Noble Corp plc
Form 8-K
December 22, 2014

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

Date of report (date of earliest event reported): December 22, 2014

NOBLE CORPORATION plc

(Exact name of Registrant as specified in its charter)

England and Wales	**001-36211**	**98-0619597**
(State or other jurisdiction of incorporation or organization)	**(Commission file number)**	**(I.R.S. employer identification number)**

Devonshire House, 1 Mayfair Place

London, England	**W1J8AJ**
(Address of principal executive offices)	**(Zip code)**

Registrant s telephone number, including area code: +44 20 3300 2300

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

¨ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

¨ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

¨ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

¨ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.07 Submission of Matters to a Vote of Security Holders.

A special meeting of the shareholders of Noble Corporation, a company incorporated in England and Wales (the Company), was held on December 22, 2014. The matter voted on at the special meeting and the results thereof were as follows:

Proposal	For	Against	Abstain	Broker Non-Votes
To authorize the purchase by the Company from time to time of up to 37,000,000 of the Company s ordinary shares, representing approximately 15% of the Company s total share capital.	185,415,952	6,022,285	1,460,781	

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 hereunto duly authorized.

Date: December 22, 2014

NOBLE CORPORATION

By: /s/ James A. MacLennan
James A. MacLennan
Senior Vice President and Chief Financial Officer

Euro

$

23,323

Various: Mar. 07 Mar. 08

Various: Mar. 08 Sept. 08

British Pound Sterling

5,012

Various: July. 07 Mar. 08

Various: Apr. 08 June 08

Japanese Yen	
	3,278
Various: July 07 Jan. 08	
Various: May 08 Dec. 08	
Canadian Dollar	
	1,530
Various: July. 07 Mar. 08	
Various: Mar. 08 Dec. 08	
Swiss Franc	
	324
Various: Dec. 07 Mar. 08	
Various: Apr. 08 June 08	
Total	
$	

33,467

Installment receivable contracts

The installment receivable contracts are financial instruments subject to market risk from changes in interest rates. We do not expect that fluctuations in interest rates will significantly impact results of operations in a particular period.

Item 4. ***Controls and Procedures***

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. The term disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Securities Exchange Act is accumulated and communicated to the company s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

We previously reported five material weaknesses in our internal control over financial reporting as of June 30, 2007, which were described in Item 9A, *Management s Report on Internal Control over Financial Reporting* in our Annual Report on Form 10-K for the fiscal year ended June 30, 2007.

The five material weaknesses as of June 30, 2007 were as follows:

- Inadequate and ineffective controls over the periodic financial close process;

- Inadequate and ineffective controls over the accounting for transfers of customer installment and accounts receivables under receivable sale facilities;

- Inadequate and ineffective controls over income tax accounting and disclosure;
- Inadequate and ineffective controls over the recognition of revenue; and
- Inadequate and ineffective controls over the accounts receivable function.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control-Integrated Framework*. Our management believes that these material weaknesses still exist as of March 31, 2008. Because of the material weaknesses described above, our chief executive officer and chief financial officer have concluded that, as of March 31, 2008, our disclosure controls and procedures were not effective.

Changes in Internal Control Over Financial Reporting

During the quarter ended March 31, 2008, the following changes were made to our internal control over accounting for transfers of customer installment and accounts receivables under receivable sale facilitie*s* that materially affected, or were reasonably likely to materially affect, our internal control over financial reporting.

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In order to improve controls over the periodic financial close process, we performed the following:

- Consolidated our financial operations into three global centers.

In order to improve controls over the accounting for transfers of customer installment and accounts receivables under receivable sale facilities, we performed the following:

- Enhanced procedures, including increased management review and approval of receivable transfers under receivable sale facilities and development of appropriate systems and reporting mechanisms, to ensure that transactions are allowable and properly accounted for as a sale of assets or secured borrowing under the terms of the receivable sale facilities;

- Enhanced receivable reconciliation procedures to ensure that only valid receivables are included on internal reports used to identify receivables eligible for transfer;

- Improved reporting and review procedures between our company and the financial institutions who participate in the receivable sales facilities, and

- Paid off remaining outstanding borrowings under our Fiscal 2007 Securitization, which reduces the risks associated with these activities.

Remediation Plans

Management has identified the following measures to strengthen our internal control over financial reporting and to address the material weaknesses described above. We began implementing certain of these measures prior to the filing of this Form 10-Q but changes made to our internal controls have not yet been in place for a sufficient time to have had a significant effect. We are continuing to develop our remediation plans and implement additional measures during fiscal 2009.

In order to improve controls over the periodic financial close process, we intend to:

- Complete the upgrade of our existing financial applications, which is designed to streamline the capturing of relevant data, improve the general ledger and entity account level reporting structures and enhance the information query and reporting capability for the consolidated books worldwide;

- Continue to assess training requirements and adequacy and expertise of the finance and accounting staff on a global basis;

- Further improve the periodic financial close process through the use of a detailed financial close plan and enhanced review of manual journal entries, account reconciliations, estimates and judgments and consolidation schedules;

- Assess the adequacy of the systems and procedures used to track and account for stock-based awards; and

- Further simplify the legal entity structure and the ways in which we do business.

