

ADVANCED ENERGY INDUSTRIES INC

FORM 10-Q (Quarterly Report)

Filed 5/9/2001 For Period Ending 3/31/2001

Address	1625 SHARP POINT DR FT COLLINS, Colorado 80525
Telephone	970-221-4670
CIK	0000927003
Industry	Electronic Instr. & Controls
Sector	Technology
Fiscal Year	12/31

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, 2001.

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

For the transition period from _____ to _____.

Commission file number: 000-26966

ADVANCED ENERGY INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

DELAWARE

84-0846841

(State or other jurisdiction of incorporation
or organization)

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

1625 SHARP POINT DRIVE, FORT COLLINS, CO

80525

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: (970) 221-4670

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 X No .

As of May 7, 2001, there were 31,724,632 shares of the Registrant's Common Stock, par value \$0.001 per share, outstanding.

ADVANCED ENERGY INDUSTRIES, INC.
FORM 10-Q
TABLE OF CONTENTS

PART I	FINANCIAL INFORMATION	
ITEM 1.	UNAUDITED FINANCIAL STATEMENTS	
	Consolidated Balance Sheets- March 31, 2001 and December 31, 2000	3
	Consolidated Statement of Operations - Three months ended March 31, 2001 and 2000	4
	Consolidated Statement of Cash Flows - Three months ended March 31, 2001 and 2000	5
	Notes to consolidated financial statements	6
ITEM 2.	MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS	11
ITEM 3.	QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK	16
PART II	OTHER INFORMATION	
ITEM 1.	LEGAL PROCEEDINGS	18
ITEM 2.	CHANGES IN SECURITIES AND USE OF PROCEEDS	18
ITEM 3.	DEFAULTS UPON SENIOR SECURITIES	18
ITEM 4.	SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS	18
ITEM 5.	OTHER INFORMATION	18
ITEM 6.	EXHIBITS AND REPORTS ON FORM 8-K	19

PART I FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

ADVANCED ENERGY INDUSTRIES, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS (IN THOUSANDS)

	MARCH 31, 2001 (UNAUDITED)	DECEMBER 31, 2000 (UNAUDITED)
	-----	-----
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 26,773	\$ 31,716
Marketable securities - trading	130,050	157,811
Accounts receivable, net	62,206	76,545
Notes receivable	2,472	2,472
Income tax receivable	88	74
Inventories	53,018	45,266
Other current assets	3,465	2,508
Deferred income tax assets, net	8,050	7,483
	-----	-----
Total current assets	286,122	323,875
	-----	-----
PROPERTY AND EQUIPMENT, net	32,813	24,101
OTHER ASSETS:		
Deposits and other	874	995
Goodwill and intangibles, net	31,770	9,890
Investments - available for sale	2,209	1,824
Demonstration and customer service equipment, net	3,494	2,889
Deferred debt issuance costs, net	2,138	2,261
	-----	-----
Total assets	\$359,420	\$365,835
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade	\$ 16,078	\$ 18,250
Accrued payroll and employee benefits	9,134	11,723
Other accrued expenses	4,412	4,383
Customer deposits	124	104
Accrued income taxes payable	1,248	7,923
Current portion of capital lease obligations and long-term debt .	1,104	1,337
Accrued interest payable on convertible subordinated notes	1,600	529
	-----	-----
Total current liabilities	33,700	44,249
	-----	-----
LONG-TERM LIABILITIES:		
Notes payable, net of current portion	892	1,043
Deferred income tax liabilities, net	912	--
Convertible subordinated notes payable	81,600	81,600
	-----	-----
	83,404	82,643
	-----	-----
Total liabilities	117,104	126,892
	-----	-----
MINORITY INTEREST	80	145
	-----	-----
STOCKHOLDERS' EQUITY	242,236	238,798
	-----	-----
Total liabilities and stockholders' equity	\$359,420	\$365,835
	=====	=====

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

ADVANCED ENERGY INDUSTRIES, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	THREE MONTHS ENDED MARCH 31,	
	2001	2000
	(UNAUDITED)	(UNAUDITED)
SALES	\$ 74,714	\$ 75,028
COST OF SALES	43,491	38,361
	-----	-----
Gross profit	31,223	36,667
	-----	-----
OPERATING EXPENSES:		
Research and development	12,389	8,113
Sales and marketing	6,629	5,867
General and administrative	6,174	5,639
Litigation recovery	(1,500)	--
	-----	-----
Total operating expenses	23,692	19,619
	-----	-----
INCOME FROM OPERATIONS	7,531	17,048
OTHER INCOME (EXPENSE)	187	120
	-----	-----
Net income before income taxes and minority interest	7,718	17,168
PROVISION FOR INCOME TAXES	2,689	5,947
MINORITY INTEREST IN NET LOSS	(65)	(17)
	-----	-----
NET INCOME	\$ 5,094	\$ 11,238
	=====	=====
 BASIC EARNINGS PER SHARE	 \$ 0.16	 \$ 0.36
	=====	=====
DILUTED EARNINGS PER SHARE	\$ 0.16	\$ 0.35
	=====	=====
 BASIC WEIGHTED-AVERAGE COMMON SHARES OUTSTANDING	 31,547	 31,161
	=====	=====
DILUTED WEIGHTED-AVERAGE COMMON SHARES OUTSTANDING	32,187	32,512
	=====	=====

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

ADVANCED ENERGY INDUSTRIES, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CASH FLOWS
(IN THOUSANDS)

	THREE MONTHS ENDED MARCH 31,	
	2001 (UNAUDITED)	2000 (UNAUDITED)
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 5,094	\$ 11,238
Adjustments to reconcile net income to net cash provided by operating activities --		
Depreciation and amortization	3,982	2,330
Amortization of deferred debt issuance costs	123	160
Minority interest	(65)	(17)
Provision for deferred income taxes	73	(103)
Amortization of deferred compensation	131	64
Earnings from marketable securities, net	(1,565)	(2,278)
Changes in operating assets and liabilities --		
Accounts receivable-trade, net	15,449	(6,622)
Related parties and other receivables	57	(188)
Inventories	(6,074)	(3,058)
Other current assets	(868)	(362)
Deposits and other	120	(44)
Demonstration and customer service equipment	(846)	(247)
Accounts payable, trade	(2,527)	(2,526)
Accrued payroll and employee benefits	(2,994)	1,944
Customer deposits and other accrued expenses	696	1,502
Income taxes payable/receivable, net	(6,770)	5,389
Net cash provided by operating activities	4,016	7,182
CASH FLOWS FROM INVESTING ACTIVITIES:		
Marketable securities transactions	30,000	(10,000)
Proceeds from sale of equipment	--	150
Purchase of property and equipment, net	(6,471)	(2,016)
Purchase of investments	(592)	--
Acquisition of Engineering Measurements Company, net of cash acquired .	(29,932)	--
Net cash used in investing activities	(6,995)	(11,866)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Net change from notes payable and capital lease obligations	(384)	627
Proceeds from common stock transactions	199	2,996
Net cash (used in) provided by financing activities	(185)	3,623
EFFECT OF CURRENCY TRANSLATION ON CASH	(1,779)	(145)
DECREASE IN CASH AND CASH EQUIVALENTS	(4,943)	(1,206)
CASH AND CASH EQUIVALENTS, beginning of period	31,716	21,043
CASH AND CASH EQUIVALENTS, end of period	\$ 26,773	\$ 19,837
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid for interest	\$ 95	\$ 94
Cash paid for income taxes	\$ 9,236	\$ 2,727

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

ADVANCED ENERGY INDUSTRIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) BASIS OF PRESENTATION AND MANAGEMENT OPINION

In the opinion of management, the accompanying unaudited consolidated balance sheets and statements of operations and cash flows contain all adjustments, consisting only of normal recurring items, necessary to present fairly the financial position of Advanced Energy Industries, Inc., a Delaware corporation, and its wholly owned subsidiaries (the "Company") at March 31, 2001, and the results of the Company's operations and cash flows for the three-month periods ended March 31, 2001 and 2000.

The unaudited financial statements presented herein have been prepared in accordance with the instructions to Form 10-Q and do not include all the information and note disclosures required by generally accepted accounting principles. The financial statements should be read in conjunction with the audited financial statements and notes thereto contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2000, filed March 27, 2001.

