

MICROTUNE INC
Form 10-K/A
July 06, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 2

(Mark One)

Annual Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended December 31, 2002

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 000-31029-40

MICROTUNE, INC.

(Exact name of registrant as specified in its charter)

Delaware

75-2883117

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(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification Number)

2201 10th Street

Plano, Texas
(Address of principal executive offices)

75074
(Zip code)

Registrant's telephone number, including area code (972) 673-1600

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, \$0.001 par value per share

(Title of Class)

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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, as amended, during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

As of June 30, 2003 there were 50,332,277 shares of the Registrant's common stock, \$0.001 par value per share, outstanding. This is the only outstanding class of common stock of the Registrant. As of that date, the aggregate market value of the shares of common stock held by non-affiliates of the Registrant (based on the closing price of \$3.18 per share of Registrant's common stock as quoted by the NASDAQ Stock Market on that date,) was approximately \$132,645,915. The Registrant's common stock was delisted from the NASDAQ Stock Market effective July 7, 2003. In addition, because the Registrant is not current in its periodic reporting requirements under the Securities Exchange Act of 1934, as amended, the Registrant is not currently eligible to trade on the OTC Bulletin Board. The Registrant's shares of common stock are currently quoted on the pink sheets, which subject broker-dealers to additional sales practice requirements. For purposes of this disclosure shares of the Registrant's common stock held by persons who hold more than 5% of the outstanding shares of common stock and shares by officers and directors of the Registrant, have been excluded in that such persons may be deemed to be affiliates. This determination is not necessarily conclusive.

Explanatory Note: Microtune, Inc. is filing this Amendment No. 2 on Form 10-K/A to its Form 10-K for the year ended December 31, 2002 that was originally filed on July 31, 2003 (the Original 10-K) and amended by Amendment No. 1 on Form 10-K/A that was filed on March 15, 2004 (Amendment No. 1) to amend and restate the discussion under Item 14 Controls and Procedures. For the convenience of the reader, this Amendment No. 2 amends in its entirety Item 14 Controls and Procedures set forth in the Original 10-K and in Amendment No. 1. This Amendment No. 2 continues to speak as of the date of the Original 10-K, and we have not updated the disclosure contained herein to reflect any events that occurred of the date of the Original 10-K, and we have not updated the disclosure contained herein to reflect any events that occurred at a later date other than that set forth above. All information contained in this Amendment No. 2 is subject to updating and supplementing as provided in our periodic reports filed with the SEC subsequent to the date of the filing of the Original 10-K.

PART II

ITEM 14. CONTROLS AND PROCEDURES

We have evaluated, with the assistance of our Chief Executive Officer (CEO) and our Chief Financial Officer (CFO), the effectiveness of our disclosure controls and procedures in effect as of the end of the period covered by this report (the Evaluation Date). Based on this evaluation, our CEO and CFO have concluded that our disclosure controls and procedures were ineffective due to certain weaknesses in internal controls and procedures as disclosed below. The CEO and CFO also have evaluated the effectiveness of our disclosure controls and procedures in effect as of the filing date of this Amended Annual Report on Form 10-K/A and have concluded that they are now effective to ensure that information required to be disclosed by Microtune in the reports we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms.

Our evaluation was based, in part, on the results of our restatement of the financial statements contained in this report directed by the Audit Committee (the Restatement) and the findings of the inquiry (the Inquiry) into the events related to the Restatement. This disclosure controls evaluation was done under the supervision and with the participation of management, including our CEO and CFO. Our CEO and CFO also considered findings of our independent auditors and an outside consulting company retained to review our internal controls and procedures.