In order to improve controls over the accounting for transfers of customer installment and accounts receivables under receivable sale facilities, we intend to:

- Enhance procedures, including increased management review and approval of receivable transfers under receivable sale facilities and development of appropriate systems and reporting mechanisms, to ensure that transactions are allowable and properly accounted for as a sale of assets or secured borrowing under the terms of the receivable sale facilities;

- Enhance receivable reconciliation procedures to ensure that only valid receivables are included on internal reports used to identify receivables eligible for transfer; and

- Improve reporting and review procedures between the company and the financial institutions who participate in the receivable sales facilities.

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In order to improve controls over income tax accounting and disclosure, we intend to:

- Enhance our policies and procedures for determining and documenting income tax liabilities and contingencies;

- Enhance our policies and procedures for determining, documenting and calculating our tax provisions in accordance with the applicable tax code and the determination of deferred income tax assets and liabilities including stock based compensation, tax credits, net operating loss carry forwards and limitations thereto as defined under section 382 of the Internal Revenue Code of 1986, as amended; and

- Increase the number of personnel or use of outside advisors with specialized corporate and international tax expertise.

In order to improve controls over the recognition of revenue, we intend to:

- Increase the frequency, scope and tracking of training on revenue recognition for our sales and services organizations, executive management, regional finance, accounting and operations personnel;

- Hire additional personnel in regional finance and revenue accounting with expertise in software revenue recognition;

- Enhance review procedures for contracts containing both license and service elements;

- Enhance the process used to determine the estimated discount rate for the present value of license contracts with extended payment terms;

- Enhance contract review documentation and procedures to identify and accurately account for non-routine arrangements with customers;

- Revise the credit approval policy to include guidelines for the establishment and approval of customer credit limits and further define procedures for the ongoing monitoring of customer receivable balances;

- Improve procedures to identify and monitor customers who are approved on a pre-payment basis and ensure the underlying revenue transactions are accurately accounted for;

- Formalize and document a quarterly review of estimated total costs for fixed price consulting services projects and analyze significant variances to actual costs;

- Enhance review procedures to ensure all components of a customer order are delivered on a timely basis and are useable by the customer; and

- Enhance the management review procedure relating to royalty agreement, fees calculation and reconciliation in order to prevent royalty fees from being understated.

In order to improve controls over the accounts receivable function we intend to:

- Enhance procedures for the review and approval of customer credit memos and adjustments including a monthly reconciliation of authorized amounts to actual credits and adjustments recorded;

- Increase the level and frequency of review of consulting services projects with unbilled and unearned balances to ensure that amounts recorded as unbilled services or deferred revenue are valid and accurate and provisions for uncollectible amounts are sufficient;

- Increase the level and frequency of review of past due accounts and related installments in the accounts receivable aging on a global basis;

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- Assess training requirements and adequacy and expertise of the collections and accounts receivable staff on a global basis; and

- Assess the adequacy of the accounting applications deployed to service accounts receivable which have been sold.

If the remedial measures described above are insufficient to address any of the identified material weaknesses or not implemented effectively, or additional deficiencies arise in the future, material misstatements in our interim or annual financial statements may occur in the future. We are currently implementing an enhanced controls environment intended to address the material weaknesses in our internal control over financial reporting and to remedy the ineffectiveness of our disclosure controls and procedures. While this implementation phase is underway, we are relying on extensive manual procedures, including regular reviews, to assist us with meeting the objectives otherwise fulfilled by an effective internal control environment. Among other things, any unremediated material weaknesses could result in material post-closing adjustments in future financial statements. Furthermore, any such unremediated material weaknesses could have the effects described in Item 1A. Risk Factors In preparing our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting, and our failure to remedy effectively the five material weaknesses identified as of March 31, 2008 could result in material misstatements in our financial statements in Part II of this Form 10-Q.

The certifications of our principal executive officer and principal financial officer required in accordance with Section 302 of the Sarbanes-Oxley Act are attached as exhibits to this Form 10-Q. The disclosures set forth in this Item 4 contain information concerning the evaluation of our disclosure controls and procedures, and changes in internal control over financial reporting, referred to in paragraph 4 of the certifications. This Item 4 should be read in conjunction with the officer certifications for a more complete understanding of the topics presented.

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PART II. OTHER INFORMATION

Item 1. ***Legal Proceedings***

(a) FTC settlement and Related Honeywell Litigation

In December 2004, we entered into a consent decree with the Federal Trade Commission, or FTC, with respect to a civil administrative complaint filed by the FTC in August 2003 alleging that our acquisition of Hyprotech in May 2002 was anticompetitive in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act. In connection with the consent decree, we entered into an agreement with Honeywell International, Inc. on October 6, 2004, or the Honeywell Agreement, pursuant to which we transferred our operator training business and our rights to the intellectual property of various legacy Hyprotech products. In addition, we transferred our AXSYS product line to Bentley Systems, Inc.