(2) ACQUISITIONS

EMCO - On January 2, 2001, Engineering Measurements Company ("EMCO"), a publicly-held, Longmont, Colorado-based manufacturer of electronic and electromechanical precision instruments for measuring and controlling the flow of liquids, steam and gases, was merged with a wholly owned subsidiary of the Company. The Company paid the EMCO shareholders cash in an aggregate amount of approximately \$30 million. The acquisition was accounted for using the purchase method of accounting, and the operating results of EMCO are reflected in the accompanying financial statements prospectively from the date of acquisition. The purchase price was allocated to the net assets of EMCO as summarized below:

	(In thousands)
	(UNAUDITED)
Cash and cash equivalents	\$ 459
Marketable securities	674
Accounts receivable	1,167
Inventories	1,678
Deferred income tax assets, current	584
Other current assets	88
Fixed assets	4,596
Goodwill and intangibles	23,152
Accounts payable	(355)
Accrued payroll	(405)
Other accrued expenses	(391)
Deferred income tax liability	(856)

	\$30,391
	=====

SEKIDENKO, INC. - On August 18, 2000, Sekidenko, Inc. ("Sekidenko"), a privately-held, Vancouver, Washington state-based supplier of optical fiber thermometers to the semiconductor capital equipment industry, was merged with a wholly owned subsidiary of the Company. The Company issued 2.1 million shares of its common stock to the former shareholders of Sekidenko.

NOAH HOLDINGS, INC. - On April 6, 2000, Noah Holdings, Inc. ("Noah"), a privately-held, California-based manufacturer of solid state temperature control systems used to control process temperatures during semiconductor manufacturing, was merged with a wholly owned subsidiary of the

Company. The Company issued approximately 687,000 shares of its common stock in connection with the acquisition. In addition, outstanding Noah stock options were converted into options to purchase approximately 40,000 shares of the Company's common stock.

The Sekidenko and Noah mergers constituted tax-free reorganizations and have been accounted for as poolings of interests under Accounting Principles Board Opinion No. 16. Accordingly, all prior period consolidated financial statements presented have been restated to include the combined balance sheet, statements of operations and cash flows of Noah and Sekidenko as though each had always been part of the Company. There were no transactions between the Company, Noah and Sekidenko prior to the combinations, and immaterial adjustments were recorded at Noah and Sekidenko to conform their accounting policies. Certain reclassifications were made to conform the Noah and Sekidenko financial statements to the Company's presentations. The results of operations for the separate companies and combined amounts presented in the consolidated financial statements follow:

	THREE MONTHS ENDED MARCH 31,	
	2001	2000
	(UNAUDITED)	(UNAUDITED)
	(IN THOUSANDS)	
Sales:		
Pre-Noah and Sekidenko mergers		
Advanced Energy	\$ --	\$67,171
Noah	--	3,080
Sekidenko	--	4,777
Post-Noah and Sekidenko mergers	74,714	--
Consolidated	\$74,714	\$75,028
	=====	=====
Net income:		
Pre-Noah and Sekidenko mergers		
Advanced Energy	\$ --	\$ 9,996
Noah	--	43
Sekidenko	--	1,199
Post-Noah and Sekidenko mergers	5,094	--
Consolidated	\$ 5,094	\$11,238
	=====	=====

LITMAS -- During 1998 the Company acquired a 29% ownership interest in LITMAS, a privately-held, North Carolina-based start-up company that designs and manufactures plasma gas abatement systems and high-density plasma sources. The purchase price consisted of \$1 million in cash. On October 1, 1999, the Company acquired an additional 27.5% interest in LITMAS for an additional \$560,000. The purchase price consisted of \$385,000 in the Company's common stock and \$175,000 in cash. The acquisition was accounted for using the purchase method of accounting and resulted in \$523,000 allocated to intangible assets as goodwill. The results of operations of LITMAS have been consolidated in the accompanying consolidated financial statements from the date the controlling interest of 56.5% was acquired. On October 1, 2000, the Company acquired an additional 3.0% interest in LITMAS for an additional \$250,000, bringing the Company's ownership interest in LITMAS to 59.5%.

(3) MARKETABLE SECURITIES - TRADING

MARKETABLE SECURITIES - TRADING consisted of the following:

	MARCH 31,	DECEMBER 31,
	2001	2000
	(UNAUDITED)	(UNAUDITED)
	(IN THOUSANDS)	
Commercial paper	\$ 76,849	\$ 85,827
Municipal bonds and notes .	35,571	54,022
Mutual funds	17,630	17,962
Total marketable securities	\$130,050	\$157,811
	=====	=====

These marketable securities are stated at period end market value, and have original costs of

\$129,523,000 and \$157,112,000 as of March 31, 2001 and December 31, 2000, respectively. Included in these balances is unrealized interest income of \$442,000 and \$699,000 as of March 31, 2001 and December 31, 2000, respectively.

(4) ACCOUNTS RECEIVABLE - TRADE

ACCOUNTS RECEIVABLE - TRADE consisted of the following:

	MARCH 31, 2001 (UNAUDITED)	DECEMBER 31, 2000 (UNAUDITED)
	(IN THOUSANDS)	
Domestic	\$ 26,071	\$ 41,545
Foreign	30,876	31,971
Allowance for doubtful accounts	(969)	(784)
	-----	-----
Trade accounts receivable	55,978	72,732
Related parties	63	38
Other	6,165	3,775
	-----	-----
Total accounts receivable	\$ 62,206	\$ 76,545
	=====	=====

(5) INVENTORIES

INVENTORIES consisted of the following:

	MARCH 31, 2001 (UNAUDITED)	DECEMBER 31, 2000 (UNAUDITED)
	(IN THOUSANDS)	
Parts and raw materials	\$37,534	\$34,462
Work in process	3,266	3,777
Finished goods	12,218	7,027
	-----	-----
Total inventories	\$53,018	\$45,266
	=====	=====

(6) INVESTMENTS - AVAILABLE FOR SALE AND OTHER

In the third quarter of 2000 the Company exercised warrants of a supplier in a cashless transaction and received 458,000 shares of the supplier's common stock, which is publicly traded. Concurrent with the exercise, the Company sold 320,000 shares of the supplier's common stock and recognized a gain of approximately \$4.8 million. The remaining 138,000 shares have been classified as available-for-sale securities and are reflected as an investment of approximately \$1.5 million in the accompanying balance sheet. Also included in investments is \$700,000 of private company placements accounted for under the cost method.

(7) STOCKHOLDERS' EQUITY

STOCKHOLDERS' EQUITY consisted of the following:

	MARCH 31, 2001 (UNAUDITED)	DECEMBER 31, 2000 (UNAUDITED)
	(IN THOUSANDS, EXCEPT PAR VALUE)	
Common stock, \$0.001 par value, 40,000 shares authorized; 31,557 and 31,537 shares issued and outstanding at March 31, 2001 and December 31, 2000, respectively	\$ 32	\$ 32
Additional paid-in capital	125,129	124,930
Retained earnings	122,065	116,971
Deferred compensation	(1,489)	(1,620)
Accumulated other comprehensive loss	(3,501)	(1,515)
	-----	-----
Total stockholders' equity	\$ 242,236	\$ 238,798
	=====	=====

(8) ACCOUNTING STANDARDS

COMPREHENSIVE INCOME -- Comprehensive income for the Company consists of net income, foreign currency translation adjustments and an unrealized holding gain as presented below

	THREE MONTHS ENDED MARCH 31, 2001 (UNAUDITED)	THREE MONTHS ENDED MARCH 31, 2000 (UNAUDITED)

	(IN THOUSANDS)	
Net income, as reported	\$ 5,094	\$ 11,238
Adjustment to arrive at comprehensive net income:		
Unrealized holding loss on available-for-sale marketable securities	(207)	--
Cumulative translation adjustment	(1,779)	(145)
	-----	-----
Comprehensive net income	\$ 3,108	\$ 11,093
	=====	=====

SEGMENT REPORTING -- SFAS No. 131, "Disclosure about Segments of an Enterprise and Related Information," requires a public business enterprise to report financial and descriptive information about its reportable operating segments. Operating segments are components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision-maker in deciding how to allocate resources and in assessing performance. Management operates and manages the Company's business as one operating segment, because all of its products and systems have similar economic characteristics and production processes. Since the Company operates in one segment, all financial segment information required by SFAS No. 131 is found in the consolidated financial statements.