As a result of the Restatement, which included substantive testing of our balance sheet and statement of operations accounts, and the Inquiry, we discovered certain disclosure controls were not effective to provide reasonable assurance that our consolidated financial statements were fairly presented in conformity with accounting principles generally accepted in the United States (GAAP). Specifically, with the assistance of our outside auditors, we concluded that our internal controls related to revenue recognition were not sufficient to ensure that revenue was properly recognized under GAAP and our internal controls and procedures covering our revenue recognition process were not effective in ensuring that our existing policies and procedures were operating as intended. In some cases, terms contained in agreements with customers were not followed. In addition, our internal controls and procedures covering revenue recognition did not detect that in some cases representatives of Microtune agreed to terms with customers beyond our normal terms, including price protection, rights to return products unsold by customers, payment terms that were conditional on the sale or use of our products by our customer, or payment terms extended beyond our normal terms. In addition, our internal controls did not detect occurrences where quantities shipped to customers were in excess of quantities included in customer purchase orders or were shipped without valid customer purchase orders. Previously we recognized revenue in the wrong accounting period in some cases because delivery to our customer had not been completed due to the shipping terms of the transaction. Finally, our internal controls did not detect that in some cases revenue had been recognized on shipments of products that had not completed certain quality test procedures or were missing certain components. In certain cases these instances were the result of existing controls and procedures being circumvented or overridden by Microtune personnel.

In July 2003, our outside auditors advised us that they had determined that the previously discussed circumstances regarding our internal controls related to revenue recognition represented a material weakness. Our auditors further identified an additional material weakness resulting from issues related to our month-end accounting close process. Specifically, our auditors raised the concern that certain statements made to them in management representation letters regarding the terms and conditions of certain customer agreements were either incomplete or incorrect, indicating to our auditors that additional audit procedures were required to provide reasonable assurance that representations and assertions of management were correct.

Based upon the results of the Restatement and the discussions with our outside auditors, including the receipt of the material weakness letter, the CEO and CFO note that since the Evaluation Date we have made improvements to our internal controls and procedures as follows:

In January 2003, we began requiring each of our sales and sales support personnel and all officers to certify for each quarter beginning with the quarter ended December 31, 2002 that on behalf of Microtune he or she has not entered into any verbal agreements or written agreements on behalf of Microtune outside our standard written agreements except as disclosed to us.

Beginning in April 2003, our accounting department compared all purchase orders received from customers to the corresponding invoices generated by our Enterprise Resource Planning system. Differences were investigated and the results used to determine the appropriate recognition of revenue. We have begun to perform similar comparisons for subsequent quarters and intend to continue to do so. Errors related to invoicing are tracked and used to ensure compliance with our internal controls.

In May 2003 we alerted our sales and sales support staff that strict observance of all terms of our credit policy is required without exception, including obtaining written authorization to extend credit.

In June 2003, we adopted whistleblower policies and procedures. These policies and procedures provide a means for our employees to anonymously inform us of, among other things, (a) unethical business practices, (b) illegal activity, (c) any deviations from our policies and procedures, (d) erroneous accounting treatment of business transactions, (e) weaknesses in internal controls, (f) disputes with auditors, and (g) disclosures in SEC reports or other public disclosures that are not full, fair, accurate, timely or understandable. These policies are in addition to our practice of obtaining quarterly written confirmation from key employees regarding compliance with policies and procedures that impact the preparation of our financial statements.

In July 2003, we adopted a Code of Ethics to promote the honest and ethical conduct of all of our officers and financial executives, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships, to promote full, fair, accurate, timely and understandable disclosure in periodic reports required to be filed by us, and to promote compliance with all applicable rules and regulations that apply to us and our officers. This policy is in addition to our training of all employees whose duties impact the preparation of our financial statements as to the critical nature of their representations and assertions that are embodied in such statements.

In August 2003, we separated the position of Chief Financial Officer and General Counsel into two positions each held by a different individual.

In July 2003, we hired an outside consulting company to review and provide insight into our internal controls and procedures. In November 2003, the consulting company reported that it concluded the basic controls were in place for the areas reviewed, but it identified several areas where our controls could be strengthened or processes improved. Certain of the changes discussed above addressed items our consultant indicated needed improvement. In addition, in response to a concern identified by the consultant regarding the reconciliation of our accounts receivable sub-ledger to the general ledger for June, July and August 2003, in the fourth quarter of 2003, we implemented procedures designed to strengthen the documentation of any reconciliation item between all sub-ledgers and their corresponding general ledger accounts.

INDEX TO EXHIBITS

Exhibit No.

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| 31.1 | Certification pursuant to Rule 13a-14(a) or Rule 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 31.2 | Certification pursuant to Rule 13a-14(a) or Rule 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |