenue and expenses during the reported period. The accounting estimates that require our most significant, difficult, and subjective judgments include:

- valuation of inventory, goodwill, intangible assets, warrants, and stock-based compensation;
  - assessment of recovery of long-lived assets;
- revenue recognition associated with the percentage of completion method; and,
  - allowance for doubtful accounts and warranty accruals.

Management develops estimates based on historical experience and on various assumptions about the future that are believed to be reasonable based on the best information available. The Company's reported financial position or results of operations may be materially different under changed conditions or when using different estimates and assumptions, particularly with respect to significant accounting policies. In the event that estimates or assumptions prove to differ from actual results, adjustments are made in subsequent periods to reflect more current information.

**Loss per Share.** The Company's loss per share was calculated by dividing net loss applicable to common stock by the weighted average number of common stock shares outstanding for the period and it is presented in the accompanying consolidated statements of operations. For the three and six months ended March 31, 2010, and 2009, 9,876,855 and

10,106,042 stock options, respectively, and all warrants were excluded from the computation of diluted earnings per share since the Company incurred a net loss for these periods and any effect would have been anti-dilutive.

#### Liquidity and Capital Resources

As of March 31, 2010, cash, cash equivalents, available-for-sale securities and current restricted cash totaled approximately \$19.0 million. During the three months ended March 31, 2010, the Company incurred a net loss of \$1.7 million and generated cash from operations of approximately \$1.1 million. The Company's operating results for future periods are subject to numerous uncertainties and it is unclear if the Company will be able to reduce or eliminate its net losses for the foreseeable future. In the event that management is not able to increase revenue and/or manage operating expenses in line with revenue forecasts, the Company may not be able to achieve profitability.

Historically, management has addressed the Company's liquidity requirements through the combination of cost reduction initiatives, improvements in working capital management, capital markets transactions, and the sale of assets. In fiscal 2010, management continues to remain focused on maximizing cash flow from operations while developing additional sources of liquidity.

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On October 1, 2009, the Company entered into an equity line of credit arrangement with Commerce Court Small Cap Value Fund, Ltd. (“Commerce Court”). Upon issuance of a draw-down request by the Company, Commerce Court has committed to purchase up to \$25 million of the Company’s common stock over the 24-month term of the purchase agreement. See Footnote 4 – Equity Facility for additional information related to this equity line of credit.

During the first six months of fiscal 2010, the Company has also significantly lowered its spending on capital expenditures and focused on improving the management of its working capital. Over the last four quarters ended March 31, 2010, the Company generated approximately \$0.9 million in cash from operations due to improved operating performance and working capital management including the monetization of \$10.1 million of inventory and the generation of \$4.6 million in cash from the lowering of accounts receivable balances. The Company achieved positive cash flow from operations in three of the last four quarters, including the quarters ended June 30, 2009, September 30, 2009, and March 31, 2010.

We believe that our existing balances of cash, cash equivalents, and available-for-sale securities, together with the cash expected to be generated from operations, amounts expected to be available under our revolving credit facility with Bank of America and the equity line of credit agreement with Commerce Court will provide us with sufficient financial resources to meet our cash requirements for operations, working capital, and capital expenditures for the next 12 months. However, in the event of unforeseen circumstances, or unfavorable market or economic developments, the Company may have to raise additional funds by any one or a combination of the following: issuing equity, debt or convertible debt, or selling certain product lines and/or portions of our business. There can be no guarantee that the Company will be able to raise additional funds on terms acceptable to us, or at all. A significant contraction in the capital markets, particularly in the technology sector, may make it difficult for us to raise additional capital if or when it is required, especially if the Company experiences disappointing operating results. If adequate capital is not available to us as required, or is not available on favorable terms, our business, financial condition and results of operations may be adversely affected.

#### Strategic Plan

Due to significant differences in operating strategy between the Company’s Fiber Optics and Photovoltaics businesses, the Company’s management and Board of Directors believes that they would provide greater value to shareholders if they were operated as two separate business entities.

In furtherance of this strategy, on February 3, 2010, the Company entered into a Share Purchase Agreement to create a joint venture with Tangshan Caofeidian Investment Corporation (“TCIC”), a Chinese investment company located in the Caofeidian Industry Zone, Tangshan City, Hebei Province of China. The Share Purchase Agreement provides for the Company to sell a sixty percent (60%) interest in its Fiber Optics business (excluding its satellite communications and specialty photonics fiber optics businesses) to TCIC, which will be operated as a joint venture once the transaction is closed. The Fiber Optics businesses included in this transaction are the Company’s telecom, enterprise, cable television (CATV), fiber-to-the-premises (FTTP), and video transport product lines. Subsequent to the pending transaction, the Company’s business will be comprised of the satellite and terrestrial solar businesses as well as the satellite communications and specialty photonics fiber optics businesses. See Footnote 3 – Proposed Tangshan Joint Venture for additional information.

#### NOTE 2. Recent Accounting Pronouncements

ASC 105 – Generally Accepted Accounting Principles. On October 1, 2009, the Company adopted new authoritative guidance which establishes the Financial Accounting Standards Board’s (“FASB”) Accounting Standards Codification (“ASC”) as the sole source of authoritative accounting principles recognized by the FASB to be applied by all nongovernmental entities in the preparation of financial statements in conformity with GAAP. The adoption of this new guidance did not impact the Company’s results of operations or financial condition, but it revised the reference of accounting pronouncements within this Quarterly Report.

ASC 350 – Intangibles – Goodwill and Other. On October 1, 2009, the Company adopted new authoritative guidance which amends the factors an entity should consider in developing renewal or extension assumptions used in determining the useful life of recognized intangible assets and the period of expected cash flows used to measure the fair value of intangible assets under ASC 805, Business Combinations. The adoption of this new guidance did not have any impact on the Company’s results of operations or financial condition.

ASC 470 – Debt. On October 1, 2009, the Company adopted new authoritative guidance that requires the proceeds from the issuance of certain convertible debt instruments to be allocated between a liability component (issued at a discount) and an equity component. The resulting debt discount is amortized over the period the convertible debt is expected to be outstanding as additional non-cash interest expense. The change in accounting treatment is effective for the Company beginning in fiscal 2010, and it is required to be applied retrospectively to prior periods. Management is currently assessing the potential impact upon adoption of this new guidance and expects it will have an effect on the Company’s fiscal 2008 statement of operations, but it should not have any effect on the fiscal 2008 ending equity account balances or the fiscal 2009 financial statements.

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ASC 605 – Revenue Recognition. In October 2009, the FASB issued new authoritative guidance on revenue recognition related to arrangements with multiple deliverables that will become effective in fiscal 2011, with earlier adoption permitted. Under the new guidance, when vendor specific objective evidence or third party evidence for deliverables in an arrangement cannot be determined, a best estimate of the selling price is required to separate deliverables and allocate arrangement consideration using the relative selling price method. The new guidance includes new disclosure requirements on how the application of the relative selling price method affects the timing and amount of revenue recognition. Management is currently assessing the potential impact that the adoption of this new guidance could have on the Company's financial statements.

ASC 805 – Business Combinations. On October 1, 2009, the Company adopted new authoritative guidance which requires an acquirer to recognize the assets acquired, the liabilities assumed, including those arising from contractual contingencies, any contingent consideration, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date, with limited exceptions specified in the statement. It also requires the acquirer in a business combination achieved in stages (sometimes referred to as a step acquisition) to recognize the identifiable assets and liabilities, as well as the noncontrolling interest in the acquiree, at the full amounts of their fair values (or other amounts determined in accordance with this accounting principle). In addition, the accounting principle's requirement to measure the noncontrolling interest in the acquiree at fair value will result in recognizing the goodwill attributable to the noncontrolling interest in addition to that attributable to the acquirer. ASC 805 also requires the acquirer to recognize changes in the amount of its deferred tax benefits that are recognizable because of a business combination either in income from continuing operations in the period of the combination or directly in contributed capital, depending on the circumstances. It also provides guidance on the impairment testing of acquired research and development intangible assets and assets that the acquirer intends not to use. ASC 805 applies prospectively to business combinations for which the acquisition date is on or after October 1, 2009; therefore, the adoption of ASC 805 did not have any impact on the Company's historical financial statements.

ASC 810 – Consolidation. – On October 1, 2009, the Company adopted new authoritative guidance which establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It also clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. ASC 810 also changes the way the consolidated income statement is presented by requiring consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. It also requires disclosure, on the face of the consolidated statement of income, of the amounts of consolidated net income attributable to the parent and to the noncontrolling interest. ASC 810 requires that a parent recognize a gain or loss in net income when a subsidiary is deconsolidated and requires expanded disclosures in the consolidated financial statements that clearly identify and distinguish between the interests of the parent owners and the interests of the noncontrolling owners of a subsidiary. The adoption of this new guidance did not have any impact on the Company's results of operations or financial condition.

### NOTE 3. Proposed Tangshan Joint Venture

On February 3, 2010, the Company entered into a Share Purchase Agreement to create a joint venture with Tangshan Caofeidian Investment Corporation ("TCIC"), a Chinese investment company located in the Caofeidian Industry Zone, Tangshan City, Hebei Province of China.

The Share Purchase Agreement provides for the Company to sell a sixty percent (60%) interest in its Fiber Optics business (excluding its satellite communications and specialty photonics fiber optics businesses) to TCIC, which will be operated as a joint venture once the transaction is closed. The Fiber Optics businesses included in this transaction

are the Company's telecom, enterprise, cable television (CATV), fiber-to-the-premises (FTTP), and video transport product lines. Subsequent to the pending transaction, the Company's business will be comprised of the satellite and terrestrial solar businesses as well as the satellite communications and specialty photonics fiber optics businesses.

When the transaction is completed, the new joint venture entity will be named EMCORE Fiber Optics, Limited ("EFO") and it will be organized as a newly formed Hong Kong corporation. The Share Purchase Agreement provides for TCIC to pay the Company \$27.8 million in cash, subject to adjustment based on the net asset value of the business as of the closing date, and also to provide \$27.0 million of additional loans to EFO subsequent to the closing, with \$18.0 million to be funded within 90 days of closing and \$9.0 million to be funded within 90 days of the first anniversary of the closing. In consideration of the magnitude of TCIC's loan commitment to EFO, the Company will be providing 50% of its equity interest in EFO as collateral for this indebtedness. In addition, the Share Purchase Agreement provides for the Company to provide \$3.0 million of additional loans to EFO after the closing, with \$2.0 million to be funded within 5 business days of the closing and \$1.0 million to be funded within 90 days of the first anniversary of the closing.

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The parties also executed a Shareholders Agreement that provides for how EFO will be operated and governed following closing. The terms of the Shareholders Agreement provide that TCIC shall have the right to elect three of EFO's five directors, as well as to designate the Chairman of the Board and the Chief Financial Officer. The Company will have the right to elect the remaining two directors and to nominate the Chief Executive Officer. The Company also has the right to approve certain key corporate matters (including modifications to EFO's governing documents, changes in equity and corporate structure, mergers, acquisitions and dispositions, the incurring of indebtedness, and the annual business plan and budget) through supermajority voting requirements of the Board (subject to certain deadlock provisions). The Shareholders Agreement also imposes certain restrictions on the parties' abilities to transfer their interest in EFO.

The Share Purchase Agreement and the Shareholders Agreement are subject to the approval of both the Company's Board of Directors and the Board of Directors of TCIC, which means that until these approvals are obtained, the Share Purchase Agreement and the Shareholders Agreement would not be enforceable by either party against the other party. In addition, the closing of the transaction is subject to material conditions, including regulatory and governmental approvals in the U.S. and China. If U.S. regulatory approvals are not obtained, the Company may be obligated to pay a termination fee of \$2.8 million to TCIC.

It is expected that the Company's Executive Chairman and Chairman of the Board, Mr. Reuben F. Richards, Jr. will resign his position as the Company's Executive Chairman effective as of the closing of the transaction to assume the role of CEO for EFO. In addition, the Shareholders Agreement provides for certain other Company senior executives and the employees currently working for the transferred businesses to be offered positions with EFO. The Shareholders Agreement further contemplates that the Company's President and CEO, Dr. Hong Q. Hou, will also serve as a director of EFO, providing strategic and operational oversight to the joint venture.

If the transaction is completed as planned, over the next several years, the joint venture is expected to focus on developing a high volume, low cost manufacturing infrastructure and a local customer support organization to better serve the expanding customer base in China and worldwide. TCIC has committed to providing additional funding support for the JV's future strategic growth through acquisitions.

In conjunction with the establishment of the joint venture, the Company and TCIC also entered into a Supplemental Agreement pursuant to which the Company agreed to establish its China terrestrial concentrator photovoltaics (CPV) manufacturing and operations base in the Caofeidian Industry Zone. The Supplemental Agreement includes a commitment by TCIC to provide the Company with the equivalent of \$3.3 million in RMB denominated loans, tax and rent incentives and assistance in developing the Company's solar power business in China. The Supplemental Agreement is not subject to Board approval by either the Company or TCIC and is enforceable by each party against the other.

#### NOTE 4. Equity Facility

On October 1, 2009, the Company entered into a common stock purchase agreement (the "Purchase Agreement") with Commerce Court that sets forth the terms of an equity line of credit. The Purchase Agreement provides that upon certain terms and conditions, and the issuance of a draw-down request by the Company, Commerce Court has committed to purchase up to \$25 million of the Company's common stock over the 24-month term of the Purchase Agreement; provided, however, in no event may the Company sell more than 15,971,169 shares of common stock under the Purchase Agreement, which is equal to one share less than twenty percent of the Company's outstanding shares of common stock as of the closing date of the Purchase Agreement, less the number of shares of common stock the Company issued to Commerce Court on the closing date in partial payment of its commitment fee, or more shares

that would result in the beneficial ownership or more than 9.9% of the then issued and outstanding shares of our common stock by Commerce Court.

As payment of a portion of Commerce Court's fees in connection with the Purchase Agreement, the Company issued to Commerce Court, upon the execution of the Purchase Agreement, 185,185 shares of the Company's common stock and three warrants representing the right to purchase up to an aggregate of 1,600,000 shares of the Company's common stock, as follows:

- a warrant, pursuant to which Commerce Court may purchase up to 666,667 shares of the Company's common stock at an exercise price of \$1.69, which is equal to 125% of the average of the volume weighted average price of common stock for the three trading days immediately preceding the execution date of the Purchase Agreement,
  - a warrant, pursuant to which Commerce Court may purchase from up to 666,667 shares of the Company's common stock at an exercise price of \$2.02, which is equal to 150% of the average of the volume weighted average price of common stock for the three trading days immediately preceding the execution date of the Purchase Agreement, and
  - a warrant, pursuant to which Commerce Court may purchase up to 266,666 shares of the Company's common stock at an exercise price of \$2.36, which is equal to 175% of the average of the volume weighted average price of common stock for the three trading days immediately preceding the execution date of the Purchase Agreement.
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The warrants may be exercised at any time or from time to time between April 1, 2010 and April 1, 2015. The warrants may not be offered for sale, sold, transferred or assigned without the Company's consent, in whole or in part, to any person other than an affiliate of Commerce Court. If after April 1, 2010, the Company's common stock trades at a price greater than 140% of the exercise price of any warrant for a period of 10 consecutive trading days and the Company meets certain equity conditions, then the Company has the right to affect a mandatory exercise of such warrant.

From time to time over the term of the Purchase Agreement, and at the Company's sole discretion, the Company may present Commerce Court with draw down notices to purchase common stock over a ten consecutive trading day period or such other period mutually agreed upon by the Company and Commerce Court (the "draw down period") with each draw down subject to limitations based on the price of the Company's common stock and a limit of the amount in the applicable fixed amount request, or 2.5% of the Company's market capitalization at the time of such draw down, whichever is less.

The Company has the right to present Commerce Court with up to 24 draw down notices during the term of the Purchase Agreement, with only one such draw down notice allowed per draw down period with a minimum of five trading days required between each draw down period.

Once presented with a draw down notice, Commerce Court is required to purchase a pro rata portion of the shares on each trading day during the trading period on which the daily volume weighted average price for the common stock exceeds a threshold price determined by the Company for such draw down. The per share purchase price for these shares will equal the daily volume weighted average price of the common stock on each date during the draw down period on which shares are purchased, less a discount of 5%. If the daily volume weighted average price of the common stock falls below the threshold price on any trading day during a draw down period, the Purchase Agreement provides that Commerce Court will not be required to purchase the pro-rata portion of shares of common stock allocated to that day. However, at its election, Commerce Court may buy the pro-rata portion of shares allocated to that day at the threshold price less the discount described above.

The Purchase Agreement also provides that, from time to time and at the Company's sole discretion, the Company may grant Commerce Court the right to exercise one or more options to purchase additional shares of common stock during each draw down period for an amount of shares specified by the Company based on the trading price of the common stock. Upon Commerce Court's exercise of such an option, the Company would sell to Commerce Court the shares of common stock subject to the option at a price equal to the greater of the daily volume weighted average price of the common stock on the day Commerce Court notifies the Company of its election to exercise its option or the threshold price for the option determined by the Company, less a discount calculated in the same manner as it is calculated in the draw down notice.

In addition to the issuance of shares of common stock to Commerce Court pursuant to the Purchase Agreement, a supplement to the Company's shelf registration statement filed with the SEC also covers the sale of those shares from time to time by Commerce Court to the public.

The Company paid \$45,000 of Commerce Court's attorneys' fees and expenses incurred by Commerce Court in connection with the preparation, negotiation, execution and delivery of the Purchase Agreement and related transaction documentation. The Company has also agreed to pay up to \$5,000 in certain fees and expenses incurred by Commerce Court in connection with any amendments, modifications or waivers of the Purchase Agreement, ongoing due diligence of our Company and other transaction expenses associated with fixed requests made by the Company from time to time during the term of the Purchase Agreement, provided that the Company shall not be required to pay any reimbursement for any such expenses in any calendar quarter in which the Company provides a fixed request notice.

If the Company issues a draw down notice and fails to deliver the shares to Commerce Court on the applicable settlement date, and such failure continues for ten trading days, the Company has agreed to pay Commerce Court, at Commerce Court's option, liquidated damages in cash or restricted shares of common stock.

Upon each sale of common stock to Commerce Court under the Purchase Agreement, the Company has also agreed to pay Reedland Capital Partners, an Institutional Division of Financial West Group, a placement fee equal to 1% of the aggregate dollar amount of common stock purchased by Commerce Court.

On March 18, 2010, the Company sold 1,870,042 shares of its common stock to Commerce Court pursuant to the terms of the Purchase Agreement at a price of approximately \$1.07 per share.

#### Financial Impact

Costs incurred to enter into the equity line of credit facility were expensed as incurred. During the three months ended December 31, 2009, the Company expensed the fair value of the common stock and warrants issued as a non-operating expense within the condensed consolidated statement of operations. On October 1, 2009, the Company recorded \$1.4 million related to the issuance of warrants and \$0.2 million related to the issuance of 185,185 shares of common stock. The warrants issued by the Company were classified as a liability since the warrants met the classification requirements for liability accounting in accordance with ASC 815.

The fair value of the common stock was based on a closing price of \$1.23 per share on October 1, 2009. The fair value of each warrant was estimated using the Black-Scholes option valuation model. The Company expects an impact to the consolidated statement of operations when it records an adjustment to fair value of the warrants at the end of each quarterly reporting period going forward.

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The Black-Scholes option valuation model requires the input of highly subjective assumptions, including the warrant's expected life and the price volatility of the underlying stock, as outlined below:

| Assumptions used in the Black-Scholes<br>Option Valuation Model | As of<br>October 1, 2009 | As of<br>December 31,<br>2009 |
|---|--------------------------|-------------------------------|
| Expected dividend yield   | -                        | -                             |
| Expected stock price volatility                                 | 95.0%                    | 95.0%                         |
| Risk-free interest rate   | 2.2%                     | 2.7%                          |
| Expected term (in years)  | 5.50                     | 5.25                          |

As of October 1, 2009 and December 31, 2009, the value of the warrants was estimated to be \$1.4 million and \$1.1 million, respectively.

During the second quarter of fiscal 2010, management changed the warrant valuation method from the Black-Scholes option valuation model to the modified binomial option pricing model which has been recognized as a change in accounting estimate. The modified binomial option pricing model allows the valuation of each warrant to factor in the intrinsic value associated with the Company's right to affect a mandatory exercise of each warrant if the Company's common stock trades at a price greater than 140% of the exercise price of any warrant. As of December 31, 2009, this change in estimate would have resulted in a reversal of \$0.5 million non-operating expense from a change in fair value of financial instruments within the condensed consolidated statement of operations.

As of March 31, 2010, the fair value of the warrants was estimated to be \$0.8 million using the modified binomial option pricing model. The modified binomial option pricing model requires the input of highly subjective assumptions, including the warrant's expected life and the price volatility of the underlying stock, as outlined below:

| Assumptions used in the Modified<br>Binomial<br>Option Pricing Model | As of<br>December 31,<br>2009 | As of<br>March 31, 2010 |
|--|-------------------------------|-------------------------|
| Expected dividend yield  | -                             | -                       |
| Expected stock price volatility                                      | 95.0%                         | 96.3%                   |
| Risk-free interest rate  | 2.7%                          | 2.6%                    |
| Expected term (in years)   | 5.25                          | 5.00                    |

#### Draw-down Transaction

In March 2010, the Company initiated its first draw down under the Purchase Agreement and received \$2.0 million from the sale of 1,870,042 shares of common stock; with the total discount to volume weighted average price calculated on a daily basis totaling \$0.1 million, which was recorded as a non-operating expense within the condensed consolidated statement of operations.

#### NOTE 5. Equity

##### Stock Options

The Company provides long-term incentives to eligible officers, directors, and employees in the form of stock options. Most of the Company's stock options vest and become exercisable over four to five years and have a contractual life of ten years. Certain stock options awarded by the Company are intended to qualify as incentive stock options pursuant to Section 422A of the Internal Revenue Code. The Company issues new shares of common stock to satisfy the issuance of shares under this stock-based compensation plan.

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The Company's 2000 Stock Option Plan expired in February 2010; and as of March 31, 2010, no stock options were available for issuance. On April 7, 2010, upon recommendation of the Company's Compensation Committee, the Board of Directors of the Company adopted the EMCORE Corporation 2010 Equity Incentive Plan (the "Option Plan"), subject to the approval of the Company's shareholders, to replace the Company's 2000 Stock Option Plan. If the shareholders approve the Option Plan, 4,000,000 shares of the Company's common stock will be available for future issuances of stock option awards.

#### Surrender of Stock Options

On November 20, 2009, Mr. Markovich, the Company's Chief Financial Officer, voluntarily surrendered stock options exercisable into 475,000 shares of common stock. These stock options had an exercise price of \$5.57 and were granted to Mr. Markovich on August 18, 2008. Mr. Markovich received no consideration in exchange for the surrender of these stock options. The surrender of his non-vested stock options resulted in an immediate non-cash charge of \$1.3 million, which was recorded in selling, general, and administrative expense during the three months ended December 31, 2009. The expense was due to the acceleration of all unrecognized stock-based compensation expense associated with that specific stock option grant.

The following table summarizes the activity under the 2000 Stock Option Plan:

|  | Number of Shares | Weighted<br>Average<br>Exercise<br>Price | Weighted<br>Average<br>Remaining<br>Contractual<br>Life<br>(in years) |
|--|------------------|--|---|
| Outstanding as of September 30, 2009             | 10,788,174       | \$ 4.85                                  |   |
| Granted  | 76,500           | 1.07                                     |   |
| Exercised  | -                | -  |   |
| Forfeited  | (206,690)        | 3.74                                     |   |
| Cancelled  | (800,317)        | 5.53                                     |   |
| Outstanding as of March 31, 2010                 | 9,857,667        | \$ 4.77                                  | 7.54  |
| Exercisable as of March 31, 2010                 | 3,957,319        | \$ 5.97                                  | 5.79  |
| Vested and expected to vest as of March 31, 2010 | 6,067,531        | \$ 5.11                                  | 6.85  |

As of March 31, 2010, there was approximately \$4.5 million of total unrecognized compensation expense related to non-vested stock-based compensation arrangements granted under the 2000 Stock Option Plan. This expense is expected to be recognized over an estimated weighted average life of 2.6 years.

Intrinsic value for stock options represents the "in-the-money" portion or the positive variance between a stock option's exercise price and the underlying stock price. There were no stock options exercised during the three or six months

ended March 31, 2010. The total intrinsic value related to stock options exercised during the six months ended March 31, 2009 totaled approximately \$10,000. The intrinsic value related to fully vested and expected to vest stock options as of March 31, 2010 totaled approximately \$22,000 and the intrinsic value related to exercisable stock options as of March 31, 2010 was approximately \$8,000.

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|                                    |                       | Number of Stock Options Outstanding                              |   | Options Exercisable   |   |  |
|------------------------------------|-----------------------|--|---|-----------------------|---|--|
| Exercise Price<br>of Stock Options | Number<br>Outstanding | Weighted-<br>Average<br>Remaining<br>Contractual<br>Life (years) | Weighted-<br>Average<br>Exercise<br>Price | Number<br>Exercisable | Weighted-<br>Average<br>Exercise<br>Price |  |
| <\$5.00                            | 5,063,608             | 7.79   | \$1.89                                    | 1,534,645             | \$3.00                                    |  |
| >=\$5.00 to<br><\$10.00            | 4,676,339             | 7.40   | 7.55                                      | 2,325,254             | 7.33                                      |  |
| =>\$10.00                          | 117,720               | 2.29   | 18.61                                     | 97,420                | 20.15                                     |  |
| Total                              | 9,857,667             | 7.54   | \$4.77                                    | 3,957,319             | \$5.97                                    |  |

Stock-based compensation expense is measured at the stock option grant date, based on the fair value of the award, and is recorded to cost of sales; sales, general, and administrative; and research and development expense based on an employee's responsibility and function over the requisite service period. Management has made an estimate of expected forfeitures and recognizes compensation expense only for those equity awards expected to vest.

The effect of recording stock-based compensation expense was as follows:

| (in thousands, except per share data)                     | For the Three Months<br>Ended March 31, |               | For the Six Months<br>Ended March 31, |               |
|---|---|---------------|---------------------------------------|---------------|
|   | 2010                                    | 2009          | 2010                                  | 2009          |
| Stock-based compensation expense<br>by award type:        |   |               |                                       |               |
| Employee stock options                                    | \$ 1,927                                | \$ 1,346      | \$ 4,933                              | \$ 3,341      |
| Employee stock purchase plan                              | 137                                     | 140           | 317                                   | 295           |
| <br>Total stock-based compensation<br>expense             | <br>\$ 2,064                            | <br>\$ 1,486  | <br>\$ 5,250                          | <br>\$ 3,636  |
| <br>Net effect on net loss per basic<br>and diluted share | <br>\$ (0.03)                           | <br>\$ (0.02) | <br>\$ (0.06)                         | <br>\$ (0.05) |

#### Valuation Assumptions

The fair value of each stock option grant is estimated on the date of grant using the Black-Scholes option valuation model and the straight-line attribution approach using the following weighted-average assumptions. The option-pricing model requires the input of highly subjective assumptions, including the option's expected life and the price volatility of the underlying stock. The weighted-average grant date fair value of stock options granted during the three and six months ended March 31, 2010 was \$0.78 and \$0.77, respectively. The weighted average grant date fair value of stock options granted during the three and six months ended March 31, 2009 was \$0.67 and \$1.12, respectively.

#### Assumptions used in Black-Scholes Option Valuation Model

|                                   | For the Three Months<br>Ended March 31, |        | For the Six Months<br>Ended March 31, |        |
|-----------------------------------|---|--------|---------------------------------------|--------|
|                                   | 2010                                    | 2009   | 2010                                  | 2009   |
| Expected dividend yield           | -                                       | -      | -                                     | -      |
| Expected stock price volatility   | 97.3%                                   | 115.0% | 97.1%                                 | 115.0% |
| Risk-free interest rate           | 2.5%                                    | 3.0%   | 2.4%                                  | 2.6%   |
| Expected term (in years)          | 4.5                                     | 7.8    | 4.6                                   | 7.8    |
| Estimated pre-vesting forfeitures | 32.7%                                   | 25.8%  | 32.7%                                 | 25.8%  |

**Expected Dividend Yield:** The Black-Scholes valuation model calls for a single expected dividend yield as an input. The Company has not issued any dividends.

**Expected Stock Price Volatility:** The fair values of stock-based payments were valued using the Black-Scholes valuation method with a volatility factor based on the Company's historical stock price.

**Risk-Free Interest Rate:** The Company bases the risk-free interest rate used in the Black-Scholes valuation method on the implied yield that was currently available on U.S. Treasury zero-coupon notes with an equivalent remaining term. Where the expected term of stock-based awards do not correspond with the terms for which interest rates are quoted, the Company performed a straight-line interpolation to determine the rate from the available maturities.

**Expected Term:** Expected term represents the period that the Company's stock-based awards are expected to be outstanding and was determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards, vesting schedules and expectations of future employee behavior as influenced by changes to the terms of its stock-based awards.

**Estimated Pre-vesting Forfeitures:** When estimating forfeitures, the Company considers voluntary termination behavior as well as workforce reduction programs.

## Warrants

As of March 31, 2010, the Company had 3,000,003 warrants outstanding.

On October 1, 2009, the Company entered into an equity line of credit arrangement with Commerce Court Small Cap Value Fund, Ltd. wherein the Company issued to Commerce Court three warrants representing the right to purchase up to an aggregate of 1,600,000 shares of the Company's common stock. See Footnote 4 – Equity Facility for additional information related to the warrants issued with this equity facility.

In February 2008, the Company issued 1,400,003 warrants in conjunction with a private placement transaction. The warrants grant the holder the right to purchase one share of the Company's common stock at a price of \$15.06 per share. The warrants are immediately exercisable and remain exercisable until February 20, 2013. Beginning two years after their issuance, the warrants may be called by the Company for a price of \$0.01 per underlying share if the closing price of its common stock has exceeded 150% of the exercise price for at least 20 trading days within a period of any 30 consecutive trading days and other certain conditions are met. In addition, in the event of certain fundamental transactions, principally the purchase of the Company's outstanding common stock for cash, the holders of the warrants may demand that the Company purchase the unexercised portions of their warrants for a price equal to the Black-Scholes Value of such unexercised portions as of the time of the fundamental transaction. Warrants issued to the investors were accounted for as an equity transaction with a value of \$9.8 million recorded to common stock.

## Employee Stock Purchase Plan

The Company maintains an Employee Stock Purchase Plan ("ESPP") that provides employees of the Company an opportunity to purchase common stock through payroll deductions. The ESPP is a 6-month duration plan with new participation periods beginning the first business day of January and July of each year. The purchase price is set at 85% of the average high and low market price of the Company's common stock on either the first or last day of the participation period, whichever is lower, and contributions are limited to the lower of 10% of an employee's

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compensation or \$25,000. The Company issues new shares of common stock to satisfy the issuance of shares under this stock-based compensation plan.

The amounts of shares issued for the ESPP are as follows:

|  | Number of Common<br>Stock<br>Shares | Purchase Price per<br>Share of<br>Common Stock |
|--|-------------------------------------|--|
| Amount of shares reserved for the ESPP                       | 4,500,000                           |  |
| Number of shares issued for calendar years 2000 through 2007 | (1,123,857)                         | \$1.87 -<br>\$40.93                            |
| Number of shares issued for calendar year 2008               | (592,589)                           | \$0.88 -<br>\$ 5.62                            |
| Number of shares issued for calendar year 2009               | (1,073,405)                         | \$0.88 -<br>\$ 0.92                            |
| Remaining shares reserved for the ESPP                       | 1,710,149                           |  |

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## Future Issuances

As of March 31, 2010, the Company had reserved a total of 14.6 million shares of its common stock for future issuances as follows:

|  | Number of Common<br>Stock Shares<br>Available for Future<br>Issuances |
|--|---|
| For exercise of outstanding common stock options | 9,857,667   |
| For future issuances to employees under the ESPP | 1,710,149   |
| For future common stock option awards            | -   |
| For future exercise of warrants                  | 3,000,003   |
| <b>Total reserved</b>                            | <b>14,567,819</b>   |

## NOTE 6. Receivables

The components of accounts receivable consisted of the following:

| (in thousands)                  | As of<br>March<br>31,2010 | As of<br>September<br>30, 2009 |
|---------------------------------|---------------------------|--------------------------------|
| Accounts receivable             | \$ 39,509                 | \$ 40,474                      |
| Accounts receivable – unbilled  | 8,673                     | 6,068                          |
| Accounts receivable, gross      | 48,182                    | 46,542                         |
| Allowance for doubtful accounts | (5,450)                   | (7,125)                        |
| Accounts receivable, net        | \$ 42,732                 | \$ 39,417                      |

The Company records revenue from certain solar panel and solar power systems contracts using the percentage-of-completion method. The term of the contracts associated with this type of receivable usually exceed a period of one year. As of March 31, 2010, the Company had \$14.7 million of accounts receivable recorded using the percentage of completion method. Of this amount, \$7.3 million was invoiced and \$7.4 million was unbilled as of March 31, 2010. Unbilled accounts receivable represents revenue recognized but not yet billed or accounts billed after the period ended. Billings on contracts using the percentage-of-completion method usually occur upon completion of predetermined contract milestones or other contract terms, such as customer approval. The allowance for doubtful accounts specifically related to receivables recorded using the percentage-of-completion method totaled \$2.4 million as of March 31, 2010. The allowance is based on the age of receivables and a specific identification of receivables considered at risk of collection.

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All of the Company's accounts receivable as of March 31, 2010 is expected to be collected within the next twelve months.

The following table summarizes the changes in the allowance for doubtful accounts:

| (in thousands)                              | For the Six Months<br>Ended March 31, |          |
|---|---------------------------------------|----------|
|   | 2010                                  | 2009     |
| Balance at beginning of period              | \$ 7,125                              | \$ 2,377 |
| Provision adjustment – (recovery) expense   | (411)                                 | 2,662    |
| Write-offs - deductions against receivables | (1,264)                               | -        |
| Balance at end of period                    | \$ 5,450                              | \$ 5,039 |

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## NOTE 7. Inventory

Inventory is stated at the lower of cost or market, with cost being determined using the standard cost method that includes material, labor, and manufacturing overhead costs, which approximates weighted average cost. The components of inventory consisted of the following:

| (in thousands)    | As of<br>March 31,<br>2010 | As of<br>September<br>30, 2009 |
|-------------------|----------------------------|--------------------------------|
| Raw materials     | \$ 25,632                  | \$ 27,607                      |
| Work in-process   | 7,329                      | 6,496                          |
| Finished goods    | 9,271                      | 9,998                          |
| Inventory, gross  | 42,232                     | 44,101                         |
| Valuation reserve | (9,649)                    | (9,880)                        |
| Inventory, net    | \$ 32,583                  | \$ 34,221                      |

The following table summarizes the changes in the valuation allowance accounts:

| (in thousands)                              | For the Six Months<br>Ended March 31, |           |
|---|---------------------------------------|-----------|
|   | 2010                                  | 2009      |
| Balance at beginning of period              | \$ 9,880                              | \$ 12,625 |
| Provision adjustment – expense              | 913                                   | 6,262     |
| Adjustments against inventory or provisions | (1,144)                               | 365       |
| Balance at end of period                    | \$ 9,649                              | \$ 19,252 |

## NOTE 8. Property, Plant, and Equipment

The components of property, plant, and equipment consisted of the following:

| (in thousands)                 | As of<br>March 31,<br>2010 | As of<br>September<br>30, 2009 |
|--------------------------------|----------------------------|--------------------------------|
| Land                           | \$ 1,502                   | \$ 1,502                       |
| Building and improvements      | 34,854                     | 34,922                         |
| Equipment                      | 99,459                     | 98,693                         |
| Furniture and fixtures         | 3,065                      | 3,065                          |
| Computer hardware and software | 2,650                      | 2,660                          |
| Leasehold improvements         | 918                        | 1,094                          |
| Construction in progress       | 2,529                      | 3,031                          |

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|   |           |           |
|---|-----------|-----------|
| Property, plant and equipment, gross      | 144,977   | 144,967   |
| Accumulated depreciation and amortization | (94,603)  | (89,939)  |
| Property, plant and equipment, net        | \$ 50,374 | \$ 55,028 |

As of March 31, 2010 and September 30, 2009, the Company did not have any significant capital lease agreements.

Depreciation expense was \$2.4 million and \$4.8 million for the three and six months ended March 31, 2010, respectively.

Depreciation expense was \$3.1 million and \$6.3 million for the three and six months ended March 31, 2009, respectively.

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## NOTE 9. Goodwill

As of September 30, 2009, the Company performed an impairment test on its goodwill based on revised operational and cash flow forecasts. The impairment testing indicated that no impairment existed and that fair value exceeded carrying value by approximately 40%. As of December 31, 2009, the Company performed an annual impairment test on its goodwill of \$20.4 million related to its Photovoltaics reporting unit and the Company believed the carrying amount of the goodwill was not impaired. There have been no events or change in circumstances that would more likely than not reduce the fair value of the Photovoltaics reporting unit below its carrying amount. However, if there is further erosion of the Company's market capitalization or the Photovoltaics reporting unit is unable to achieve its projected cash flows, management may be required to perform additional impairment tests of its remaining goodwill. The outcome of these additional tests may result in the Company recording goodwill impairment charges.

## NOTE 10. Intangible Assets

The following table sets forth changes in the carrying value of intangible assets by reporting segment:

| (in thousands) | As of March 31, 2010 |                          |            | As of September 30, 2009 |                          |            |
|----------------|----------------------|--------------------------|------------|--------------------------|--------------------------|------------|
|                | Gross Assets         | Accumulated Amortization | Net Assets | Gross Assets             | Accumulated Amortization | Net Assets |
| Fiber Optics   | \$ 24,577            | \$ (13,636)              | \$ 10,941  | \$ 24,494                | \$ (12,341)              | \$ 12,153  |
| Photovoltaics  | 1,734                | (765)                    | 969        | 1,459                    | (630)                    | 829        |
| Total          | \$ 26,311            | \$ (14,401)              | \$ 11,910  | \$ 25,953                | \$ (12,971)              | \$ 12,982  |

The Company believes the carrying amount of its long-lived assets and intangible assets as of March 31, 2010 are recoverable. However, if there is further erosion of the Company's market capitalization or the Company is unable to achieve its projected cash flows, the Company may be required to perform impairment tests of its remaining long-lived assets and intangible assets. The outcome of these tests may result in the Company recording impairment charges.

Amortization expense related to intangible assets is included in SG&A on the consolidated statements of operations. Amortization expense was \$0.7 million and \$1.4 million for the three and six months ended March 31, 2010, respectively.

Amortization expense was \$1.1 million and \$2.2 million for the three and six months ended March 31, 2009, respectively.

Based on the carrying amount of the intangible assets as of March 31, 2010, the estimated future amortization expense is as follows:

| (in thousands)                       | Estimated Future Amortization Expense |
|--------------------------------------|---------------------------------------|
| Six months ended September 30, 2010  | \$ 1,446                              |
| Fiscal year ended September 30, 2011 | 2,503                                 |
| Fiscal year ended September 30, 2012 | 2,179                                 |
| Fiscal year ended September 30, 2013 | 1,844                                 |

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|                                      |    |        |
|--------------------------------------|----|--------|
| Fiscal year ended September 30, 2014 |    | 1,309  |
| Thereafter                           |    | 2,629  |
| Total future amortization expense    | \$ | 11,910 |

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## NOTE 11. Accrued Expenses and Other Current Liabilities

The components of accrued expenses and other current liabilities consisted of the following:

| (in thousands)                                 | As of<br>March 31,<br>2010 | As of<br>September<br>30, 2009 |
|--|----------------------------|--------------------------------|
| Compensation-related                           | \$ 4,624                   | \$ 5,861                       |
| Warranty                                       | 4,662                      | 4,287                          |
| Loss on firm commitments                       | 1,150                      | 3,821                          |
| Professional fees                              | 2,086                      | 1,839                          |
| Royalty  | 1,930                      | 1,937                          |
| Self insurance                                 | 926                        | 1,272                          |
| Deferred revenue and customer deposits         | 3,079                      | 886                            |
| Income and other taxes                         | 865                        | 625                            |
| Accrued program loss                           | 378                        | 51                             |
| Restructuring accrual                          | 285                        | 395                            |
| Other  | 245                        | 713                            |
| Accrued expenses and other current liabilities | \$ 20,230                  | \$ 21,687                      |

The following table summarizes the changes in the product warranty accrual accounts:

| (in thousands)                            | For the Six Months<br>Ended March 31, |          |
|---|---------------------------------------|----------|
|   | 2010                                  | 2009     |
| Balance at beginning of period            | \$ 4,287                              | \$ 4,640 |
| Provision adjustment – expense (recovery) | 726                                   | 1,335    |
| Utilization of warranty accrual           | (351)                                 | (847)    |
| Balance at end of period                  | \$ 4,662                              | \$ 5,128 |

## NOTE 12. Debt

## Line of Credit

In September 2008, the Company closed a \$25 million asset-backed revolving credit facility with Bank of America, which can be used for working capital, letters of credit and other general corporate purposes. Subsequently, the credit facility was amended resulting in a reduction in the total loan availability to \$14 million. The credit facility matures in September 2011 and is secured by substantially all of the Company's assets. The credit facility is subject to a borrowing base formula based on eligible accounts receivable and provides for prime-based borrowings.

As of March 31, 2010, the Company had a \$9.7 million prime rate loan outstanding, with an interest rate of 8.25%, and approximately \$2.2 million in outstanding standby letters of credit under this credit facility. The Company

completely paid off the outstanding loan on April 2, 2010.

The facility is also subject to certain financial covenants. On February 8, 2010, the Company and Bank of America entered into a Sixth Amendment to the Company's credit facility, which (a) permits the Company to enter into foreign exchange hedging transactions pursuant to a separate facility with the bank, provided that available amounts under such facility shall be deducted from the maximum revolving loan limit under this facility; and (b) reset the EBITDA financial covenant for the first quarter of fiscal 2010. On May 6, 2010, the Company and Bank of America entered into a Seventh Amendment to the Company's credit facility, which reset the EBITDA and Fixed Charge Coverage Ratio financial covenants for the second quarter of fiscal 2010 and the remaining quarters of fiscal 2010.

#### Short-term Debt

In December 2008, the Company borrowed \$0.9 million from UBS Securities that is collateralized with auction rate preferred securities. The average interest rate on the loan is approximately 1.3% and the term of the loan is dependent upon the timing of the settlement of the auction rate securities with UBS Securities, which is expected to occur by June 2010 at 100% par value.

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## NOTE 13. Commitments and Contingencies

The Company leases certain land, facilities, and equipment under non-cancelable operating leases. The leases typically provide for rental adjustments for increases in base rent (up to specific limits), property taxes, insurance and general property maintenance that would be recorded as rent expense. Net facility and equipment rent expense under such leases totaled approximately \$1.3 million for both the six months ended March 31, 2010 and 2009.

Estimated future minimum rental payments under the Company's non-cancelable operating leases with an initial or remaining term of one year or more as of March 31, 2010 are as follows:

| (in thousands)                          | Estimated Future<br>Minimum Lease<br>Payments |
|---|---|
| Six months ended September 30,<br>2010  | \$ 958  |
| Fiscal year ended September 30,<br>2011 | 1,816   |
| Fiscal year ended September 30,<br>2012 | 1,073   |
| Fiscal year ended September 30,<br>2013 | 801   |
| Fiscal year ended September 30,<br>2014 | 76  |
| Thereafter                              | 2,698   |
| Total minimum lease<br>payments         | \$ 7,422                                      |

## Legal Proceedings

The Company is subject to various legal proceedings and claims that are discussed below. The Company is also subject to certain other legal proceedings and claims that have arisen in the ordinary course of business and which have not been fully adjudicated. The Company does not believe it has a potential liability related to current legal proceedings and claims that could individually, or in the aggregate, have a material adverse effect on its financial condition, liquidity or results of operations. However, the results of legal proceedings cannot be predicted with certainty. Should the Company fail to prevail in any legal matters or should several legal matters be resolved against the Company in the same reporting period, then the operating results of that particular reporting period could be materially adversely affected. In the past, the Company settled certain matters that did not individually, or in the aggregate, have a material impact on the Company's results of operations.

## a) Intellectual Property Lawsuits

We protect our proprietary technology by applying for patents where appropriate and, in other cases, by preserving the technology, related know-how and information as trade secrets. The success and competitive position of our product lines are significantly impacted by our ability to obtain intellectual property protection for our R&D efforts.

We have, from time to time, exchanged correspondence with third parties regarding the assertion of patent or other intellectual property rights in connection with certain of our products and processes. Additionally, on September 11, 2006, the Company filed a lawsuit against Optium Corporation, currently part of Finisar Corporation (Optium) in the U.S. District Court for the Western District of Pennsylvania for patent infringement of certain patents associated with our Fiber Optics segment. In the suit, the Company and JDS Uniphase Corporation (JDSU) allege that Optium is infringing on U.S. patents 6,282,003 and 6,490,071 with its Prisma II 1550nm transmitters. On March 14, 2007, following denial of a motion to add additional claims to its existing lawsuit, the Company and JDSU filed a second patent suit in the same court against Optium alleging infringement of JDSU's patent 6,519,374 ("the '374 patent"). On March 15, 2007, Optium filed a declaratory judgment action against the Company and JDSU. Optium sought in this litigation a declaration that certain products of Optium do not infringe the '374 patent and that the patent is invalid, but the District Court dismissed the action on January 3, 2008 without addressing the merits. The '374 patent is assigned to JDSU and licensed to the Company.

On December 20, 2007, the Company was served with a complaint in another declaratory relief action, which Optium had filed in the Federal District Court for the Western District of Pennsylvania. This action seeks to have U.S. patents 6,282,003 and 6,490,071 declared invalid or unenforceable because of certain conduct alleged to have occurred in connection with the grant of these patents. These allegations are substantially the same as those brought by Optium by motion in the Company's own case against Optium, which motion had been denied by the Court. On August 11, 2008, both actions pending in the Western District of Pennsylvania were consolidated before a single judge, and a trial date of October 19, 2009 was set. On February 18, 2009, the Company's motion for a summary judgment dismissing Optium's declaratory relief action was granted, and on March 11, 2009, the Company was notified that Optium intended to file an appeal of this order. On May 5, 2010, the Court of Appeals for the Federal Circuit rejected Optium's appeal and affirmed the summary judgment dismissing Optium's declaratory relief action.

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In October 2009 the consolidated matters were tried before a jury, which found that all patents asserted against Optium were valid, that all claims asserted were infringed, and that such infringement by Optium was willful where willfulness was asserted. The jury awarded the Company and JDSU monetary damages totaling approximately \$3.4 million. The Company has been advised that Optium has filed an appeal of this award with the Court of Appeals for the Federal Circuit, which the Company intends to contest.

In accordance with U.S. GAAP, a contingency that might result in a gain should not be reflected in the financial statements because to do so might be to recognize income before its realization.

#### b) Avago-related Litigation

On July 15, 2008, the Company was served with a complaint filed by Avago Technologies and what appear to be affiliates thereof in the United States District Court for the Northern District of California, San Jose Division (Avago Technologies U.S., Inc., et al., Emcore Corporation, et al., Case No.: C08-3248 JW). In this complaint, Avago asserts claims for breach of contract and breach of express warranty against Venture Corporation Limited (one of the Company's customers) and asserts a tort claim for negligent interference with prospective economic advantage against the Company.

On December 5, 2008, the Company was also served with a complaint by Avago Technologies filed in the United States District Court for the Northern District of California, San Jose Division alleging infringement of two patents by the Company's VCSEL products. (Avago Technologies Singapore et al., Emcore Corporation, et al., Case No.: C08-5394 EMC). This matter has been stayed pending resolution of the International Trade Commission matter described immediately below.

On March 5, 2009, the Company was notified that, based on a complaint filed by Avago alleging the same patent infringement that formed the basis of the complaint previously filed in the Northern District of California, the U.S. International Trade Commission (the "ITC") had determined to begin an investigation titled "In the Matter of Certain Optoelectronic Devices, Components Thereof and Products Containing the Same", Inv. No. 337-TA-669. This matter was tried before an administrative law judge of the ITC from November 16-20, 2009.

On March 12, 2010, the Company was advised that an initial determination had been issued by the administrative law judge of the ITC that found that one of the two patents asserted against certain of the Company's products was both valid and infringed. This initial determination is subject to review and confirmation by the ITC itself and to further review by the President of the United States. Any orders which might issue following such review are subject to appeal to the U.S. Court of Appeals for the Federal Circuit. The initial determination will also not be binding in the patent case currently pending between the Company and Avago in the Northern District of California, which will remain stayed until all appeals of the initial determination have been exhausted.

On March 29, 2010, the Company filed a petition with the International Trade Commission for a review of certain portions of the initial determination that were adverse to the Company. The Commission has not yet indicated which portions of the initial determination it will review.

The Company plans to follow all available avenues of appeal with respect to the adverse aspects of this initial determination and to petition the Patent and Trademark Office for a re-examination of both of the patents in question based on evidence presented in the ITC matter. The Company is also evaluating non-judicial approaches, including product redesign and manufacturing relocation, to minimize the impact of any exclusionary or cease and desist order which may be issued.

#### c) Green and Gold related litigation

On December 23, 2008, Plaintiffs Maurice Prissert and Claude Prissert filed a purported stockholder class action (the “Prissert Class Action”) pursuant to Federal Rule of Civil Procedure 23 allegedly on behalf of a class of Company shareholders against the Company and certain of its present and former directors and officers (the “Individual Defendants”) in the United States District Court for the District of New Mexico captioned, Maurice Prissert and Claude Prissert v. EMCORE Corporation, Adam Gushard, Hong Q. Hou, Reuben F. Richards, Jr., David Danzilio and Thomas Werthan, Case No. 1:08cv1190 (D.N.M.). The Complaint alleges that Company and the Individual Defendants violated certain provisions of the federal securities laws, including Section 10(b) of the Securities Exchange Act of 1934, arising out of the Company’s disclosure regarding its customer Green and Gold Energy (“GGE”) and the associated backlog of GGE orders with the Company’s Photovoltaics business segment. The Complaint in the Class Action seeks, among other things, an unspecified amount of compensatory damages and other costs and expenses associated with the maintenance of the Action.

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On or about February 12, 2009, a second purported stockholder class action (Mueller v. EMCORE Corporation et al., Case No. 1:09cv 133 (D.N.M.)) (the “Mueller Class Action”) was filed in the United States District Court for the District of New Mexico against the same defendants named in the Prissert Class Action, based on substantially the same facts and circumstances, containing substantially the same allegations and seeking substantially the same relief. Plaintiffs in both class actions have moved to consolidate the matters into a single action, and several alleged EMCORE shareholders have moved to be appointed lead class plaintiff of the to-be consolidated action. Selection of a lead plaintiff in this matter is currently pending before the Court.

On January 23, 2009, Plaintiff James E. Stearns filed a purported stockholder derivative action (the “Stearns Derivative Action”) on behalf of the Company against the Individual Defendants, as well as the Company as nominal defendant in the Superior Court of New Jersey, Atlantic County, Chancery Division (James E. Stearns, derivatively on behalf of EMCORE Corporation v. Thomas J. Russell, Robert Bogomolny, Charles Scott, John Gillen, Reuben F. Richards, Jr., Hong Q. Hou, Adam Gushard, David Danzilio and Thomas Werthan, Case No. Atl-C-10-09). This action is based on essentially the same factual contentions as the Prissert Class Action, and alleges that the Individual Defendants engaged in improprieties and violations of law in connection with the reporting of the GGE backlog. The Stearns Derivative Action seeks several forms of relief, allegedly on behalf of the Company, including, among other things, damages, equitable relief, corporate governance reforms, an accounting of, rescission of, restitution of, and costs and disbursements of the lawsuit.

On March 11, 2009, Plaintiff Gary Thomas filed a second purported shareholder derivative action (the “Thomas Derivative Action”; together with the Stearns Derivative Action, the “Derivative Actions”) in the U.S. District Court for the District of New Mexico against the Company and certain of the Individual Defendants (Gary Thomas, derivatively on behalf of EMCORE Corporation v. Thomas J. Russell, Robert Bogomolny, Charles Scott, John Gillen, Reuben F. Richards, Jr., Hong Q. Hou, and EMCORE Corporation, Case No. 1.09-cv-00236, (D.N.M.)). The Thomas Derivative Action makes the same allegations as the Stearns Derivative Action and seeks essentially the same relief.

The Stearns Derivative Action and the Thomas Derivative action have been consolidated before a single judge in Somerset County, New Jersey, and have been stayed pending the Prissert and Mueller Class Actions.

The Company intends to vigorously defend against the allegations of both the Class Actions and the Derivative Actions.

#### d) Securities Matters

SEC Communications. On February 24, 2010, the Company received a letter from the Securities and Exchange Commission's Division of Enforcement dated February 2, 2010 stating that the staff has completed its investigation of EMCORE Corporation that the Company had disclosed in its Form 10-K filed for its fiscal year ended September 30, 2009. The letter further advised the Company that the staff of the Division of Enforcement did not intend to recommend any enforcement action against the Company.

NASDAQ Communication. On March 8, 2010, the Company received notice from the NASDAQ Listings Qualifications group, stating that it had closed its inquiry involving EMCORE Corporation that the Company had disclosed in its Form 10-K filed for its fiscal year ended September 30, 2009.

As of March 31, 2010 and the filing date of this Quarterly Report on Form 10-Q, no amounts have been accrued for any litigation item discussed above since no estimate of loss can be made at this time.

See Footnote 3 – Proposed Tangshan Joint Venture for additional disclosures related to commitments and contingencies on Tangshan agreements announced on February 3, 2010.

NOTE 14. Income Taxes

During the six months ended March 31, 2010 and 2009, there were no material increases or decreases in unrecognized tax benefits and management does not anticipate any material increases or decreases in the amounts of unrecognized tax benefits over the next twelve months. As of March 31, 2010, the Company had approximately \$0.2 million of interest and penalties accrued as tax liabilities on the balance sheet.

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A reconciliation of the beginning and ending amount of unrecognized gross tax benefits is as follows:

(in thousands)

|   |    |      |
|---|----|------|
| Balance as of September 30, 2009                                | \$ | 374  |
| Subtractions based on tax positions related to the current year |    | (17) |
| Subtractions for tax positions of prior years                   |    | (19) |
| Balance as of March 31, 2010                                    | \$ | 338  |

The Company files income tax returns in the U.S. federal, state, and local jurisdictions and, currently, no federal, state, and local income tax returns are under examination. The following tax years remain open to income tax examination for each of the more significant jurisdictions where the Company is subject to income taxes: after fiscal year 2006 for U.S. federal; after fiscal year 2005 for the state of California and after fiscal year 2006 for the state of New Mexico.

#### NOTE 15. Segment Data and Related Information

The Company has five operating divisions: (1) EMCORE Digital Fiber Optics Products, (2) EMCORE Broadband Fiber Optics Products, and (3) EMCORE Hong Kong, which are aggregated as a separate reporting segment, Fiber Optics, and (4) EMCORE Photovoltaics and (5) EMCORE Solar Power, which are aggregated as a separate reporting segment, Photovoltaics. Fiber Optics revenue is derived primarily from sales of optical components and subsystems for CATV, FTTP, enterprise routers and switches, telecom grooming switches, core routers, high performance servers, supercomputers, and satellite communications data links. Photovoltaics revenue is derived primarily from the sales of solar power generation products for the space and terrestrial markets, including solar cells, coverglass interconnected solar cells, satellite solar panels, concentrator solar cells and concentrating photovoltaic (“CPV”) receiver assemblies and systems. The Company evaluates its reportable segments in accordance with ASC 280, Segment Reporting. The Company’s Chief Executive Officer is the Chief Operating Decision Maker pursuant to ASC 280, and he allocates resources to segments based on their business prospects, competitive factors, net revenue, operating results and other non-GAAP financial ratios. Operating income or expense that is not specifically related to an operating segment is charged to a separate unallocated corporate division.

The following table sets forth the revenue and percentage of total revenue attributable to each of the Company’s reporting segments.

| Segment Revenue<br>(in thousands) | For the Three Months<br>Ended March 31, |              |           |              |
|-----------------------------------|---|--------------|-----------|--------------|
|                                   | 2010                                    |              | 2009      |              |
|                                   | Revenue                                 | % of Revenue | Revenue   | % of Revenue |
| Fiber Optics                      | \$ 30,204                               | 63%          | \$ 28,414 | 66%          |
| Photovoltaics                     | 17,990                                  | 37           | 14,870    | 34           |
| Total revenue                     | \$ 48,194                               | 100%         | \$ 43,284 | 100%         |

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| Segment Revenue<br>(in thousands) | For the Six Months<br>Ended March 31, |              |           |              |
|-----------------------------------|---------------------------------------|--------------|-----------|--------------|
|                                   | 2010                                  |              | 2009      |              |
|                                   | Revenue                               | % of Revenue | Revenue   | % of Revenue |
| Fiber Optics                      | \$ 55,812                             | 62%          | \$ 67,579 | 69%          |
| Photovoltaics                     | 34,784                                | 38           | 29,761    | 31           |
| Total revenue                     | \$ 90,596                             | 100%         | \$ 97,340 | 100%         |

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The following table sets forth the Company's consolidated revenue by geographic region with revenue assigned to geographic regions based on our customers' billing address.

| Geographic Revenue<br>(in thousands) | For the Three Months<br>Ended March 31, |              |           |              |
|--------------------------------------|---|--------------|-----------|--------------|
|                                      | 2010                                    |              | 2009      |              |
|                                      | Revenue                                 | % of Revenue | Revenue   | % of Revenue |
| United States                        | \$ 32,135                               | 67%          | \$ 25,382 | 59%          |
| Asia                                 | 8,492                                   | 18           | 12,837    | 30           |
| Europe                               | 3,977                                   | 8            | 2,376     | 5            |
| Other                                | 3,590                                   | 7            | 2,689     | 6            |
| Total revenue                        | \$ 48,194                               | 100%         | \$ 43,284 | 100%         |

| Geographic Revenue<br>(in thousands) | For the Six Months<br>Ended March 31, |              |          |              |
|--------------------------------------|---------------------------------------|--------------|----------|--------------|
|                                      | 2010                                  |              | 2009     |              |
|                                      | Revenue                               | % of Revenue | Revenue  | % of Revenue |
| United States                        | \$ 66,496                             | 73%          | \$57,096 | 59%          |
| Asia                                 | 14,688                                | 16           | 32,046   | 33           |
| Europe                               | 5,254                                 | 6            | 5,173    | 5            |
| Other                                | 4,158                                 | 5            | 3,025    | 3            |
| Total revenue                        | \$ 90,596                             | 100%         | \$97,340 | 100%         |

The following table sets forth our significant customers, defined as customers that represented greater than 10% of total consolidated revenue, by reporting segment.

| Significant Customers<br>As a percentage of total consolidated<br>revenue | For the Three Months<br>Ended March 31, |      | For the Six Months<br>Ended March 31, |      |
|---|---|------|---------------------------------------|------|
|   | 2010                                    | 2009 | 2010                                  | 2009 |
| Fiber Optics – related customers:   |   |      |                                       |      |
| Cisco Systems, Inc.   | 14%                                     | 18%  | 14%                                   | 18%  |
| Motorola  | 10%                                     | -    | -                                     | -    |
| Photovoltaics – related customer:   |   |      |                                       |      |
| Loral Space & Communications  | -                                       | 16%  | 10%                                   | 15%  |

The following table sets forth operating (loss) income attributable to each of the Company's reporting segments.

| Statement of Operations Data<br>(in thousands) | For the Three Months<br>Ended March 31, |      | For the Six Months<br>Ended March 31, |      |
|--|---|------|---------------------------------------|------|
|  | 2010                                    | 2009 | 2010                                  | 2009 |

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|                          |    |         |    |          |    |          |    |          |
|--------------------------|----|---------|----|----------|----|----------|----|----------|
| Operating (loss) income: |    |         |    |          |    |          |    |          |
| Fiber Optics segment     | \$ | (3,955) | \$ | (16,775) | \$ | (12,363) | \$ | (65,199) |
| Photovoltaics segment    |    | 2,830   |    | (9,087)  |    | (694)    |    | (13,123) |
| Operating loss           | \$ | (1,125) | \$ | (25,862) | \$ | (13,057) | \$ | (78,322) |

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The following table sets forth the depreciation and amortization attributable to each of the Company's reporting segments.

| Segment Depreciation and Amortization<br>(in thousands) | For the Three Months<br>Ended March 31, |          | For the Six Months<br>Ended March 31, |          |
|---|---|----------|---------------------------------------|----------|
|   | 2010                                    | 2009     | 2010                                  | 2009     |
|   | Fiber Optics segment                    | \$ 1,787 | \$ 2,764                              | \$ 3,551 |
| Photovoltaics segment                                   | 1,331                                   | 1,453    | 2,685                                 | 2,893    |
| Depreciation and amortization                           | \$ 3,118                                | \$ 4,217 | \$ 6,236                              | \$ 8,509 |

Long-lived assets consist primarily of property, plant, and equipment and also goodwill and intangible assets. The following table sets forth long-lived assets for each of the Company's reporting segments and Corporate division.

| Long-lived Assets<br>(in thousands) | As of          | As of              |
|-------------------------------------|----------------|--------------------|
|                                     | March 31, 2010 | September 30, 2009 |
| Fiber Optics segment                | \$ 33,886      | \$ 37,399          |
| Photovoltaics segment               | 47,896         | 50,169             |
| Corporate division                  | 886            | 826                |
| Long-lived assets                   | \$ 82,668      | \$ 88,394          |

#### NOTE 16. Fair Value Accounting

ASC 820, Fair Value Measurements and Disclosures, establishes a valuation hierarchy for disclosure of the inputs to valuation used to measure fair value. Valuation techniques used to measure fair value under ASC 820 must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

- Level 1 inputs are unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.
- Level 3 inputs are unobservable inputs based on our own assumptions used to measure assets and liabilities at fair value. A financial asset or liability's classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.



The following table provides the Company's financial assets and liabilities, consisting of the following types of instruments, measured at fair value on a recurring basis:

| (in thousands)                       | As of March 31, 2010  |  |  |    | Total  |
|--------------------------------------|---|--|--|----|--------|
|                                      | Quoted Prices in<br>Active Markets for<br>Identical Assets<br><br>[Level 1] | Significant<br>Other<br>Observable<br>Remaining<br>Inputs<br><br>[Level 2] | Significant<br>Unobservable<br>Inputs<br><br>[Level 3] |    |        |
|                                      |   |  |  |    |        |
|                                      |   |  |  |    |        |
| <b>Assets</b>                        |   |  |  |    |        |
| Money market fund deposits           | \$ 17,181   | \$ -   | \$ -   | \$ | 17,181 |
| Restricted fund deposits             | 588   | -  | -  |    | 588    |
| Asset-backed auction rate securities | -   | 1,250  | -  |    | 1,250  |
| Total assets measured at fair value  | \$ 17,769   | \$ 1,250   | \$ -   | \$ | 19,019 |
| <b>Liabilities</b>                   |   |  |  |    |        |
| Warrants                             | \$ -  | \$ 810   | \$ -   | \$ | 810    |

The Company classifies investments within Level 1 if quoted prices are available in active markets. Level 1 assets include instruments valued based on quoted market prices in active markets which generally could include money market funds, corporate publicly traded equity securities on major exchanges and U.S. Treasury notes with quoted prices on active markets.

The Company classifies items in Level 2 if the investments are valued using observable inputs to quoted market prices, benchmark yields, reported trades, broker/dealer quotes or alternative pricing sources with reasonable levels of price transparency. These investments could include: government agencies, corporate bonds, commercial paper, and auction rate securities.

The Company did not hold financial assets and liabilities, which were valued using unobservable inputs as of March 31, 2010.

The carrying amounts of accounts receivable, short-term debt including borrowings under the Company's credit facility, accounts payable, accrued expenses and other current liabilities approximate fair value because of the short maturity of these instruments.

In February 2008, the FASB issued authoritative guidance, which delayed the effective date of ASC 820 for all non-financial assets and non-financial liabilities that are not re-measured at fair value on a recurring basis (at least annually). The guidance was effective for the Company beginning October 1, 2009 and it did not have an impact on our consolidated financial position, results of operations or cash flows in the three months ended March 31, 2010.

ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Business Overview

EMCORE Corporation (the "Company", "we", "our", or "EMCORE") is a provider of compound semiconductor-based components and subsystems for the fiber optics and solar power markets. The Company was established in 1984 as a New Jersey corporation and has two reporting segments: Fiber Optics and Photovoltaics. Our Fiber Optics segment offers optical components, subsystems and systems that enable the transmission of video, voice and data over high-capacity fiber optic cables for high-speed data and telecommunications, cable television ("CATV") and fiber-to-the-premises ("FTTP") networks. Our Photovoltaics segment provides solar products for satellite and terrestrial applications. For satellite applications, the Company offers high-efficiency compound semiconductor-based multi-junction solar cells, covered interconnected cells ("CICs") and fully integrated solar panels. For terrestrial applications, the Company offers concentrating photovoltaic ("CPV") power systems for commercial and utility scale solar applications as well as high-efficiency multi-junction solar cells and integrated CPV components for use in other solar power concentrator systems. Our headquarters and principal executive offices are located at 10420 Research Road, SE, Albuquerque, New Mexico, 87123, and our main telephone number is (505) 332-5000. For specific information about our Company, our products or the markets we serve, please visit our website at <http://www.emcore.com>.

Management Summary

As of March 31, 2010, cash, cash equivalents, available-for-sale securities and current restricted cash totaled approximately \$19.0 million. During the three months ended March 31, 2010, the Company incurred a net loss of \$1.7 million and generated cash from operations of approximately \$1.1 million.

Historically, management has addressed the Company's liquidity requirements through the combination of cost reduction initiatives, improvements in working capital management, capital markets transactions, and the sale of assets. In fiscal 2010, management continues to remain focused on maximizing cash flow from operations while developing additional sources of liquidity.

On October 1, 2009, the Company entered into an equity line of credit arrangement with Commerce Court Small Cap Value Fund, Ltd. ("Commerce Court"). Upon issuance of a draw-down request by the Company, Commerce Court has committed to purchase up to \$25 million of the Company's common stock over the 24-month term of the purchase agreement. See Footnote 4 – Equity Facility for additional information related to this equity line of credit.

During the first six months of fiscal 2010, the Company has also significantly lowered its spending on capital expenditures and focused on improving the management of its working capital. Over the last four quarters ended March 31, 2010, the Company generated approximately \$0.9 million in cash from operations due to improved operating performance and working capital management including the monetization of \$10.1 million of inventory and the generation of \$4.6 million in cash from the lowering of accounts receivable balances. The Company achieved positive cash flow from operations in three of the last four quarters, including the quarters ended June 30, 2009, September 30, 2009, and March 31, 2010.

Strategic Plan

Due to significant differences in operating strategy between the Company's Fiber Optics and Photovoltaics businesses, the Company's management and Board of Directors believes that they would provide greater value to shareholders if they were operated as two separate business entities.

In furtherance of this strategy, on February 3, 2010, the Company entered into a Share Purchase Agreement to create a joint venture with Tangshan Caofeidian Investment Corporation ("TCIC"), a Chinese investment company located in the Caofeidian Industry Zone, Tangshan City, Hebei Province of China. The Share Purchase Agreement provides for the Company to sell a sixty percent (60%) interest in its Fiber Optics business (excluding its satellite communications and specialty photonics fiber optics businesses) to TCIC, which will be operated as a joint venture once the transaction is closed. The Fiber Optics businesses included in this transaction are the Company's telecom, enterprise, cable television (CATV), fiber-to-the-premises (FTTP), and video transport product lines. Subsequent to the pending transaction, the Company's business will be comprised of the satellite and terrestrial solar businesses as well as the satellite communications and specialty photonics fiber optics businesses. See Footnote 3 – Proposed Tangshan Joint Venture for additional information.

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## Quarter Highlights

On January 27, 2010, the Company announced that it had been awarded a contract by ATK Space Systems of Goleta, California to manufacture, test, and deliver solar panels for ATK's UltraFlex™ solar arrays. These solar arrays will be used to power the Orion spacecraft being developed by Lockheed Martin Space Systems Company for NASA. The period of performance for this contract for the first two vehicles runs through 2013 and is valued in the range of \$9-\$11 million. The flight solar array system is expendable for each Orion mission and continuous production is expected to run through 2020 and beyond. EMCORE's latest generation ZTJ triple-junction solar cells, with a sunlight-to-electricity conversion of 30%, will be designed into the solar panels delivered to ATK Space Systems.

On March 18, 2010, the Company announced the introduction and immediate availability of a new line of high-power, > 100 milliwatt (mW), continuous-wave (CW) source laser modules for 1550-nm range DWDM applications. The DWDM 100-mW high-power CW laser module, available in all ITU grid wavelengths, offers solutions for growing demands of high optical power in DWDM, CATV networks, and free space optics applications.

On March 19, 2010, the Company announced the expansion of its telecom DWDM product portfolio empowered by the ClearLight™ proprietary tunable external-cavity laser (ECL) technology platform, with the introduction of the new micro-ITLA (Integrable Tunable Laser Assembly). EMCORE's micro-ITLA is specifically designed to meet the needs of 40 and 100 Gb/s (gigabits per second) line-cards and transponders. The new micro-ITLA is the third product empowered by EMCORE's ClearLight™ technology, joining the tunable TOSA and tunable XFP products announced last year.

On March 22, 2010, the Company announced the reliability results of its in-use 20Gb/s active optical cables. EMCORE Connects Cables™ are compact, lightweight, and allow for greater reach between processing nodes than traditional copper cables. During the last three years, the reliability of EMCORE Connects Cables over that time period has been better than 5 FITs, or 5 failures in one billion hours of device operation.

## Order Backlog

As of March 31, 2010, the Company had a consolidated order backlog of approximately \$68.0 million, a \$6.8 million, or 11%, increase from a \$61.2 million order backlog reported as of the end of the preceding quarter. On a segment basis, the quarter-end Photovoltaics order backlog totaled \$41.3 million, a \$1.0 million, or 2%, decrease from \$42.3 million reported as of the end of the preceding quarter. The quarter-end Fiber Optics order backlog totaled \$26.7 million, a \$7.8 million, or 42% increase from \$18.9 million reported as of the end of the preceding quarter. Order backlog is defined as purchase orders or supply agreements accepted by the Company with expected product delivery and / or services to be performed within the next twelve months.

From time to time, our customers may request that the Company delay shipment of certain orders and our backlog could also be adversely affected if customers unexpectedly cancel purchase orders that we've previously accepted. A majority of our fiber optics products typically ship within the same quarter as when the purchase order is received; therefore, our backlog at any particular date is not necessarily indicative of actual revenue or the level of orders for any succeeding period.

## Critical Accounting Policies

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management of the Company to make estimates and

assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, as of the date of the financial statements, and the reported amounts of revenue and expenses during the reported period.

The accounting estimates that require our most significant, difficult, and subjective judgments include:

- the valuation of inventory, goodwill, intangible assets, and stock based compensation;
  - assessment of recovery of long-lived assets;
- revenue recognition associated with the percentage of completion method; and
  - the allowance for doubtful accounts and warranty accruals.

Management develops estimates based on historical experience and on various assumptions about the future that are believed to be reasonable based on the best information available. The Company's reported financial position or results of operations may be materially different under changed conditions or when using different estimates and assumptions, particularly with respect to significant accounting policies. In the event that estimates or assumptions prove to differ from actual results, adjustments are made in subsequent periods to reflect more current information.

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A listing and description of the Company's critical accounting policies includes:

**Accounts Receivable.** The Company regularly evaluates the collectibility of its accounts receivable and accordingly maintains allowances for doubtful accounts for estimated losses resulting from the inability of our customers to meet their financial obligations to us. The allowance is based on the age of receivables and a specific identification of receivables considered at risk of collection. The Company classifies charges associated with the allowance for doubtful accounts as SG&A expense. If the financial condition of our customers were to deteriorate, impacting their ability to pay us, additional allowances may be required.

**Inventory.** Inventory is stated at the lower of cost or market, with cost being determined using the standard cost method. The Company reserves against inventory once it has been determined that conditions exist that may not allow the inventory to be sold for its intended purpose or the inventory is determined to be excess or obsolete based on the Company's forecasted future revenue. The charge related to inventory reserves is recorded as a cost of revenue. The majority of the inventory write-downs are related to estimated allowances for inventory whose carrying value is in excess of net realizable value and on excess raw material components resulting from finished product obsolescence. In most cases where the Company sells previously written down inventory, it is typically sold as a component part of a finished product. The finished product is sold at market price at the time resulting in higher average gross margin on such revenue. The Company does not track the selling price of individual raw material components that have been previously written down or written off, since such raw material components usually are only a portion of the resultant finished products and related sales price. The Company evaluates inventory levels at least quarterly against sales forecasts on a significant part-by-part basis, in addition to determining its overall inventory risk. The Company has incurred, and may in the future incur charges to write-down our inventory.

**Goodwill.** Goodwill represents the excess of the purchase price of an acquired business over the fair value of the identifiable assets acquired and liabilities assumed. As required by ASC 350, Intangibles - Goodwill and Other, the Company evaluates its goodwill for impairment on an annual basis, or whenever events or changes in circumstances indicate that the carrying value of a reporting unit may exceed its fair value. Management has elected December 31st as the annual assessment date. Circumstances that could trigger an interim impairment test include but are not limited to: a significant adverse change in the market value of the Company's common stock, the business climate or legal factors; an adverse action or assessment by a regulator; unanticipated competition; loss of key personnel; the likelihood that a reporting unit or significant portion of a reporting unit will be sold or otherwise disposed; results of testing for recoverability of a significant asset group within a reporting unit; and recognition of a goodwill impairment loss in the financial statements of a subsidiary that is a component of a reporting unit.

In performing goodwill impairment testing, the Company determines the fair value of each reporting unit using a weighted combination of a market-based approach and a discounted cash flow ("DCF") approach. The market-based approach relies on values based on market multiples derived from comparable public companies. In applying the DCF approach, management forecasts cash flows over the remaining useful life of its primary asset using assumptions of current economic conditions and future expectations of earnings. This analysis requires the exercise of significant judgment, including judgments about appropriate discount rates based on the assessment of risks inherent in the amount and timing of projected future cash flows. The derived discount rate may fluctuate from period to period as it is based on external market conditions. All of these assumptions are critical to the estimate and can change from period to period. Updates to these assumptions in future periods, particularly changes in discount rates, could result in different results of goodwill impairment tests.

**Valuation of Long-lived Assets.** Long-lived assets consist primarily of property, plant, and equipment and intangible assets. Because most of the Company's long-lived assets are subject to amortization, the Company reviews these assets for impairment in accordance with the provisions of ASC 360, Property, Plant, and Equipment. As part of internal control procedures, the Company reviews long-lived assets for impairment whenever events or changes in



circumstances indicate that its carrying amount may not be recoverable. Our impairment testing of long-lived assets consists of determining whether the carrying amount of the long-lived asset (asset group) is recoverable, in other words, whether the sum of the future undiscounted cash flows expected to result from the use and eventual disposition of the asset (asset group) exceeds its carrying amount. The determination of the existence of impairment involves judgments that are subjective in nature and may require the use of estimates in forecasting future results and cash flows related to an asset or group of assets. In making this determination, the Company uses certain assumptions, including estimates of future cash flows expected to be generated by these assets, which are based on additional assumptions such as asset utilization, the length of service that assets will be used in our operations, and estimated salvage values.

**Product Warranty Reserves.** The Company provides its customers with limited rights of return for non-conforming shipments and warranty claims for certain products. In accordance with ASC 450, Contingencies, the Company makes estimates of product warranty expense using historical experience rates as a percentage of revenue and accrues estimated warranty expense as a cost of revenue. The Company estimates the costs of its warranty obligations based on historical experience of known product failure rates, use of materials to repair or replace defective products and service delivery costs incurred in correcting product issues. In addition, from time to time, specific warranty accruals may be made if unforeseen technical problems arise. Should our actual experience relative to these factors differ from our estimates, the Company may be required to record additional warranty reserves. Alternatively, if the Company provides more reserves than needed, the Company may reverse a portion of such provisions in future periods.

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Revenue Recognition. Revenue is recognized upon shipment, provided persuasive evidence of a contract exists, (such as when a purchase order or contract is received from a customer), the price is fixed, the product meets its specifications, title and ownership have transferred to the customer, and there is reasonable assurance of collection of the sales proceeds. In those few instances where a given sale involves post shipment obligations, formal customer acceptance documents, or subjective rights of return, revenue is not recognized until all post-shipment conditions have been satisfied and there is reasonable assurance of collection of the sales proceeds. The majority of our products have shipping terms that are free on board (“FOB”) or free carrier alongside (“FCA”) shipping point, which means that the Company fulfills its delivery obligation when the goods are handed over to the freight carrier at our shipping dock. This means the buyer bears all costs and risks of loss or damage to the goods from that point. In certain cases, the Company ships its products cost insurance and freight (“CIF”). Under this arrangement, revenue is recognized under FCA shipping point terms, but the Company pays (and bills the customer) for the cost of shipping and insurance to the customer's designated location. The Company accounts for shipping and related transportation costs by recording the charges that are invoiced to customers as revenue, with the corresponding cost recorded as cost of revenue. In those instances where inventory is maintained at a consigned location, revenue is recognized only when our customer pulls product for its use and title and ownership have transferred to the customer. Revenue from time and material contracts is recognized at the contractual rates as labor hours and direct expenses are incurred. The Company also generates service revenue from hardware repairs and calibrations that is recognized as revenue upon completion of the service. Any cost of warranties and remaining obligations that are inconsequential or perfunctory are accrued when the corresponding revenue is recognized.

- Distributors - The Company uses a number of distributors around the world and recognizes revenue upon shipment of product to these distributors. Title and risk of loss pass to the distributors upon shipment, and our distributors are contractually obligated to pay the Company on standard commercial terms, just like our other direct customers. The Company does not sell to its distributors on consignment and, except in the event of product discontinuance, does not give distributors a right of return.
- Solar Panel and Solar Power Systems Contracts - The Company records revenues from certain solar panel and solar power systems contracts using the percentage-of-completion method. Revenue is recognized in proportion to actual costs incurred compared to total anticipated costs expected to be incurred for each contract. Such contracts require estimates to determine the appropriate cost and revenue recognition. The Company uses all available information in determining dependable estimates of the extent of progress towards completion, contract revenues, and contract costs. Estimates are revised as additional information becomes available. If estimates of costs to complete long-term contracts indicate a loss, a provision is made for the total loss anticipated.
- Government R&D Contracts - R&D contract revenue represents reimbursement by various U.S. government entities, or their contractors, to aid in the development of new technology. The applicable contracts generally provide that the Company may elect to retain ownership of inventions made in performing the work, subject to a non-exclusive license retained by the U.S. government to practice the inventions for governmental purposes. The R&D contract funding may be based on a cost-plus, cost reimbursement, or a firm fixed price arrangement. The amount of funding under each R&D contract is determined based on cost estimates that include both direct and indirect costs. Cost-plus funding is determined based on actual costs plus a set margin. As the Company incurs costs under cost reimbursement type contracts, revenue is recorded. Contract costs include material, labor, special tooling and test equipment, subcontracting costs, as well as an allocation of indirect costs. An R&D contract is considered complete when all significant costs have been incurred, milestones have been reached, and any reporting obligations to the customer have been met. Government contract revenue is primarily recognized as service revenue.

The Company also has certain cost-sharing R&D arrangements. Under such arrangements in which the actual costs of performance are split between the U.S. government and the Company on a best efforts basis, no revenue is recorded and the Company's R&D expense is reduced for the amount of the cost-sharing receipts.

The U.S. government may terminate any of our government contracts at their convenience as well as for default based on our failure to meet specified performance measurements. If any of our government contracts were to be terminated for convenience, the Company generally would be entitled to receive payment for work completed and allowable termination or cancellation costs. If any of our government contracts were to be terminated for default, generally the U.S. government would pay only for the work that has been accepted and can require us to pay the difference between the original contract price and the cost to re-procure the contract items, net of the work accepted from the original contract. The U.S. government can also hold us liable for damages resulting from the default.

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Stock-Based Compensation. The Company uses the Black-Scholes option-pricing model and the straight-line attribution approach to determine the fair-value of stock-based awards in accordance with ASC 718, Compensation. The option-pricing model requires the input of highly subjective assumptions, including the option's expected life and the price volatility of the underlying stock. The Company's expected term represents the period that stock-based awards are expected to be outstanding and is determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards, vesting schedules and expectations of future employee behavior as influenced by changes to the terms of its stock-based awards. The expected stock price volatility is based on the Company's historical stock prices.

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The above listing is not intended to be a comprehensive list of all of our accounting policies. In many cases, U.S. GAAP specifically dictates the accounting treatment of a particular transaction. There are also areas in which management's judgment in selecting any available alternative would not produce a materially different result. For a complete discussion of our accounting policies, recently adopted accounting pronouncements, and other required U.S. GAAP disclosures, we refer you to the accompanying footnotes to the Company's consolidated financial statements in our Annual Report on Form 10-K for the fiscal year ended September 30, 2009.

## Results of Operations

The following table sets forth the Company's consolidated statements of operations data expressed as a percentage of total revenue.

|   | Three Months Ended |        | Six Months Ended |        |
|---|--------------------|--------|------------------|--------|
|   | March 31,          |        | March 31,        |        |
|   | 2010               | 2009   | 2010             | 2009   |
| Revenue                                       | 100.0%             | 100.0% | 100.0%           | 100.0% |
| Cost of revenue                               | 67.9               | 116.2  | 74.1             | 105.6  |
| Gross profit (loss)                           | 32.1               | (16.2) | 25.9             | (5.6)  |
| Operating expenses:                           |                    |        |                  |        |
| Selling, general, and administrative          | 18.7               | 27.6   | 23.6             | 24.8   |
| Research and development                      | 15.7               | 15.9   | 16.7             | 15.4   |
| Impairments                                   | -                  | -      | -                | 34.7   |
| Total operating expenses                      | 34.4               | 43.5   | 40.3             | 74.9   |
| Operating loss                                | (2.3)              | (59.7) | (14.4)           | (80.5) |
| Other (income) expense:                       |                    |        |                  |        |
| Interest income                               | -                  | (0.1)  | -                | (0.1)  |
| Interest expense                              | 0.2                | 0.3    | 0.2              | 0.3    |
| Foreign exchange loss                         | 1.5                | 2.1    | 1.1              | 1.4    |
| Change in fair value of financial instruments | (0.6)              | -      | 0.9              | -      |
| Financing instrument cost                     | 0.2                | -      | 0.4              | -      |
| Impairment of investment                      | -                  | -      | -                | 0.4    |

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|                               |        |         |         |         |
|-------------------------------|--------|---------|---------|---------|
| Gain from sale of investments | -      | (7.2)   | -       | (3.2)   |
| Total other (income) expense  | 1.3    | (4.9)   | 2.6     | (1.2)   |
| Net loss                      | (3.6)% | (54.8)% | (17.0)% | (79.3)% |

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Comparison of the Three Months Ended March 31, 2010 and 2009

Revenue:

Revenue for the three months ended March 31, 2010 was \$48.2 million, an increase of \$4.9 million, or 11%, from \$43.3 million reported in the same period last year.

On a segment basis, revenue for the Fiber Optics segment was \$30.2 million, an increase of \$1.8 million, or 6%, from \$28.4 million reported in the same period last year. The increase in Fiber Optics revenue was primarily due to a significant increase in demand for our CATV products which offsets a slight decrease in demand of telecom-related products when compared to the prior period. For the three months ended March 31, 2010, the Fiber Optics segment represented 63% of the Company's consolidated revenue compared to 66% in the same period last year.

Revenue for the Photovoltaics segment was \$18.0 million, an increase of \$3.1 million, or 21%, from \$14.9 million reported in the same period last year. The increase in Photovoltaics revenue was primarily due to a significant increase in demand for the Company's satellite solar power products. For the three months ended March 31, 2010, the Photovoltaics segment represented 37% of the Company's consolidated revenue compared to 34% in the same period last year.

Gross Profit:

For the three months ended March 31, 2010, the consolidated gross profit was \$15.5 million, an increase of \$22.5 million, or 321%, from a gross loss of \$7.0 million reported in the same period last year. For the three months ended March 31, 2010, the consolidated gross margin was 32.1% compared to a negative 16.2% gross margin reported in the same period last year.

Fiber Optics gross margin for the three months ended March 31, 2010 was 23.6%, a significant increase from a negative 11.7% gross margin reported in the same period last year. The improvement in Fiber Optics gross margin was due primarily to higher gross margins in the Company's CATV product lines, as well as, lower inventory excess and obsolescence charges when compared to the prior year. Last year, the Fiber Optics segment incurred \$1.3 million of excess and obsolescence inventory charges and \$0.2 million related to specific warranty charges.

Photovoltaics gross margin for the three months ended March 31, 2010 was 46.6%, a significant increase from a negative 24.7% gross margin reported in the same period last year. The improvement in Photovoltaics gross margin was primarily due to increased sales of higher margin satellite solar power products along with improved manufacturing yields on certain satellite solar panel contracts, as well as favorable adjustments of approximately \$0.8 million related to the sale of inventory previously reserved for and a larger than expected benefit from a precious metal reclamation process of approximately \$0.4 million. Last year, the Photovoltaics gross margin was depressed due to \$5.7 million of excess and obsolescence inventory charges and \$1.1 million related to specific warranty charges associated with the Company's older generation of CPV products and systems.

Operating Expenses:

Sales, general, and administrative expenses for the three months ended March 31, 2010 totaled \$9.0 million, a decrease of \$3.0 million, or 25%, from \$12.0 million reported in the same period last year. During the quarter, the Company incurred legal expenses of approximately \$0.3 million related to patent litigation and other corporate legal charges. Last year, SG&A included \$1.7 million of additional provisions for bad debt, \$0.3 million related to severance and restructuring charges, and \$0.8 million of patent litigation and other corporate-related legal

expense. As a percentage of revenue, SG&A expenses were 18.7%, a decrease from 27.6% in the same period last year.

Research and development expenses for the three months ended March 31, 2010 totaled \$7.6 million, an increase of \$0.7 million, or 10%, from \$6.9 million reported in the same period last year. As a percentage of revenue, R&D expenses were 15.7%, a decrease from 15.9% in the same period last year.

Consolidated operating expenses for the three months ended March 31, 2010 totaled \$16.6 million, a decrease of \$2.2 million, or 12%, from \$18.8 million reported in the same period last year.

**Operating loss:**

For the three months ended March 31, 2010, the consolidated operating loss was \$1.1 million, a decrease of \$24.8 million, or 96%, from an operating loss of \$25.9 million reported in the same period last year, with the variance primarily due to improved operating performance at the gross margin level.

**Net loss:**

For the three months ended March 31, 2010, the consolidated net loss was \$1.7 million, a decrease of \$22.0 million, or 93%, from the \$23.7 million loss reported in the same period last year, with the variance primarily due to the impairment charge discussed above, as well as improved operating performance at the gross margin level. The net loss per share for the three months ended March 31, 2010 was \$0.02, a decrease of \$0.28 per share, from a net loss of \$0.30 per share reported in the same period last year.

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Comparison of the Six Months Ended March 31, 2010 and 2009

Revenue:

Revenue for the six months ended March 31, 2010 was \$90.6 million, a decrease of \$6.7 million, or 7%, from \$97.3 million reported in the same period last year.

On a segment basis, six month revenue for the Fiber Optics segment was \$55.8 million, a decrease of \$11.8 million, or 17%, from \$67.6 million reported in the same period last year. The decrease in Fiber Optics revenue was primarily due to a significant drop in demand for our telecom-related products due to the very unfavorable macroeconomic environment as well as continued pressure on selling prices as the Company competes to maintain or increase its market share positions. Fiber Optics did experience a 9% increase in demand from customers purchasing CATV-related products when compared to the prior period. For the six months ended March 31, 2010, the Fiber Optics segment represented 62% of the Company's consolidated revenue compared to 69% in the same period last year.

Six month revenue for the Photovoltaics segment was \$34.8 million, an increase of \$5.0 million, or 17%, from \$29.8 million reported in the same period last year. The increase in Photovoltaics revenue was primarily due to a significant increase in demand for the Company's satellite solar power products. For the six months ended March 31, 2010, the Photovoltaics segment represented 38% of the Company's consolidated revenue compared to 31% in the same period last year.

Gross Profit:

For the six months ended March 31, 2010, the consolidated gross profit was \$23.5 million, an increase of \$28.9 million, or 534%, from a gross loss of \$5.4 million reported in the same period last year. For the six months ended March 31, 2010, the consolidated gross margin was 25.9% compared to a negative 5.6% gross margin reported in the same period last year.

Fiber Optics gross margin for the six months ended March 31, 2010 was 20.4%, an increase from a negative 5.6% gross margin reported in the same period last year. The improvement in Fiber Optics gross margin was due primarily to higher gross margins in the Company's CATV and telecom-related product lines, as well as, lower inventory excess and obsolescence charges when compared to the prior year. Last year, the Fiber Optics gross margin was depressed due to \$6.8 million of excess and obsolescence inventory charges.

Photovoltaics gross margin for the six months ended March 31, 2010 was 34.8%, an increase from a negative 5.5% gross margin reported in the same period last year. The significant increase in Photovoltaics gross margin was primarily due to increased sales of higher margin satellite solar power products along with improved manufacturing yields on certain satellite solar panel contracts, as well as favorable adjustments of approximately \$0.8 million related to the sale of inventory previously reserved for and a larger than expected benefit from a precious metal reclamation process of approximately \$0.4 million that occurred during the three months ended March 31, 2010. Last year, the Photovoltaics gross margins was depressed due to \$5.7 million of excess and obsolescence inventory charges and \$1.2 million related to specific warranty charges associated with the Company's older generation of CPV products and systems.

Operating Expenses:



Sales, general, and administrative expenses for the six months ended March 31, 2010 totaled \$21.4 million, a decrease of \$2.7 million, or 11%, from \$24.1 million reported in the same period last year. During the six months ended March 31, 2010, the Company incurred legal expenses of approximately \$4.5 million related to patent litigation and other corporate legal charges and \$1.3 million of non-cash stock-based compensation expense from the forfeiture of stock options. Last year, SG&A included \$2.6 million of additional provisions for bad debt, \$0.9 million related to severance and restructuring charges, and \$1.5 million of patent litigation and other corporate-related legal expense. As a percentage of revenue, SG&A expenses were 23.6%, a decrease from 24.8% in the same period last year.

Research and development expenses for the six months ended March 31, 2010 totaled \$15.1 million, an increase of \$0.1 million, or 1%, from \$15.0 million reported in the same period last year. As a percentage of revenue, R&D expenses were 16.7%, an increase from 15.4% in the same period last year.

**Impairments:**

The Company performed its annual goodwill impairment test as of December 31, 2008 and, based on that analysis, determined that goodwill related to its Fiber Optics segment was fully impaired. As a result, the Company recorded a non-cash impairment charge of \$31.8 million in the first quarter of fiscal 2009 and the Company's balance sheet no longer reflects any goodwill associated with its Fiber Optics segment. During the first fiscal quarter of 2009, the Company also recorded a \$2.0 million non-cash impairment charge related to certain intangible assets acquired from Intel Corporation that were subsequently abandoned.

Consolidated operating expenses for the six months ended March 31, 2010 totaled \$36.6 million, a decrease of \$36.3 million, or 50%, from \$72.9 million reported in the same period last year, with the variance primarily due to the impairment charges incurred in the prior year, as discussed above.

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Operating loss:

For the six months ended March 31, 2010, the consolidated operating loss was \$13.1 million, a decrease of \$65.2 million, or 83%, from an operating loss of \$78.3 million reported in the same period last year, with the variance primarily due to the magnitude of the non-cash impairment charges incurred in the prior year, as discussed above, as well as improved operating performance at the gross margin level.

Change in fair value of financial instruments.

The warrants issued by the Company were classified as a liability since the warrants met the classification requirements for liability accounting in accordance with ASC 815. As of October 1, 2009, the value of the warrants was estimated to be \$1.4 million. The Company expects an impact to the consolidated statement of operations when it records an adjustment to fair value of the warrants at the end of each quarterly reporting period going forward. As of December 31, 2009 and March 31, 2010, the value of the warrants was estimated to be \$1.1 million and \$0.8 million, respectively. In the Notes to the Condensed Consolidated Financial Statements, see Footnote 4 – Equity Facility for additional information related to this equity line of credit.

Cost of financing instruments.

Costs incurred to enter into the Company's equity line of credit facility were expensed as incurred. On October 1, 2009, the Company recorded \$0.2 million related to the issuance of 185,185 shares of common stock. In March 2010, the Company initiated its first draw down under the Purchase Agreement and received \$2.0 million from the sale of 1,870,042 shares of common stock; with the total discount to volume weighted average price calculated on a daily basis totaling \$0.1 million, which was recorded as a non-operating expense within the condensed consolidated statement of operations. In the Notes to the Condensed Consolidated Financial Statements, see Footnote 4 – Equity Facility for additional information related to this equity line of credit.

Impairment of investment.

In April 2008, the Company invested approximately \$1.5 million in Lightron Corporation, a Korean company that is publicly traded on the Korean Stock Market. The Company initially accounted for this investment as an available-for-sale security. Due to the decline in the market value of this investment and the expectation of non-recovery of this investment beyond its current market value, the Company recorded a \$0.5 million "other than temporary" impairment loss on this investment as of September 30, 2008 and another \$0.4 million "other than temporary" impairment loss on this investment as of December 31, 2008. During the quarter ended March 31, 2009, the Company sold its interest in Lightron Corporation, via several transactions, for a total of \$0.5 million in cash. The Company recorded a gain on the sale of this investment of approximately \$21,000, after consideration of impairment charges recorded in previous periods, and the Company also recorded a foreign exchange loss of \$0.1million due to the conversion from Korean Won to U.S. dollars.

Foreign exchange.

The Company recognizes gains and losses on foreign currency exchange primarily due to the Company's operations in Spain, the Netherlands and China.

Net Loss:

For the six months ended March 31, 2010, the consolidated net loss was \$15.4 million, a decrease of \$61.8 million, or 80%, from \$77.2 million reported in the same period last year, with the variance primarily due to the magnitude of the non-cash impairment charge discussed above, as well as improved operating performance at the gross margin

level. The net loss per share for the six months ended March 31, 2010 was \$0.19, a decrease of \$0.80 per share, from a net loss of \$0.99 per share reported in the same period last year.

#### Liquidity and Capital Resources

As of March 31, 2010, cash, cash equivalents, available-for-sale securities and current restricted cash totaled approximately \$19.0 million. During the three months ended March 31, 2010, the Company incurred a net loss of \$1.7 million and generated cash from operations of approximately \$1.1 million. The Company's operating results for future periods are subject to numerous uncertainties and it is unclear if the Company will be able to reduce or eliminate its net losses for the foreseeable future. In the event that management is not able to increase revenue and/or manage operating expenses in line with revenue forecasts, the Company may not be able to achieve profitability.

Historically, management has addressed the Company's liquidity requirements through the combination of cost reduction initiatives, improvements in working capital management, capital markets transactions, and the sale of assets. In fiscal 2010, management continues to remain focused on maximizing cash flow from operations while developing additional sources of liquidity.

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On October 1, 2009, the Company entered into an equity line of credit arrangement with Commerce Court Small Cap Value Fund, Ltd. Upon issuance of a draw-down request by the Company, Commerce Court has committed to purchasing up to \$25 million worth of shares of the Company's common stock over the 24-month term of the purchase agreement. See Footnote 4 – Equity Facility for additional information related to this equity line of credit.

During the first six months of fiscal 2010, the Company has also significantly lowered its spending on capital expenditures and focused on improving the management of its working capital. Over the last four quarters ended March 31, 2010, the Company generated approximately \$0.9 million in cash from operations due to improved operating performance and working capital management including the monetization of \$10.1 million of inventory and the generation of \$4.6 million in cash from the lowering of accounts receivable balances. The Company achieved positive cash flow from operations in three of the last four quarters, including the quarters ended June 30, 2009, September 30, 2009, and March 31, 2010.

We believe that our existing balances of cash, cash equivalents, and available-for-sale securities, together with the cash expected to be generated from operations, amounts expected to be available under our revolving credit facility with Bank of America and the equity line of credit agreement with Commerce Court will provide us with sufficient financial resources to meet our cash requirements for operations, working capital, and capital expenditures for the next 12 months. However, in the event of unforeseen circumstances, or unfavorable market or economic developments, the Company may have to raise additional funds by any one or a combination of the following: issuing equity, debt or convertible debt, or selling certain product lines and/or portions of our business. There can be no guarantee that the Company will be able to raise additional funds on acceptable terms, or at all. A significant contraction in the capital markets, particularly in the technology sector, may make it difficult for us to raise additional capital if or when it is required, especially if the Company experiences disappointing operating results. If adequate capital is not available to us as required, or is not available on favorable terms, our business, financial condition and results of operations may be adversely affected.

## Cash Flow

### Cash Used for Operations

For the six months ended March 31, 2010, net cash used by operating activities totaled approximately \$0.2 million, which represents a decrease of \$30.4 million, or 99%, from \$30.6 million in cash used by operating activities for the six months ended March 31, 2009.

For the six months ended March 31, 2010, the \$0.2 million cash usage was primarily due to the Company's net loss of \$15.4 million offset by a favorable net decrease in certain components of working capital. The net decrease in certain components of working capital was primarily due to a \$5.3 million increase in accounts payable, a \$0.7 million decrease in inventory, and a \$0.2 million decrease in other assets offset by a \$3.5 million increase in accounts receivable and a decrease of \$2.0 million in accrued expenses and other liabilities. Significant non-cash adjustments used to reconcile net loss to net cash used in operating activities included \$5.3 million related to stock-based compensation expense, \$6.2 million related to depreciation and amortization expense, and \$1.1 million related to non-cash losses from financing instruments.

For the six months ended March 31, 2009, the \$30.6 million cash usage was primarily due to the Company's net loss of \$77.2 million and a net increase in certain components of working capital of approximately \$5.9 million. The net increase in certain components of working capital was primarily due to a \$24.4 million decrease in accounts payable and a \$3.3 million decrease in accrued expenses and other current liabilities offset by an \$11.0 million decrease in inventory, a \$7.9 million decrease in accounts receivable, and a \$2.9 million decrease in other assets. Significant

non-cash adjustments used to reconcile net loss to net cash used in operating activities included \$33.8 million in impairment of goodwill within the Fiber Optics segment, \$6.3 million related to an increase in inventory provisions, \$8.5 million related to depreciation and amortization expense, \$3.6 related to stock-based compensation expense, \$2.7 million related to an increase in the provision for doubtful accounts, offset slightly by a gain of \$3.1 million from the sale of an unconsolidated affiliate.

#### Net Cash Provided by Investing Activities

For the six months ended March 31, 2010, net cash provided by investing activities totaled \$0.6 million, which represents a decrease of \$13.4 million from \$14.0 million in cash provided by investing activities for the six months ended March 31, 2009.

For the six months ended March 31, 2010, the \$0.6 million in net cash provided by investing activities was primarily due from the release of restricted cash of \$1.1 million and the sale of auction-rate securities of \$0.1 million offset by \$0.2 million in capital expenditures and \$0.4 million in patent investments.

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For the six months ended March 31, 2009, the \$14.0 million in net cash provided by investing activities was primarily due to \$11.0 million of proceeds from the sale of an unconsolidated affiliate, \$2.7 million received from the sale of available-for-sale securities, and \$1.5 million from the release of restricted cash offset by \$1.1 million in capital expenditures.

#### Net Cash Provided by Financing Activities

For the six months ended March 31, 2010, net cash provided by financing activities totaled \$1.7 million, which represents a decrease of \$6.0 million from \$7.7 million in cash provided by financing activities for the six months ended March 31, 2009.

For the six months ended March 31, 2010, the \$1.7 million in net cash provided by financing activities consisted of \$2.0 million in net proceeds from the Company's equity line of credit facility with Commerce Court and \$0.5 million in proceeds from the Company's employee stock purchase plan offset slightly by \$0.8 million of repayments on the Company's debt.

For the six months ended March 31, 2009, the \$7.7 million in net cash provided by financing activities consisted of \$6.2 million in net borrowings under the Company's credit facility with Bank of America, \$0.9 million in net borrowings with UBS, and \$0.6 million in proceeds from the Company's employee stock purchase plan.

#### Contractual Obligations and Commitments

The Company's contractual obligations and commitments over the next five years are summarized in the table below:

| (in thousands)                                | For the Fiscal Years Ended September 30, |           |                 |                 |                      |
|---|--|-----------|-----------------|-----------------|----------------------|
|   | Total                                    | 2010      | 2011 to<br>2012 | 2013 to<br>2014 | 2015<br>and<br>later |
| Operating lease obligations                   | \$ 7,422                                 | \$ 958    | \$ 2,889        | \$ 877          | \$ 2,698             |
| Line of credit                                | 9,662                                    | 9,662     | -               | -               | -                    |
| Short-term debt                               | 728                                      | 728       | -               | -               | -                    |
| Purchase obligations                          | 25,945                                   | 25,795    | 120             | 30              | -                    |
| Total contractual obligations and commitments | \$ 43,757                                | \$ 37,143 | \$ 3,009        | \$ 907          | \$ 2,698             |

Interest expense is not included in the contractual obligations and commitments table above since it is insignificant to the Company's financial statements.

#### Operating leases

Operating leases include non-cancelable terms and exclude renewal option periods, property taxes, insurance and maintenance expenses on leased properties.

#### Line of Credit

In September 2008, the Company closed a \$25 million asset-backed revolving credit facility with Bank of America, which can be used for working capital, letters of credit and other general corporate purposes. Subsequently, the credit facility was amended resulting in a reduction in the total loan availability to \$14 million. The credit facility matures in September 2011 and is secured by substantially all of the Company's assets. The credit facility is subject to a borrowing base formula based on eligible accounts receivable and provides for prime-based borrowings.

As of March 31, 2010, the Company had a \$9.7 million prime rate loan outstanding, with an interest rate of 8.25%, and approximately \$2.2 million in outstanding standby letters of credit under this credit facility. The Company completely paid off the outstanding loan on April 2, 2010.

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The facility is also subject to certain financial covenants. On February 8, 2010, the Company and Bank of America entered into a Sixth Amendment to the Company's credit facility, which (a) permits the Company to enter into foreign exchange hedging transactions pursuant to a separate facility with the bank, provided that available amounts under such facility shall be deducted from the maximum revolving loan limit under this facility; and (b) reset the EBITDA financial covenant for the first quarter of fiscal 2010. On May 6, 2010, the Company and Bank of America entered into a Seventh Amendment to the Company's credit facility, which reset the EBITDA and Fixed Charge Coverage Ratio financial covenants for the second quarter of fiscal 2010 and the remaining quarters of fiscal 2010.

#### Short-term Debt

In December 2008, the Company borrowed \$0.9 million from UBS Securities that is collateralized with auction rate preferred securities. The average interest rate on the loan is approximately 1.3% and the term of the loan is dependent upon the timing of the settlement of the auction rate securities with UBS Securities, which is expected to occur by June 2010 at 100% par value.

#### Segment Data and Related Information

In the Notes to the Condensed Consolidated Financial Statements, see Footnote 15 for disclosures related to business segment revenue, geographic revenue, significant customers, and operating loss by business segment.

#### Recent Accounting Pronouncements

In the Notes to the Condensed Consolidated Financial Statements, see Footnote 2 for disclosures related to recent accounting pronouncements.

### ITEM 3. Quantitative and Qualitative Disclosures about Market Risk

The Company is exposed to financial market risks, including changes in currency exchange rates and interest rates. The Company does not use derivative financial instruments for speculative purposes.

**Currency Exchange Rates.** The United States dollar is the functional currency for the Company's consolidated financials. The functional currency of the Company's Spanish subsidiary is the Euro and for the China subsidiary it is the Yuan Renminbi. The financial statements of these entities are translated to United States dollars using period end rates for assets and liabilities, and the weighted average rate for the period for all revenue and expenses. During the normal course of business, the Company is exposed to market risks associated with fluctuations in foreign currency exchange rates, primarily the Euro. To reduce the impact of these risks on the Company's earnings and to increase the predictability of cash flows, the Company uses natural offsets in receipts and disbursements within the applicable currency as the primary means of reducing the risk. Some of our foreign suppliers may adjust their prices (in \$US) from time to time to reflect currency exchange fluctuations, and such price changes could impact our future financial condition or results of operations. The Company does not currently hedge its foreign currency exposure and does not believe that fluctuations of currency exchange rates will have a material impact to the Company's financial statements.

#### Credit Market Conditions



Recently, the U.S. and global capital markets have been experiencing turbulent conditions, particularly in the credit markets, as evidenced by tightening of lending standards, reduced availability of credit, and reductions in certain asset values. This could impact the Company's ability to obtain additional funding through financing or asset sales.

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ITEM 4.

Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed in reports filed under the Securities Exchange Act of 1934 (the "Act") is recorded, processed, summarized and reported within the specified time periods and accumulated and communicated to management, including its Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Accounting Officer), as appropriate, to allow timely decisions regarding required disclosure.

Management, under the supervision and with the participation of its Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Accounting Officer), evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) promulgated under the Act), as of the end of the period covered by this report. Based on that evaluation, management concluded that, as of that date, the Company's disclosure controls and procedures were effective.

Attached, as exhibits to this Quarterly Report on Form 10-Q, are certifications of the Company's Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), which are required in accordance with Rule 13a-14 of the Act. This Disclosure Controls and Procedures section includes information concerning management's evaluation of disclosure controls and procedures referred to in those certifications and, as such, should be read in conjunction with the certifications of the Company's Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer).

Changes in Internal Control over Financial Reporting

There were no changes in the Company's internal control over financial reporting during the three months ended March 31, 2010 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Limitations on the Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls or our internal controls will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with associated policies or procedures. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.



PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

Legal Proceedings

The Company is subject to various legal proceedings and claims that are discussed below. The Company is also subject to certain other legal proceedings and claims that have arisen in the ordinary course of business and which have not been fully adjudicated. The Company does not believe it has a potential liability related to current legal proceedings and claims that could individually, or in the aggregate, have a material adverse effect on its financial condition, liquidity or results of operations. However, the results of legal proceedings cannot be predicted with certainty. Should the Company fail to prevail in any legal matters or should several legal matters be resolved against the Company in the same reporting period, then the operating results of that particular reporting period could be materially adversely affected. In the past, the Company settled certain matters that did not individually, or in the aggregate, have a material impact on the Company's results of operations.

a) Intellectual Property Lawsuits

We protect our proprietary technology by applying for patents where appropriate and, in other cases, by preserving the technology, related know-how and information as trade secrets. The success and competitive position of our product lines are significantly impacted by our ability to obtain intellectual property protection for our R&D efforts.

We have, from time to time, exchanged correspondence with third parties regarding the assertion of patent or other intellectual property rights in connection with certain of our products and processes. Additionally, on September 11, 2006, the Company filed a lawsuit against Optium Corporation, currently part of Finisar Corporation (Optium) in the U.S. District Court for the Western District of Pennsylvania for patent infringement of certain patents associated with our Fiber Optics segment. In the suit, the Company and JDSU Uniphase Corporation (JDSU) allege that Optium is infringing on U.S. patents 6,282,003 and 6,490,071 with its Prisma II 1550nm transmitters. On March 14, 2007, following denial of a motion to add additional claims to its existing lawsuit, the Company and JDSU filed a second patent suit in the same court against Optium alleging infringement of JDSU's patent 6,519,374 ("the '374 patent"). On March 15, 2007, Optium filed a declaratory judgment action against the Company and JDSU. Optium sought in this litigation a declaration that certain products of Optium do not infringe the '374 patent and that the patent is invalid, but the District Court dismissed the action on January 3, 2008 without addressing the merits. The '374 patent is assigned to JDSU and licensed to the Company.

On December 20, 2007, the Company was served with a complaint in another declaratory relief action, which Optium had filed in the Federal District Court for the Western District of Pennsylvania. This action seeks to have U.S. patents 6,282,003 and 6,490,071 declared invalid or unenforceable because of certain conduct alleged to have occurred in connection with the grant of these patents. These allegations are substantially the same as those brought by Optium by motion in the Company's own case against Optium, which motion had been denied by the Court. On August 11, 2008, both actions pending in the Western District of Pennsylvania were consolidated before a single judge, and a trial date of October 19, 2009 was set. On February 18, 2009, the Company's motion for a summary judgment dismissing Optium's declaratory relief action was granted, and on March 11, 2009, the Company was notified that Optium intended to file an appeal of this order. On May 5, 2010, the Court of Appeals for the Federal Circuit rejected Optium's appeal and affirmed the summary judgment dismissing Optium's declaratory relief action.