DERIVATIVE HEDGING ACTIVITIES -- In June 1998 the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." The Company, as required, adopted SFAS No. 133, as amended by SFAS No. 137, on January 1, 2001. SFAS No. 133 establishes accounting and reporting standards for derivative instruments and for hedging activity by requiring all derivatives to be recorded on the balance sheet as either an asset or liability and measured at their fair value. Changes in the derivative's fair value will be recognized currently in earnings unless specific hedging accounting criteria are met. SFAS No. 133 also establishes uniform hedge accounting criteria for all derivatives. The Company will not seek specific hedge accounting treatment for its foreign currency forward contracts. The adoption of SFAS No. 133 did not have a material impact on the Company's financial condition or results of operations.

REVENUE RECOGNITION -- In December 1999 the staff of the Securities and Exchange Commission issued its Staff Accounting Bulletin ("SAB") No. 101, "Revenue Recognition." SAB No. 101 provides guidance on the measurement and timing of revenue recognition in financial statements of public companies. Changes in accounting policies to apply the guidance of SAB No. 101 were required to be adopted by recording the cumulative effect of the change in the fiscal quarter ending December 31, 2000. The adoption of SAB No. 101 did not have a material effect on the Company's financial condition or results of operations.

(9) CONVERTIBLE SUBORDINATED NOTES PAYABLE

In November 1999 the Company issued \$135 million of convertible subordinated notes payable at 5.25%. These notes mature November 15, 2006, with interest payable on May 15th and November 15th each year beginning May 15, 2000. Net proceeds to the Company were approximately \$130.5 million, after deducting \$4.5 million of offering costs, which have been capitalized and are being amortized over a period of seven years. Holders of the notes may convert the notes at any time into shares of the Company's common stock, at \$49.53 per share. The Company may convert the notes on or after November 19, 2002 at a conversion price of 103.00% times the principal amount, and may convert at successively lesser amounts thereafter until November 15, 2006, at which time the Company may convert at a redemption price equal to the principal amount. At March 31, 2001, \$1.6 million of interest expense related to these notes was accrued as a current liability.

In October and November 2000, the Company repurchased an aggregate of approximately \$53.4 million principal amount of its convertible subordinated notes in the open market, for a cost of approximately \$40.8 million. These purchases resulted in an after-tax extraordinary gain of \$7.6 million. The purchased notes have been cancelled. Approximately \$81.6 million principal amount of the notes remains outstanding. The Company may continue to purchase additional notes in the open market from time to time, if market conditions and its financial position are deemed favorable for such purposes.

(10) LITIGATION RECOVERY

In March 2001, the Company received a \$1.5 million settlement for recovery of legal expenses pertaining to a patent-infringement suit in which the Company was the plaintiff.

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

SPECIAL NOTE ON FORWARD LOOKING STATEMENTS

This Form 10-Q, including the following discussion, contains forward looking statements, within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Statements that are other than historical information are forward looking statements. For example, statements relating to our beliefs, expectations and plans are forward looking statements, as are statements that certain actions, conditions or circumstances will occur or continue. Forward looking statements involve risks and uncertainties. As a result, actual results may differ materially from the results discussed in the forward looking statements. Factors that could cause or contribute to such differences or prove any forward looking statements, by hindsight, to be overly optimistic or unachievable, include, but are not limited to the following:

- o changes or slowdowns in economic conditions in the semiconductor and semiconductor capital equipment industries or other industries in which our customers operate;
- o changes in customers' inventory management practices;
- o timing and challenges of integrating recent and potential future acquisitions;
- o component shortages or allocations or other factors that change our levels of inventory or substantially increase our spending on inventory;
- o introduction of new products by our competitors; and
- o our ability to attract and retain key personnel.

For a discussion of these and other factors that may impact our realization of our forward looking statements, see our Annual Report on Form 10-K for the year ended December 31, 2000, Part I "Cautionary Statements - Risk Factors."

RESULTS OF OPERATIONS FOR THE THREE MONTHS ENDED MARCH 31, 2001 AND 2000

SALES

We sell power conversion and control systems and related equipment primarily to the semiconductor capital equipment, data storage and advanced product applications markets in the United States, to the flat panel display and advanced product applications markets in the Asia Pacific region, and to data storage and advanced product applications

markets in Europe. We also sell spare parts and repair services worldwide through our customer service and technical support organization.

Sales were \$74.7 million in the first quarter of 2001, down less than one percent from sales of \$75.0 million in the first quarter of 2000, and down 27% from sales of \$102.7 million in the fourth quarter of 2000. The first quarter of 2001 included sales by EMCO, a wholly owned subsidiary we acquired on January 2, 2001, which was accounted for by the purchase method of accounting. The fourth quarter of 2000 was the eighth consecutive quarter of sales growth, which was primarily attributable to capacity expansion and increased investment in advanced technology by the semiconductor industry, which resulted in increased demand for our systems from manufacturers of semiconductor capital equipment. During the first quarter of 2001, a worldwide slowdown in demand for semiconductors resulted in a sudden and rapid decline in demand for semiconductor manufacturing equipment, as inventory buildups and slower global economic growth resulted in slower capital investment by semiconductor manufacturers and their suppliers. Our experience has shown that our sales to semiconductor capital equipment customers is dependent on the volatility of that industry, which results from sudden changes in semiconductor supply and demand, and rapid technological advances in both semiconductor devices and wafer fabrication processes. Our sales to the semiconductor capital equipment industry in the first quarter of 2001 increased one percent over sales to that industry from the first quarter of 2000, but declined 31% from sales to that industry from the fourth quarter of 2000. We expect sales to the semiconductor capital equipment industry in 2001 to be lower than in 2000.

Our sales to the data storage industry decreased 62% from the first quarter of 2000 to the first quarter of 2001, primarily due to slowdown in growth of demand for CVD and DVD replication equipment, overcapacity of such manufacturing equipment, and slower than expected personal computer sales. Sales to the flat panel display industry increased 12% from the first quarter of 2000 to the first quarter of 2001. Sales to advanced product applications industries increased 24% from the first quarter of 2000 to the first quarter of 2001.

The following tables summarize net sales and percentages of net sales by customer type for us for the three-month periods ended March 31, 2001 and 2000:

	THREE MONTHS ENDED MARCH 31,	
	2001	2000
	-----	-----
	(IN THOUSANDS)	
Semiconductor capital equipment ..	\$51,047	\$50,557
Data storage	2,199	5,806
Flat panel display	6,710	5,967
Advanced product applications	10,974	8,841
Customer service technical support	3,784	3,857
	-----	-----
	\$74,714	\$75,028
	=====	=====

	THREE MONTHS ENDED MARCH 31,	
	2001	2000
Semiconductor capital equipment ..	68%	67%
Data storage	3	8
Flat panel display	9	8
Advanced product applications	15	12
Customer service technical support	5	5
	---	---
	100%	100%
	===	===

The following tables summarize net sales and percentages of net sales by geographic region for us for the three-month periods ended March 31, 2001 and 2000:

	THREE MONTHS ENDED MARCH 31,	
	2001	2000
	-----	-----
	(IN THOUSANDS)	
United States and Canada	\$52,798	\$53,713
Europe	8,613	11,217
Asia Pacific	13,092	9,897
Rest of world	211	201
	-----	-----
	\$74,714	\$75,028
	=====	=====

	THREE MONTHS ENDED MARCH 31,	
	2001	2000
	---	---
United States and Canada	71%	72%
Europe	12	15
Asia Pacific	17	13
Rest of world	--	--
	---	---
	100%	100%
	===	===

GROSS MARGIN

Our gross margin was 41.8% in the first quarter of 2001 compared to 48.9% in the first quarter of 2000. The decrease was due to lower absorption of manufacturing overhead and fixed costs. We added new facilities in Fort Collins, Colorado in the first quarter of 2001 to increase our manufacturing capacity, which will increase our lease and depreciation costs. This adversely impacted absorption of overhead because the increased capacity was not fully utilized due to decreased demand. Any further decreases in our level of sales in the future could have an additional negative impact on our gross margin.

RESEARCH AND DEVELOPMENT EXPENSES

We invest in research and development to identify new technologies, develop new products and improve existing product designs. Our research and development expenses were \$8.1 million in the first quarter of 2000 and \$12.4 million in the first quarter of 2001, representing an increase of 53%. The increase is primarily due to increases in payroll, materials and supplies, purchased services and higher infrastructure costs for new product development, and partly due to the inclusion of EMCO research and development expenses in the first quarter of 2001. As a percentage of sales, research and development expenses increased from 10.8% in the first quarter of 2000 to 16.6% in the first quarter of 2001 because of the higher spending.

We believe continued investment in the research and development of new systems is critical to our ability to serve new and existing markets, and we continue to invest in new

product development during industry downturns. Since our inception, the majority of our research and development costs generally have been internally funded and all have been expensed as incurred.

SALES AND MARKETING EXPENSES

Our sales and marketing expenses support domestic and international sales and marketing activities which include personnel, trade shows, advertising, and other marketing activities. Sales and marketing expenses were \$5.9 million in the first quarter of 2000 and \$6.6 million in the first quarter of 2001, representing a 13% increase. The increase is primarily due to the inclusion of EMCO sales and marketing expenses in the first quarter of 2001, and due to higher payroll, promotion, distribution and travel costs. We incurred these expenses to continue to increase our sales management and product management capabilities. As a percentage of sales, sales and marketing expenses increased from 7.8% in the first quarter of 2000 to 8.9% in the first quarter of 2001.

GENERAL AND ADMINISTRATIVE EXPENSES

Our general and administrative expenses support our worldwide financial, administrative, information systems and human resources functions. General and administrative expenses were \$5.6 million in the first quarter of 2000 and \$6.2 million in the first quarter of 2001, representing a 9% increase. The increase is primarily due to the inclusion of goodwill amortization resulting from the acquisition of EMCO, partially offset by lower spending for payroll. As a percentage of sales, general and administrative expenses increased from 7.5% in the first quarter of 2000 to 8.3% in the first quarter of 2001.

We continue to implement our management system software, including the replacement of existing systems in our domestic and foreign locations. We expect that charges related to personnel training and implementation of the software will continue through 2001.

LITIGATION RECOVERY

In March 2001, we received a \$1.5 million settlement for recovery of legal expenses pertaining to a patent-infringement suit in which we were the plaintiff.

OTHER INCOME (EXPENSE)

Other income consists primarily of interest income and expense, foreign exchange gains and losses and other miscellaneous gain, loss, income and expense items. Other income was \$120,000 in the first quarter of 2000, and included \$2.5 million of interest income offset by \$2.0 million of interest expense, \$319,000 of foreign currency loss and \$56,000 of other expenses. Other income was \$187,000 in the first quarter of 2001, and included \$1.8 million of interest income offset by \$1.3 million of interest expense and \$293,000 of other expenses.

PROVISION FOR INCOME TAXES

The income tax provision for the first quarter of 2000 was \$5.9 million and represented an effective tax rate of 35%. The income tax provision for the first quarter of 2001 was \$2.7 million, which also represented an effective tax rate of 35%. Changes in our relative earnings and the earnings of our foreign subsidiaries affect our consolidated effective tax rate. We adjust our income taxes periodically based upon the anticipated tax status of all foreign and domestic entities.

LIQUIDITY AND CAPITAL RESOURCES

Since our inception, we have financed our operations, acquired equipment and met our working capital requirements through borrowings under our revolving lines of credit, long-term loans secured by property and equipment, cash flow from operations and proceeds from underwritten public offerings of our common stock and convertible subordinated debt.

Operating activities provided cash of \$7.2 million in the first three months of 2000, primarily as a result of net income, depreciation and amortization, and increased accruals for income taxes, partially offset by increases in accounts receivable and inventories and decreases in accounts payable. Operating activities provided cash of \$4.0 million in the first three months of 2001, primarily as a result of net income, depreciation and amortization, and decreases in accounts receivable, partially offset by increases in inventories, decreases in accounts payable and decreased accruals for payroll, employee benefits and income taxes. We expect future receivable and inventory balances to fluctuate with net sales. We are required to maintain higher levels of buffer stock inventory to satisfy our customers' delivery requirements. Any increase in our inventory levels will require the use of cash to finance the inventory.

Investing activities used cash of \$11.9 million in the first three months of 2000, and included the purchase of marketable securities of \$10.0 million and the purchase of property and equipment for \$2.0 million, partially offset by proceeds from the sale of equipment of \$150,000. Investing activities used cash of \$7.0 million in the first three months of 2001, and included the acquisition of EMCO for \$29.9 million, the purchase of property and equipment for \$6.5 million and the purchase of investments for \$592,000, partially offset by the sale of marketable securities of \$30.0 million.

Financing activities provided cash of \$3.6 million in the first three months of 2000, and included of \$3.0 million from the exercise of employee stock options and sale of common stock through our employee stock purchase plan ("ESPP"), and \$627,000 of net changes in notes payable and capital lease obligations. Financing activities used cash of \$185,000 in the first three months of 2001, and included \$384,000 of net decreases in

notes payable and capital lease obligations, offset by proceeds of \$199,000 from the exercise of employee stock options and sale of common stock through our ESPP.

We plan to spend approximately \$6.0 million through the remainder of 2001 for the acquisition of equipment, leasehold improvements and furnishings, with depreciation expense projected to be approximately \$7.1 million.

As of March 31, 2001, we had working capital of \$252.4 million. Our principal sources of liquidity consisted of \$26.8 million of cash and cash equivalents, \$130.1 million of marketable securities, and a credit facility consisting of a \$30.0 million revolving line of credit. Advances under the revolving line of credit bear interest at either the prime rate (7.50% at April 30, 2001) minus 1.00% or the LIBOR 360-day rate (4.44125% at April 30, 2001) plus 175 basis points, at our option. All advances under the revolving line of credit will be due and payable May 2003. As of March 31, 2001 there was an advance outstanding of \$792,000 on this line of credit by our Japanese subsidiary, Advanced Energy Japan K.K. ("AE-Japan").

We believe that our cash and cash equivalents, marketable securities, cash flow from operations and available borrowings, will be sufficient to meet our working capital needs through at least the end of 2001. After that time, we may require additional equity or debt financing to address our working capital, capital equipment or expansion needs. In addition, any significant acquisitions we make may require additional equity or debt financing to fund the purchase price, if paid in cash. There can be no assurance that additional funding will be available when required or that it will be available on terms acceptable to us.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

INTEREST RATE RISK

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio and long-term debt obligations. We generally place our investments with high credit quality issuers and by policy are averse to principal loss and seek to protect and preserve our invested funds by limiting default risk, market risk and reinvestment risk.

As of March 31, 2001, our investments consisted of equity securities, commercial paper, municipal bonds and notes and money market mutual funds which had an original cost of \$129.5 million, and earned \$1.6 million for the quarter then ended, at an average interest rate of approximately 4.8%. The impact on interest income of a ten percent decrease in the average interest rate would have resulted in approximately \$157,000 less interest income for the quarter ended March 31, 2001.

As of March 31, 2001, all of our debt was at fixed interest rates except for an amount outstanding of \$792,000 on our line of credit. The impact on interest expense of a ten percent increase in the average interest rate would have been immaterial to our financial position and results of operations.

FOREIGN CURRENCY EXCHANGE RATE RISK

We transact business in various foreign countries. Our primary foreign currency cash flows are generated in countries in Asia and Europe. We have entered into various forward foreign exchange contracts to mitigate against currency fluctuations in the Japanese yen. These currency swaps offset changes in the exchange rate in the yen, when intercompany transactions we conduct with AE-Japan are settled. Changes in the exchange rates of the U.S. dollar with other currencies in which we operate are immaterial. We will continue to evaluate various methods to minimize the effects of currency fluctuations.

Eleven European countries adopted a Single European Currency (the "euro") as of January 1, 1999 with a transition period continuing through at least January 1, 2002. As of January 1, 1999, these eleven of the fifteen member countries of the European Union (the "participating countries") established fixed conversion rates between their existing sovereign currencies and the euro. For three years after the introduction of the euro, the participating countries can perform financial transactions in either the euro or their original local currencies. This will result in a fixed exchange rate among the participating countries, whereas the euro (and the participating countries' currencies in tandem) will continue to float freely against the U.S. dollar and other currencies of non-participating countries. A twelfth European country adopted the euro on January 1, 2001. Although we do not expect the introduction of the euro currency to have a significant impact on our revenues or results of operations, we are unable to determine what effects, if any, the currency change in Europe will have on competition and competitive pricing in the affected regions.

OTHER RISK

We have invested in start-up companies and may in the future make additional investments in start-up companies that develop products which we believe may provide future benefits. The current start-up investments and any future start-up investments will be subject to all of the risks inherent in investing in companies that are not established.

PART II OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we are party to various legal proceedings relating to our business. We are not currently party to any material legal proceedings, except as described below:

We are the defendant in an action filed by Applied Science and Technology, Inc., a Delaware corporation. The civil action was filed in the U.S. District Court for the District of Delaware on November 30, 2000. Applied Science and Technology, which is a subsidiary of MKS Instruments, Inc., alleges that, by manufacturing and selling reactive gas generators, we are infringing upon its patent. Applied Science and Technology seeks injunctive relief and damages in an unspecified amount. The action is in the discovery stage. We have reviewed the allegations with our patent counsel and believe we have meritorious defenses to the claim. We have denied the allegation of infringement and will defend against the claim vigorously.

In March 2001, we received a \$1.5 million settlement for recovery of legal expenses pertaining to a patent-infringement suit in which we were the plaintiff.

ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

Not applicable.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits:

- 3.1 The Company's Restated Certificate of Incorporation, as amended(1)
 - 3.2 The Company's By-laws(2)
 - 4.1 Form of Specimen Certificate for the Company's Common Stock(2)
 - 4.2 Indenture dated November 1, 1999 between State Street Bank and Trust Company of California, N.A., as trustee, and the Company (including form of 5 1/4% Convertible Subordinated Note due 2006)(3)
 - 10.1 1995 Stock Option Plan, as amended and restated through February 7, 2001*
 - 10.2 1995 Non-Employee Directors' Stock Option Plan, as amended and restated through February 7, 2001*
-

(1) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1999 (File No. 000-26966), filed July 28, 1999.

(2) Incorporated by reference to the Company's Registration Statement on Form S-1 (File No. 33-97188), filed September 20, 1995, as amended.

(3) Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1999 (File No. 000-26966), filed March 20, 2000.

* Compensation Plan

(b) The Company filed a report on Form 8-K on February 20, 2001 announcing the resignation and retirement of Dr. Hollis Caswell, then the Company's President, Chief Operating Officer and a director, and the appointment of James F. Gentilcore as Executive Vice President in charge of operations.

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.

ADVANCED ENERGY INDUSTRIES, INC.

/s/ Richard P. Beck

Richard P. Beck

*Senior Vice President, Chief Financial
Officer, Assistant Secretary and*

*Director (Principal Financial Officer
and Principal Accounting Officer)*

May 9, 2001

INDEX TO EXHIBITS

- 3.1 The Company's Restated Certificate of Incorporation, as amended(1)
 - 3.2 The Company's By-laws(2)
 - 4.1 Form of Specimen Certificate for the Company's Common Stock(2)
 - 4.2 Indenture dated November 1, 1999 between State Street Bank and Trust Company of California, N.A., as trustee, and the Company (including form of 5 1/4% Convertible Subordinated Note due 2006)(3)
 - 10.1 1995 Stock Option Plan, as amended and restated through February 7, 2001*
 - 10.2 1995 Non-Employee Directors' Stock Option Plan, as amended and restated through February 7, 2001*
-

(1) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1999 (File No. 000-26966), filed July 28, 1999.

(2) Incorporated by reference to the Company's Registration Statement on Form S-1 (File No. 33-97188), filed September 20, 1995, as amended.

(3) Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1999 (File No. 000-26966), filed March 20, 2000.

* Compensation Plan

EXHIBIT 10.1

**ADVANCED ENERGY INDUSTRIES, INC.
1995 STOCK OPTION PLAN**

**ADOPTED JUNE 6, 1993
AS AMENDED AND RESTATED SEPTEMBER 20, 1995
AND AS FURTHER AMENDED FEBRUARY 10, 1998, FEBRUARY 9, 1999,
DECEMBER 13, 2000 AND FEBRUARY 7, 2001**

1. PURPOSES.

- (a) The purpose of the Plan is to provide a means by which selected Employees and Directors of and Consultants to the Company, and its Affiliates, may be given an opportunity to purchase stock of the Company.
- (b) The Company, by means of the Plan, seeks to retain the services of persons who are now Employees or Directors of or Consultants to the Company or its Affiliates, to secure and retain the services of new Employees, Directors and Consultants, and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.
- (c) The Company intends that the Options issued under the Plan shall, in the discretion of the Board or any Committee to which responsibility for administration of the Plan has been delegated pursuant to subsection 3(c), be either Incentive Stock Options or Nonstatutory Stock Options. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and in such form as issued pursuant to Section 6, and a separate certificate or certificates will be issued for shares purchased on exercise of each type of Option.

2. DEFINITIONS.

- (a) "AFFILIATE" means any parent corporation or subsidiary corporation, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f) respectively, of the Code.
- (b) "BOARD" means the Board of Directors of the Company.
- (c) "CODE" means the Internal Revenue Code of 1986, as amended.
- (d) "COMMITTEE" means a Committee appointed by the Board in accordance with subsection 3(c) of the Plan.
- (e) "COMPANY" means Advanced Energy Industries, Inc., a Delaware corporation.
- (f) "CONSULTANT" means any person, including an advisor, engaged by the Company or an Affiliate to render consulting services and who is compensated for such services, provided that the term "Consultant" shall not include Directors who are paid only a director's fee by the Company or who are not compensated by the Company for their services as Directors.

(g) "CONTINUOUS STATUS AS AN EMPLOYEE, DIRECTOR OR CONSULTANT" means the employment or relationship as a Director or Consultant is not interrupted or terminated. The Board, in its sole discretion, may determine whether Continuous Status as an Employee, Director or Consultant shall be considered interrupted in the case of: (i) any leave of absence approved by the Board, including sick leave, military leave, or any other personal leave; or (ii) transfers between locations of the Company or between the Company, Affiliates or their successors.

(h) "COVERED EMPLOYEE" means the Chief Executive Officer and the four (4) other highest compensated officers of the Company.

(i) "DIRECTOR" means a member of the Board.

(j) "DISINTERESTED PERSON" means a Director who either (i) was not during the one year prior to service as an administrator of the Plan granted or awarded equity securities pursuant to the Plan or any other plan of the Company or any of its affiliates entitling the participants therein to acquire equity securities of the Company or any of its affiliates except as permitted by Rule 16b-3(c)(2)(i); or (ii) is otherwise considered to be a "disinterested person" in accordance with Rule 16b-3(c)(2)(i), or any other applicable rules, regulations or interpretations of the Securities and Exchange Commission.

(k) "EMPLOYEE" means any person, including Officers and Directors, employed by the Company or any Affiliate of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(l) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.

(m) "FAIR MARKET VALUE" means the value of the common stock as determined in good faith by the Board and in a manner consistent with Section 260.140.50 of Title 10 of the California Code of Regulations.

(n) "INCENTIVE STOCK OPTION" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(o) "NONSTATUTORY STOCK OPTION" means an Option not intended to qualify as an Incentive Stock Option.

(p) "OFFICER" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(q) "OPTION" means a stock option granted pursuant to the Plan.

(r) "OPTION AGREEMENT" means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(s) "OPTIONEE" means an Employee, Director or Consultant who holds an outstanding Option.

(t) "OUTSIDE DIRECTOR" means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (as defined in the Treasury regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an affiliated corporation receiving compensation for prior services (other than benefits under a tax qualified pension plan), was not an officer of the Company or an affiliated corporation at any time, and is not currently receiving compensation for personal services in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(u) "PLAN" means this 1995 Stock Option Plan.

(v) "RULE 16b-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

3. ADMINISTRATION.

(a) The Plan shall be administered by the Board unless and until the Board delegates administration to a Committee, as provided in subsection 3(c).

(b) The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(1) To determine from time to time which of the persons eligible under the Plan shall be granted Options; when and how each Option shall be granted; whether an Option will be an Incentive Stock Option or a Nonstatutory Stock Option; the provisions of each Option granted (which need not be identical), including the time or times such Option may be exercised in whole or in part; and the number of shares for which an Option shall be granted to each such person.

(2) To construe and interpret the Plan and Options granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Option Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(3) To amend the Plan as provided in Section 11.

(c) The Board may delegate administration of the Plan to a committee composed of not fewer than two (2) members (the "Committee"), all of the members of which Committee shall be Disinterested Persons and may also be, in the discretion of the Board, Outside Directors. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board (and references in this Plan to the Board shall thereafter be to the Committee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan. Additionally, prior to the date of the first registration of an equity security of the Company under

Section 12 of the Exchange Act, and notwithstanding anything to the contrary contained herein, the Board may delegate administration of the Plan to any person or persons and

the term "Committee" shall apply to any person or persons to whom such authority has been delegated. Notwithstanding anything in this Section 3 to the contrary, the Board or the Committee may delegate to a committee of one or more members of the Board the authority to grant Options to eligible persons who (1) are not then subject to Section 16 of the Exchange Act and/or (2) are either (i) not then Covered Employees and are not expected to be Covered Employees at the time of recognition of income resulting from such Option, or (ii) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code.

(d) Any requirement that an administrator of the Plan be a Disinterested Person shall not apply (i) prior to the date of the first registration of an equity security of the Company under Section 12 of the Exchange Act, or (ii) if the Board or the Committee expressly declares that such requirement shall not apply. Any Disinterested Person shall otherwise comply with the requirements of Rule 16b-3.

4. SHARES SUBJECT TO THE PLAN.

(a) Subject to the provisions of Section 10 relating to adjustments upon changes in stock, the stock that may be sold pursuant to Options shall not exceed in the aggregate eight million one hundred twenty-five thousand (8,125,000) shares of the Company's common stock. If any Option shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the stock not purchased under such Option shall revert to and again become available for issuance under the Plan.

(b) The stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5. ELIGIBILITY.

(a) Incentive Stock Options may be granted only to Employees. Nonstatutory Stock Options may be granted only to Employees, Directors or Consultants.

(b) A Director shall in no event be eligible for the benefits of the Plan unless at the time discretion is exercised in the selection of the Director as a person to whom Options may be granted, or in the determination of the number of shares which may be covered by Options granted to the Director: (i) the Board has delegated its discretionary authority over the Plan to a Committee which consists solely of Disinterested Persons; or (ii) the Plan otherwise complies with the requirements of Rule 16b-3. The Board shall otherwise comply with the requirements of Rule 16b-3. This subsection 5(b) shall not apply (i) prior to the date of the first registration of an equity security of the Company under Section 12 of the Exchange Act, or (ii) if the Board or Committee expressly declares that it shall not apply.

(c) No person shall be eligible for the grant of an Option if, at the time of grant, such person owns (or is deemed to own pursuant to Section 424 (d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any of its Affiliates unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value of such stock at the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

(d) Subject to the provisions of Section 10 relating to adjustments upon changes in stock, no person shall be eligible to be granted Options covering more than three hundred thousand (300,000) shares of the Company's common stock in any calendar year.

6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) **TERM.** No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

(b) **PRICE.** The exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted. The exercise price of each Nonstatutory Stock Option shall be not less than eighty-five percent (85%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted.

(c) **CONSIDERATION.** The purchase price of stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (i) in cash at the time the Option is exercised, or (ii) at the discretion of the Board or the Committee, either at the time of the grant or exercise of the Option, (A) by delivery to the Company of other common stock of the Company, (B) according to a deferred payment or other arrangement (which may include, without limiting the generality of the foregoing, the use of other common stock of the Company) with the person to whom the Option is granted or to whom the Option is transferred pursuant to subsection 6(d), or (C) in any other form of legal consideration that may be acceptable to the Board.

In the case of any deferred payment arrangement, interest shall be payable at least annually and shall be charged at the minimum rate of interest necessary to avoid the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement.

(d) **TRANSFERABILITY.** An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of the person to whom the Incentive Stock Option is granted only by such person. A Nonstatutory Stock Option shall not be transferable except by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order satisfying the requirements of Rule 16b-3 and the rules thereunder (a "QDRO"), and shall be exercisable during the lifetime of the person to whom the Option is granted only by such person or any transferee pursuant to a QDRO. The person to whom the Option is granted may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionee, shall thereafter be entitled to exercise the Option.

(e) **VESTING.** The total number of shares of stock subject to an Option may, but need not, be allotted in periodic installments (which may, but need not, be equal). The Option Agreement may provide that from time to time during each of such installment periods, the Option may become

exercisable ("vest") with respect to some or all of the shares allotted to that period, and may be exercised with respect to some or all of the shares allotted to such period and/or any prior period as to which the Option became vested but was not fully exercised. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary but in each case will provide for vesting of at least twenty percent (20%) per year of the total number of shares subject to the Option. The provisions of this subsection 6(e) are subject to any Option provisions governing the minimum number of shares as to which an Option may be exercised.

(f) **SECURITIES LAW COMPLIANCE.** The Company may require any Optionee, or any person to whom an Option is transferred under subsection 6(d), as a condition of exercising any such Option, (1) to give written assurances satisfactory to the Company as to the Optionee's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters, and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option; and (2) to give written assurances satisfactory to the Company stating that such person is acquiring the stock subject to the Option for such person's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (i) the issuance of the shares upon the exercise of the Option has been registered under a then currently effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), or (ii) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

(g) **TERMINATION OF EMPLOYMENT OR RELATIONSHIP AS A DIRECTOR OR CONSULTANT.** In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates (other than upon the Optionee's death or disability), the Optionee may exercise his or her Option (to the extent that the Optionee was entitled to exercise it at the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months after the termination of the Optionee's Continuous Status as an Employee, Director or Consultant (or such longer or shorter period, which in no event shall be less than thirty (30) days, specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionee does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

(h) **DISABILITY OF OPTIONEE.** In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates as a result of the Optionee's disability, the Optionee may exercise his or her Option (to the extent that the Optionee was entitled to exercise it at the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination (or such longer or shorter period, which in no event shall be less than six (6) months, specified in the Option Agreement), or (ii) the expiration of the term of

the Option as set forth in the Option Agreement. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become available for issuance under the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

(i) **DEATH OF OPTIONEE.** In the event of the death of an Optionee during, or within a period specified in the Option after the termination of, the Optionee's Continuous Status as an Employee, Director or Consultant, the Option may be exercised (to the extent the Optionee was entitled to exercise the Option at the date of death) by the Optionee's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionee's death pursuant to subsection 6(d), but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period, which in no event shall be less than six (6) months, specified in the Option Agreement), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, at the time of death, the Optionee was not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become available for issuance under the Plan. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

(j) **EARLY EXERCISE.** The Option may, but need not, include a provision whereby the Optionee may elect at any time while an Employee, Director or Consultant to exercise the Option as to any part or all of the shares subject to the Option prior to the full vesting of the Option. Any unvested shares so purchased shall be subject to a repurchase right in favor of the Company, with the repurchase price to be equal to the original purchase price of the stock, or to any other restriction the Board determines to be appropriate; provided, however, that (i) the right to repurchase at the original purchase price shall lapse at a minimum rate of twenty percent (20%) per year over five (5) years from the date the Option was granted, and (ii) such right shall be exercisable only within (A) the ninety (90) day period following the termination of employment or the relationship as a Director or Consultant, or (B) such longer period as may be agreed to by the Company and the Optionee (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code (regarding "qualified small business stock")), and (iii) such right shall be exercisable only for cash or cancellation of purchase money indebtedness for the shares. Should the right of repurchase be assigned by the Company, the assignee shall pay the Company cash equal to the difference between the original purchase price and the stock's Fair Market Value if the original purchase price is less than the stock's Fair Market Value.

(k) **WITHHOLDING.** To the extent provided by the terms of an Option Agreement, the Optionee may satisfy any federal, state or local tax withholding obligation relating to the exercise of such Option by any of the following means or by a combination of such means: (1) tendering a cash payment; (2) authorizing the Company to withhold shares from the shares of the common stock otherwise issuable to the participant as a result of the exercise of the Option; or (3) delivering to the Company owned and unencumbered shares of the common stock of the Company.

7. COVENANTS OF THE COMPANY.

(a) During the terms of the Options, the Company shall keep available at all times the number of shares of stock required to satisfy such Options.

(b) The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to issue and sell shares of stock upon exercise of the Options; provided, however, that this undertaking shall not require the Company to register under the Securities Act either the Plan, any Option or any stock issued or issuable pursuant to any such Option. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Options unless and until such authority is obtained.

8. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of stock pursuant to Options shall constitute general funds of the Company.

9. MISCELLANEOUS.

(a) Neither an Optionee nor any person to whom an Option is transferred under subsection 6(d) shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Option unless and until such person has satisfied all requirements for exercise of the Option pursuant to its terms.

(b) Throughout the term of any Option, the Company shall deliver to the holder of such Option, not later than one hundred twenty (120) days after the close of each of the Company's fiscal years during the Option term, a balance sheet and an income statement. This section shall not apply when issuance is limited to key employees whose duties in connection with the Company assure them access to equivalent information.

(c) Nothing in the Plan or any instrument executed or Option granted pursuant thereto shall confer upon any Employee, Director, Consultant or Optionee any right to continue in the employ of the Company or any Affiliate or to continue acting as a Director or Consultant or shall affect the right of the Company or any Affiliate to terminate the employment or relationship as a Director or Consultant of any Employee, Director, Consultant or Optionee with or without cause.

(d) To the extent that the aggregate Fair Market Value (determined at the time of grant) of stock with respect to which Incentive Stock Options granted after 1986 are exercisable for the first time by any Optionee during any calendar year under all plans of the Company and its Affiliates exceeds one hundred thousand dollars (\$100,000), the Options or portions thereof which exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options.

10. ADJUSTMENTS UPON CHANGES IN STOCK.

(a) If any change is made in the stock subject to the Plan, or subject to any Option (through merger, consolidation, reorganization, recapitalization, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or otherwise), the Plan will be appropriately adjusted in the class(es) and maximum number of shares subject to the Plan pursuant to subsection 4(a) and the maximum number of shares subject to award to any person during any calendar year pursuant to subsection 5(d), and the outstanding Options will be appropriately adjusted in the class(es) and number of shares and price per share of stock subject to such outstanding Options.

(b) In the event of: (1) a merger or consolidation in which the Company is not the surviving corporation or (2) a reverse merger in which the Company is the surviving corporation but the shares of the Company's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise then to the extent permitted by applicable law: (i) any surviving corporation shall assume any Options outstanding under the Plan or shall substitute similar Options for those outstanding under the Plan, or (ii) such Options shall continue in full force and effect. In the event any surviving corporation refuses to assume or continue such Options, or to substitute similar options for those outstanding under the Plan, then such Options shall be terminated if not exercised prior to such event. In the event of a dissolution or liquidation of the Company, any Options outstanding under the Plan shall terminate if not exercised prior to such event.

11. AMENDMENT OF THE PLAN.

(a) The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 10 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the stockholders of the Company within twelve (12) months before or after the adoption of the amendment, where the amendment will:

(1) Increase the number of shares reserved for Options under the Plan;

(2) Modify the requirements as to eligibility for participation in the Plan (to the extent such modification requires stockholder approval in order for the Plan to satisfy the requirements of Section 422 of the Code); or

(3) Modify the Plan in any other way if such modification requires stockholder approval in order for the Plan to satisfy the requirements of Section 422 of the Code or to comply with the requirements of Rule 16b-3.

(b) The Board may in its sole discretion submit any other amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 162(m) of the Code and the regulations promulgated thereunder regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to certain executive officers.

(c) It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide Optionees with the maximum benefits provided or to be

provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options and/or to bring the Plan and/or Incentive Stock Options granted under it into compliance therewith.

- (d) Rights and obligations under any Option granted before amendment of the Plan shall not be altered or impaired by any amendment of the Plan unless (i) the Company requests the consent of the person to whom the Option was granted and (ii) such person consents in writing.

12. TERMINATION OR SUSPENSION OF THE PLAN.

- (a) The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on June 5, 2003 which shall be within ten

(10) years from the date the Plan is adopted by the Board or approved by the stockholders of the Company, whichever is earlier. No Options may be granted under the Plan while the Plan is suspended or after it is terminated.

- (b) Rights and obligations under any Option granted while the Plan is in effect shall not be altered or impaired by suspension or termination of the Plan, except with the consent of the person to whom the Option was granted.

13. EFFECTIVE DATE OF PLAN.

The Plan shall become effective as determined by the Board, but no Options granted under the Plan shall be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board, and, if required, an appropriate permit has been issued by the Commissioner of Corporations of the State of California.

EXHIBIT 10.2

ADVANCED ENERGY INDUSTRIES, INC.

1995 NON-EMPLOYEE DIRECTORS' STOCK OPTION PLAN

**ADOPTED ON SEPTEMBER 20, 1995,
AS AMENDED ON FEBRUARY 9, 1999 AND FEBRUARY 7, 2001**

1. PURPOSE.

(a) The purpose of the 1995 Non-Employee Directors' Stock Option Plan, as amended (the "Plan") is to provide a means by which each director of Advanced Energy Industries, Inc. (the "Company") who is not otherwise an employee of or consultant to the Company or of any Affiliate of the Company (a "Non-Employee Director") will be given an opportunity to purchase stock of the Company.

(b) The word "Affiliate" as used in the Plan means any parent corporation or subsidiary corporation of the Company as those terms are defined in Sections 424(e) and (f), respectively, of the Internal Revenue Code of 1986, as amended from time to time (the "Code").

(c) The Company, by means of the Plan, seeks to retain the services of persons now serving as Non-Employee Directors of the Company, to secure and retain the services of persons capable of serving in such capacity, and to provide incentives for such persons to exert maximum efforts for the success of the Company.

2. ADMINISTRATION.

(a) The Plan shall be administered by the Board of Directors of the Company (the "Board") unless and until the Board delegates administration to a committee, as provided in subparagraph 2(b).

(b) The Board may delegate administration of the Plan to a committee composed of not fewer than two (2) members of the Board (the "Committee"). If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revert in the Board the administration of the Plan.

3. SHARES SUBJECT TO THE PLAN.

(a) Subject to the provisions of paragraph 10 relating to adjustments upon changes in stock, the stock that may be sold pursuant to options granted under the Plan shall not exceed in the aggregate Two Hundred Thousand (200,000) shares of the Company's common stock. If any option granted under the Plan shall for any reason expire or otherwise terminate without having been exercised in full, the stock not purchased under such option shall again become available for the Plan.

(b) The stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

4. ELIGIBILITY.

Options shall be granted only to Non-Employee Directors of the Company.

5. NON-DISCRETIONARY GRANTS.

(a) Each person who, on September 20, 1995, is a Non-Employee Director automatically shall be granted on that date an option to purchase Seven Thousand Five Hundred (7,500) shares of common stock of the Company (an "Initial Grant") on the terms and conditions set forth herein.

(b) Each person who, after September 20, 1995, is elected for the first time to be a Non-Employee Director automatically shall, upon the date of his or her initial election to be a Non-Employee Director by the Board or stockholders of the Company, receive an Initial Grant on the terms and conditions set forth herein.

(c) Each Non-Employee Director automatically shall be granted, on the first and each subsequent anniversary of his or her Initial Grant, an option to purchase Two Thousand Five Hundred (2,500) shares of common stock of the Company (an "Annual Grant") on the terms and conditions set forth herein.

6. OPTION PROVISIONS.

Each option shall be subject to the following terms and conditions:

(a) The term of each option commences on the date it is granted and, unless sooner terminated as set forth herein, expires on the date ("Expiration Date") ten (10) years from the date of grant. If the optionee's service as director or employee of or consultant to the Company or any Affiliate of the Company terminates for any reason or for no reason, the option shall terminate on the earlier of the Expiration Date or the date six (6) months following the date of termination of service. In any and all circumstances, an option may be exercised following termination of the optionee's service as a director or employee of or consultant to the Company or any Affiliate of the Company only as to that number of shares as to which it was exercisable on the date of termination of such service under the provisions of subparagraph 6(e).