In October 2009 the consolidated matters were tried before a jury, which found that all patents asserted against Optium were valid, that all claims asserted were infringed, and that such infringement by Optium was willful where willfulness was asserted. The jury awarded the Company and JDSU monetary damages totaling approximately \$3.4

million. The Company has been advised that Optium has filed an appeal of this award with the Court of Appeals for the Federal Circuit, which the Company intends to contest.

In accordance with U.S. GAAP, a contingency that might result in a gain should not be reflected in the financial statements because to do so might be to recognize income before its realization.

b) Avago-related Litigation

On July 15, 2008, the Company was served with a complaint filed by Avago Technologies and what appear to be affiliates thereof in the United States District Court for the Northern District of California, San Jose Division (Avago Technologies U.S., Inc., et al., Emcore Corporation, et al., Case No.: C08-3248 JW). In this complaint, Avago asserts claims for breach of contract and breach of express warranty against Venture Corporation Limited (one of the Company's customers) and asserts a tort claim for negligent interference with prospective economic advantage against the Company.

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On December 5, 2008, the Company was also served with a complaint by Avago Technologies filed in the United States District Court for the Northern District of California, San Jose Division alleging infringement of two patents by the Company's VCSEL products. (Avago Technologies Singapore et al., Emcore Corporation, et al., Case No.: C08-5394 EMC). This matter has been stayed pending resolution of the International Trade Commission matter described immediately below.

On March 5, 2009, the Company was notified that, based on a complaint filed by Avago alleging the same patent infringement that formed the basis of the complaint previously filed in the Northern District of California, the U.S. International Trade Commission (the "ITC") had determined to begin an investigation titled "In the Matter of Certain Optoelectronic Devices, Components Thereof and Products Containing the Same", Inv. No. 337-TA-669. This matter was tried before an administrative law judge of the ITC from November 16-20, 2009.

On March 12, 2010, the Company was advised that an initial determination had been issued by the administrative law judge of the ITC that found that one of the two patents asserted against certain of the Company's products was both valid and infringed. This initial determination is subject to review and confirmation by the ITC itself and to further review by the President of the United States. Any orders which might issue following such review are subject to appeal to the U.S. Court of Appeals for the Federal Circuit. The initial determination will also not be binding in the patent case currently pending between the Company and Avago in the Northern District of California, which will remain stayed until all appeals of the initial determination have been exhausted.

On March 29, 2010, the Company filed a petition with the International Trade Commission for a review of certain portions of the initial determination that were adverse to the Company. The Commission has not yet indicated which portions of the initial determination it will review.

The Company plans to follow all available avenues of appeal with respect to the adverse aspects of this initial determination and to petition the Patent and Trademark Office for a re-examination of both of the patents in question based on evidence presented in the ITC matter. The Company is also evaluating non-judicial approaches, including product redesign and manufacturing relocation, to minimize the impact of any exclusionary or cease and desist order which may be issued.

#### c) Green and Gold related litigation

On December 23, 2008, Plaintiffs Maurice Prissert and Claude Prissert filed a purported stockholder class action (the "Prissert Class Action") pursuant to Federal Rule of Civil Procedure 23 allegedly on behalf of a class of Company shareholders against the Company and certain of its present and former directors and officers (the "Individual Defendants") in the United States District Court for the District of New Mexico captioned, Maurice Prissert and Claude Prissert v. EMCORE Corporation, Adam Gushard, Hong Q. Hou, Reuben F. Richards, Jr., David Danzilio and Thomas Werthan, Case No. 1:08cv1190 (D.N.M.). The Complaint alleges that Company and the Individual Defendants violated certain provisions of the federal securities laws, including Section 10(b) of the Securities Exchange Act of 1934, arising out of the Company's disclosure regarding its customer Green and Gold Energy ("GGE") and the associated backlog of GGE orders with the Company's Photovoltaics business segment. The Complaint in the Class Action seeks, among other things, an unspecified amount of compensatory damages and other costs and expenses associated with the maintenance of the Action.

On or about February 12, 2009, a second purported stockholder class action (Mueller v. EMCORE Corporation et al., Case No. 1:09cv 133 (D.N.M.)) (the "Mueller Class Action") was filed in the United States District Court for the District of New Mexico against the same defendants named in the Prissert Class Action, based on substantially the same facts and circumstances, containing substantially the same allegations and seeking substantially the same relief. Plaintiffs in both class actions have moved to consolidate the matters into a single action, and several alleged

EMCORE shareholders have moved to be appointed lead class plaintiff of the to-be consolidated action. Selection of a lead plaintiff in this matter is currently pending before the Court.

On January 23, 2009, Plaintiff James E. Stearns filed a purported stockholder derivative action (the “Stearns Derivative Action”) on behalf of the Company against the Individual Defendants, as well as the Company as nominal defendant in the Superior Court of New Jersey, Atlantic County, Chancery Division (James E. Stearns, derivatively on behalf of EMCORE Corporation v. Thomas J. Russell, Robert Bogomolny, Charles Scott, John Gillen, Reuben F. Richards, Jr., Hong Q. Hou, Adam Gushard, David Danzilio and Thomas Werthan, Case No. Atl-C-10-09). This action is based on essentially the same factual contentions as the Prissert Class Action, and alleges that the Individual Defendants engaged in improprieties and violations of law in connection with the reporting of the GGE backlog. The Stearns Derivative Action seeks several forms of relief, allegedly on behalf of the Company, including, among other things, damages, equitable relief, corporate governance reforms, an accounting of, rescission of, restitution of, and costs and disbursements of the lawsuit.

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On March 11, 2009, Plaintiff Gary Thomas filed a second purported shareholder derivative action (the “Thomas Derivative Action”; together with the Stearns Derivative Action, the “Derivative Actions”) in the U.S. District Court for the District of New Mexico against the Company and certain of the Individual Defendants (Gary Thomas, derivatively on behalf of EMCORE Corporation v. Thomas J. Russell, Robert Bogomolny, Charles Scott, John Gillen, Reuben F. Richards, Jr., Hong Q. Hou, and EMCORE Corporation, Case No. 1.09-cv-00236, (D.N.M.)). The Thomas Derivative Action makes the same allegations as the Stearns Derivative Action and seeks essentially the same relief.

The Stearns Derivative Action and the Thomas Derivative action have been consolidated before a single judge in Somerset County, New Jersey, and have been stayed pending the Prissert and Mueller Class Actions.

The Company intends to vigorously defend against the allegations of both the Class Actions and the Derivative Actions.

#### d) Securities Matters

SEC Communications. On February 24, 2010, the Company received a letter from the Securities and Exchange Commission's Division of Enforcement dated February 2, 2010 stating that the staff has completed its investigation of EMCORE Corporation that the Company had disclosed in its Form 10-K filed for its fiscal year ended September 30, 2009. The letter further advised the Company that the staff of the Division of Enforcement did not intend to recommend any enforcement action against the Company.

NASDAQ Communication. On March 8, 2010, the Company received notice from the NASDAQ Listings Qualifications group, stating that it had closed its inquiry involving EMCORE Corporation that the Company had disclosed in its Form 10-K filed for its fiscal year ended September 30, 2009.

As of March 31, 2010 and the filing date of this Quarterly Report on Form 10-Q, no amounts have been accrued for any litigation item discussed above since no estimate of loss can be made at this time.

#### ITEM 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the year ended September 30, 2009, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K are not the only risks facing our Company. Additional risks and uncertainties not currently known to us also may materially adversely affect our business, financial condition and/or operating results.

Our agreement for the sale of a majority of our fiber optics assets and the creation of a joint venture in China is subject to the satisfaction of material conditions. A failure of the transaction to close would likely have material adverse effect on the Company.

Our Share Purchase Agreement and the related Shareholders Agreement with TCIC for the sale of a majority interest in our telecom, enterprise, CATV, FTTP and video transport product lines are subject to the approval of both the Company’s Board of Directors and the Board of Directors of TCIC, which means that, until these approvals are obtained, the Share Purchase Agreement and Shareholders Agreement would not be enforceable by either party



against the other. In addition, the closing of the transaction is subject to the satisfaction of material conditions, including regulatory and government approvals in the U.S. and China. In the event these conditions are not satisfied, the Company may be unable to consummate the transaction, and, if U.S. regulatory approvals are not obtained, the Company may be liable for the payment of a \$2,775,000 termination fee to TCIC.

The Company has also agreed to relocate its China CPV manufacturing and operations base to the Caofeidian Industry Zone. It is uncertain whether this operation can be successfully relocated, and failure to successfully do so may have an adverse impact on these operations as well as other aspects of the Company's CPV business, which may be dependent on these operations.

A failure to close the joint venture transaction for any reason may have a material adverse effect on the Company. Our relationships or credibility with customers could suffer if transition arrangements for the joint venture transactions are planned but not implemented due to a failure to close. In addition, the Company would not realize the expected benefits under the terms of the joint venture arrangement, and, because the Company is restricted by the Share Purchase Agreement from conducting the business of the joint venture assets in ways other than the ordinary course during the pendency of the closing, the Company would not have had the opportunity to pursue other strategic transactions involving those assets.

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If the joint venture transaction is consummated, the successful implementation of the joint venture will be subject to additional risks and uncertainties that may have an adverse material effect on the joint venture's or Company's performance. If the joint venture is not successful, the Company may suffer losses under its obligation to provide loans to the joint venture.

If the transaction is closed, the implementation of the joint venture transaction will also be subject to additional risks and uncertainties. The assets included in the transaction will need to be transferred to the joint venture, and in some cases will be relocated geographically to the Caofeidian Industry Zone in China, which could result in business interruptions or other adverse consequences to the business. A failure by the joint venture to retain key employees may also have an adverse material effect on the business and performance of the joint venture. In addition, the announcement and or consummation of the transaction, or the operation of the joint venture, may have an adverse material effect on the Company's business relationships or operating results, including those of the Fiber Optics businesses which will become part of the joint venture. Because the Company will share ownership and management of the joint venture, the management of these risks will not be entirely within our control.

The Company has agreed to make \$3.0 million in additional loans available to the joint venture following the closing, and to pledge 50% of its interest in the joint venture as collateral for the \$27.0 million in working capital loans to the joint venture to be arranged by TCIC. The Company will likely suffer losses of these amounts if the joint venture is unable to repay its debts.

## ITEM 5. Other Information

### Tangshan Agreements

On February 3, 2010, the Company entered into a Share Purchase Agreement to create a joint venture with Tangshan Caofeidian Investment Corporation ("TCIC"), a Chinese investment company located in the Caofeidian Industry Zone, Tangshan City, Hebei Province of China.

The Share Purchase Agreement provides for the Company to sell a sixty percent (60%) interest in its Fiber Optics business (excluding its satellite communications and specialty photonics fiber optics businesses) to TCIC, which will be operated as a joint venture once the transaction is closed. The Fiber Optics businesses included in this transaction are the Company's telecom, enterprise, cable television (CATV), fiber-to-the-premises (FTTP), and video transport product lines. Subsequent to the pending transaction, the Company's business will be comprised of the satellite and terrestrial solar businesses as well as the satellite communications and specialty photonics fiber optics businesses.

When the transaction is completed, the new joint venture entity will be named EMCORE Fiber Optics, Limited ("EFO") and it will be organized as a newly formed Hong Kong corporation. The Share Purchase Agreement provides for TCIC to pay the Company \$27.8 million in cash, subject to adjustment based on the net asset value of the business as of the closing date, and also to provide \$27.0 million of additional loans to EFO subsequent to the closing, with \$18.0 million to be funded within 90 days of closing and \$9.0 million to be funded within 90 days of the first anniversary of the closing. In consideration of the magnitude of TCIC's loan commitment to EFO, the Company will be providing 50% of its equity interest in EFO as collateral for this indebtedness. In addition, the Share Purchase Agreement provides for the Company to provide \$3.0 million of additional loans to EFO after the closing, with \$2.0 million to be funded within 5 business days of the closing and \$1.0 million to be funded within 90 days of the first anniversary of the closing.

The parties also executed a Shareholders Agreement that provides for how EFO will be operated and governed following closing. The terms of the Shareholders Agreement provide that TCIC shall have the right to elect three of EFO's five directors, as well as to designate the Chairman of the Board and the Chief Financial Officer. The Company will have the right to elect the remaining two directors and to nominate the Chief Executive Officer. The Company also has the right to approve certain key corporate matters (including modifications to EFO's governing documents, changes in equity and corporate structure, mergers, acquisitions and dispositions, the incurring of indebtedness, and the annual business plan and budget) through supermajority voting requirements of the Board (subject to certain deadlock provisions). The Shareholders Agreement also imposes certain restrictions on the parties' abilities to transfer their interest in EFO.

The Share Purchase Agreement and the Shareholders Agreement are subject to the approval of both the Company's Board of Directors and the Board of Directors of TCIC, which means that until these approvals are obtained, the Share Purchase Agreement and the Shareholders Agreement would not be enforceable by either party against the other party. In addition, the closing of the transaction is subject to material conditions, including regulatory and governmental approvals in the U.S. and China. If U.S. regulatory approvals are not obtained, the Company may be obligated to pay a termination fee of \$2.8 million to TCIC.

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It is expected that the Company's Executive Chairman and Chairman of the Board, Mr. Reuben F. Richards, Jr. will resign his position as the Company's Executive Chairman effective as of the closing of the transaction to assume the role of CEO for EFO. In addition, the Shareholders Agreement provides for certain other Company senior executives and the employees currently working for the transferred businesses to be offered positions with EFO. The Shareholders Agreement further contemplates that the Company's President and CEO, Dr. Hong Q. Hou, will also serve as a director of EFO, providing strategic and operational oversight to the joint venture.

If the transaction is completed as planned, over the next several years, the joint venture is expected to focus on developing a high volume, low cost manufacturing infrastructure and a local customer support organization to better serve the expanding customer base in China and worldwide. TCIC has committed to providing additional funding support for the JV's future strategic growth through acquisitions.

In conjunction with the establishment of the joint venture, the Company and TCIC also entered into a Supplemental Agreement pursuant to which the Company agreed to establish its China terrestrial concentrator photovoltaics (CPV) manufacturing and operations base in the Caofeidian Industry Zone. The Supplemental Agreement includes a commitment by TCIC to provide the Company with the equivalent of \$3.3 million in RMB denominated loans, tax and rent incentives and assistance in developing the Company's solar power business in China. The Supplemental Agreement is not subject to Board approval by either the Company or TCIC and is enforceable by each party against the other.

#### Line of Credit

On February 8, 2010, the Company and Bank of America entered into a Sixth Amendment to the Company's credit facility, which (a) permits the Company to enter into foreign exchange hedging transactions pursuant to a separate facility with the bank, provided that available amounts under such facility shall be deducted from the maximum revolving loan limit under this facility; and (b) reset the EBITDA financial covenant for the first quarter of fiscal 2010. On May 6, 2010, the Company and Bank of America entered into a Seventh Amendment to the Company's credit facility, which reset the EBITDA and Fixed Charge Coverage Ratio financial covenants for the second quarter of fiscal 2010 and the remaining quarters of fiscal 2010.

#### ITEM 6. Exhibits

##### Exhibit Description

##### Number

- 10.1\* Seventh Amendment to the Loan and Security Agreement with Bank of America, N.A., dated May 6, 2010.
- 31.1\* Certificate of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated May 10, 2010.
- 31.2\* Certificate of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated May 10, 2010.
- 32.1\*

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Certificate of Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated May 10, 2010.

32.2\* Certificate of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated May 10, 2010.

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\* Filed herewith

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.

EMCORE CORPORATION

Date: May 10, 2010

By: /s/ Hong Q. Hou  
Hong Q. Hou, Ph.D.

Chief Executive Officer  
(Principal Executive Officer)

Date: May 10, 2010

By: /s/ John M. Markovich  
John M. Markovich

Chief Financial Officer  
(Principal Financial and Accounting Officer)