(b) The exercise price of each option shall be one hundred percent (100%) of the fair market value of the stock subject to such option on the date such option is granted.

(c) Payment of the exercise price of each option is due in full in cash upon any exercise when the number of shares being purchased upon such exercise is less than 1,000 shares; but when the number of shares being purchased upon an exercise is 1,000 or more shares, the optionee may elect to make payment of the exercise price under one of the following alternatives:

(i) Payment of the exercise price per share in cash at the time of exercise; or

(ii) Provided that at the time of the exercise the Company's common stock is publicly traded and quoted regularly in the Wall Street Journal, payment by delivery of shares of common stock of the Company already owned by the optionee, held for the period required to avoid a charge to the Company's reported earnings, and owned free and clear of any liens, claims, encumbrances or security interest, which common stock shall be valued at its fair market value on the date preceding the date of exercise; or

(iii) Payment by a combination of the methods of payment specified in subparagraph 6(c)(i) and 6(c)(ii) above.

Notwithstanding the foregoing, this option may be exercised pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board which results in the receipt of cash (or check) by the Company prior to the issuance of shares of the Company's common stock.

(d) An option shall not be transferable except by will or by the laws of descent and distribution, or pursuant to a domestic relations order satisfying the requirements of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "DRO"), and shall be exercisable during the lifetime of the person to whom the option is granted only by such person or by his or her guardian or legal representative or transferee pursuant to a DRO. The person to whom the Option is granted may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionee, shall thereafter be entitled to exercise the Option.

(e) Upon an Initial Grant, one-third of the Option (2,500 shares) shall be fully vested and exercisable. On each of the second and third anniversaries of an Initial Grant, an additional one-third of the Option (2,500 shares) shall become fully vested and exercisable, provided that the optionee has, during the entire period prior to such vesting date, continuously served as a director or employee of or consultant to the Company or any Affiliate of the Company. The Option representing an Annual Grant shall become fully vested and exercisable on the third anniversary of the Annual Grant, provided that the optionee has, during the entire period prior to such vesting date, continuously served as a director or employee of or consultant to the Company or any Affiliate of the Company.

(f) The Company may require any optionee, or any person to whom an option is transferred under subparagraph 6(d), as a condition of exercising any such option: (i) to give written assurances satisfactory to the Company as to the optionee's knowledge and experience in financial and business matters; and (ii) to give written assurances satisfactory to the Company stating that such person is acquiring the stock subject to the option for such person's own account and not with any present intention of selling or otherwise distributing the stock. These requirements, and any assurances given pursuant to such requirements, shall be inoperative if (i) the issuance of the shares upon the exercise of the option has been registered under a then-currently-effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), or (ii), as

to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then-applicable securities laws.

(g) Notwithstanding anything to the contrary contained herein, an option may not be exercised unless the shares issuable upon exercise of such option are then registered under the Securities Act or, if such shares are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act.

7. COVENANTS OF THE COMPANY.

(a) During the terms of the options granted under the Plan, the Company shall keep available at all times the number of shares of stock required to satisfy such options.

(b) The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to issue and sell shares of stock upon exercise of the options granted under the Plan; provided, however, that this undertaking shall not require the Company to register under the Securities Act either the Plan, any option granted under the Plan, or any stock issued or issuable pursuant to any such option. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such options.

8. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of stock pursuant to options granted under the Plan shall constitute general funds of the Company.

9. MISCELLANEOUS.

(a) Neither an optionee nor any person to whom an option is transferred under subparagraph 6(d) shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such option unless and until such person has satisfied all requirements for exercise of the option pursuant to its terms.

(b) Throughout the term of any option granted pursuant to the Plan, the Company shall make available to the holder of such option, not later than one hundred twenty (120) days after the close of each of the Company's fiscal years during the option term, upon request, such financial and other information regarding the Company as comprises the annual report to the stockholders of the Company provided for in the Bylaws of the Company and such other information regarding the Company as the holder of such option may reasonably request.

(c) Nothing in the Plan or in any instrument executed pursuant thereto shall confer upon any Non-Employee Director any right to continue in the service of the Company or

any Affiliate or shall affect any right of the Company, its Board or stockholders or any Affiliate to terminate the service of any Non-Employee Director with or without cause.

(d) No Non-Employee Director, individually or as a member of a group, and no beneficiary or other person claiming under or through him or her, shall have any right, title or interest in or to any option reserved for the purposes of the Plan except as to such shares of common stock, if any, as shall have been reserved for him or her pursuant to an option granted to him or her.

(e) In connection with each option made pursuant to the Plan, it shall be a condition precedent to the Company's obligation to issue or transfer shares to a Non-Employee Director, or to evidence the removal of any restrictions on transfer, that such Non-Employee Director make arrangements satisfactory to the Company to insure that the amount of any federal or other withholding tax required to be withheld with respect to such sale or transfer, or such removal or lapse, is made available to the Company for timely payment of such tax.

(f) As used in this Plan, fair market value means, as of any date, the value of the common stock of the Company determined as follows:

(i) If the common stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market, the Fair Market Value of a share of common stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such system or exchange (or the exchange with the greatest volume of trading in common stock) on the last market trading day prior to the day of determination, as reported in the Wall Street Journal or such other source as the Board deems reliable;

(ii) If the common stock is quoted on The Nasdaq SmallCap Market or is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a share of common stock shall be the mean between the bid and asked prices for the common stock on the last market trading day prior to the day of determination, as reported in the Wall Street Journal or such other source as the Board deems reliable;

(iii) In the absence of an established market for the common stock, the Fair Market Value shall be determined in good faith by the Board.

10. ADJUSTMENTS UPON CHANGES IN STOCK.

(a) If any change is made in the stock subject to the Plan, or subject to any option granted under the Plan (through merger, consolidation, reorganization, recapitalization, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or otherwise), the Plan and outstanding options will be appropriately adjusted in the class(es) and maximum number of shares subject to the Plan and the class(es) and number of shares and price per share of stock subject to outstanding options.

(b) In the event of: (1) a merger or consolidation in which the Company is not the surviving corporation; (2) a reverse merger in which the Company is the surviving corporation but the shares of the Company's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise; or (3) any other capital reorganization in which more than fifty percent (50%) of the shares of the Company entitled to vote are exchanged, the time during which options outstanding under the Plan may be exercised shall be accelerated and the options terminated if not exercised prior to such event.

11. AMENDMENT OF THE PLAN.

(a) The Board at any time, and from time to time, may amend the Plan, provided, however, that the Board shall not amend the plan more than once every six (6) months, with respect to the provisions of the Plan which relate to the amount, price and timing of grants, other than to comport with changes in the Code, the Employee Retirement Income Security Act, or the rules thereunder. Except as provided in paragraph 10 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the stockholders of the Company within twelve (12) months before or after the adoption of the amendment, where the amendment will:

(i) Increase the number of shares which may be issued under the Plan;

(ii) Modify the requirements as to eligibility for participation in the Plan (to the extent such modification requires stockholder approval in order for the Plan to comply with the requirements of Rule 16b-3); or

(iii) Modify the Plan in any other way if such modification requires stockholder approval in order for the Plan to comply with the requirements of Rule 16b-3.

(b) Rights and obligations under any option granted before any amendment of the Plan shall not be altered or impaired by such amendment unless (i) the Company requests the consent of the person to whom the option was granted and (ii) such person consents in writing.

12. TERMINATION OR SUSPENSION OF THE PLAN.

(a) The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on September 20, 2005. No options may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) Rights and obligations under any option granted while the Plan is in effect shall not be altered or impaired by suspension or termination of the Plan, except with the consent of the person to whom the option was granted.

(c) The Plan shall terminate upon the occurrence of any of the events described in Section 10(b) above.

13. EFFECTIVE DATE OF PLAN; CONDITIONS OF EXERCISE.

- (a) The Plan shall become effective upon adoption by the Board of Directors, subject to the condition subsequent that the Plan is approved by the stockholders of the Company.
- (b) No option granted under the Plan shall be exercised or exercisable unless and until the condition of subparagraph 13(a) above has been met.

-7-

End of Filing

Powered By **EDGAR**
Online

© 2005 | EDGAR Online, Inc.