On December 23, 2004, we completed the transactions with Honeywell contemplated by the Honeywell Agreement. Under the terms of the transactions:

- we agreed to a cash payment of approximately $6.0 million from Honeywell in consideration of the transfer of our operator training services business, our covenant not-to-compete in the operator training business until the third anniversary of the closing date, and the transfer of ownership of the intellectual property of our Hyprotech engineering products, $1.2 million of which is subject to holdback and may be released upon the resolution of any adjustments for uncollected billed accounts receivable and unbilled accounts receivable.
- we transferred and Honeywell assumed, as of the closing date, approximately $4 million in accounts receivable relating to the operator training business; and
- we entered into a two-year support agreement with Honeywell under which we agreed to provide Honeywell with source code to new releases of the Hyprotech products provided to customers under standard software maintenance services agreements.

The Honeywell transaction resulted in a deferred gain of $0.2 million, which was amortized over the two-year life of the support agreement, and was subject to a potential increase of the gain of up to $1.2 million upon resolution of the holdback payment issue, which is discussed below.

We are subject to ongoing compliance obligations under the FTC consent decree. We have been responding to numerous requests by the Staff of the FTC for information relating to the Staff s investigation of whether we have complied with the consent decree. In addition, we have met with several of the FTC Commissioners and Staff members to discuss the Staff s investigation, and the FTC referred a recommendation to the Consumer Litigation Division (the Division) of the U.S. Department of Justice that the Division commence litigation against us relating to our alleged failure to comply with certain aspects of the decree. A decision is still pending at the Division on whether to pursue litigation, and no action has been filed. Although we believe that we have complied with the consent decree and that the assertions by the FTC Staff are without merit, we are engaged in settlement discussion with the FTC Staff regarding this matter. If we and the FTC are unable to reach a settlement on terms acceptable to us, litigation or administrative proceedings may ensue, in which case we could be required to pay substantial legal fees and, if the FTC or a court were to determine that we have not complied with our obligations under the consent decree, we could be subject to one or more of a variety of penalties, fines, injunctive relief and other remedies, any of which might materially limit our ability to operate under our current business plan, which could have a material adverse effect on our operating results, cash flows and financial position.

In March 2007, we were served with a complaint and petition to compel arbitration filed by Honeywell in New York State Supreme Court. The complaint alleges that we failed to comply with our obligations to deliver certain technology under the Honeywell Agreement referred to above, that we owe approximately $800,000 to Honeywell under the Honeywell Agreement, and that Honeywell is entitled to some portion of the $1.2 million holdback retained by Honeywell under the holdback provisions of the Honeywell Agreement, plus unspecified monetary damages. In accordance with the Honeywell Agreement, certain of Honeywell s claims relating to the holdback were the subject of a proceeding before an independent accountant, who determined in December 2008 that we were entitled to a portion of the holdback. Although we believe many of the claims to be without merit and intend to defend the claims vigorously, we and Honeywell have engaged in settlement negotiations. If we and Honeywell are unable to reach a settlement on terms acceptable to us, it is possible that the litigation and resolution of the claims may have an adverse impact on our operating results, cash flows and financial position.

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(b) Other Litigation

SEC action and U.S. Attorney s office criminal complaint

In January 2007, the SEC filed civil enforcement complaints in the United States District Court in and for the District of Massachusetts alleging securities fraud and other violations against three of our former executive officers, David McQuillin, Lisa Zappala and Lawrence Evans, arising out of six transactions in 1999 through 2002 that were reflected in our originally filed consolidated financial statements for fiscal 2000 through 2004, the accounting for which was restated in March 2005 (we and each of these former executive officers had also received Wells Notice letters of possible enforcement proceedings by the SEC in June and July 2006). On the same day the SEC complaints were filed, the U.S. Attorney s Office for the Southern District of New York filed a criminal complaint against David McQuillin alleging criminal securities fraud violations arising out of two of those transactions. Mr. McQuillin pled guilty in March 2007 and was sentenced in October 2007. On November 12, 2008, Mr. McQuillin and Mr. Evans entered into final settlements of the civil enforcement actions with the SEC without admitting or denying liability, and the Court also entered a stay of discovery in Ms. Zappala s case in as much as the parties had reached an agreement in principle to settle that matter as well.

As previously disclosed, on July 31, 2007, we entered into a settlement order with the SEC relating to the Wells Notice received by us. No enforcement action was filed by the SEC against us, and under the Wells Notice settlement order, we agreed to cease and desist from violations of certain provisions of the federal securities laws, and to comply with certain undertakings. No civil penalty was assessed by the SEC in connection with that settlement order, and we did not admit or deny any wrongdoing in connection with the settlement order.

The SEC enforcement complaints and the U.S. Attorney s Office criminal action were not filed against us or any of our current officers or directors, but only against the former executive officers referenced above. We can provide no assurance, however, that the U.S. Attorney s Office, the SEC or another regulatory agency will not file an enforcement complaint against us, our officers and employees or additional former officers and employees in connection with the consolidated financial statements that were restated in March 2005. Any such enforcement action or similar proceeding could have a material adverse effect on our financial position and results of operations.

Class action and opt-out claims

In March 2006, we settled class action litigation, including related derivative claims, arising out of the restated consolidated financial statements that include the periods referenced in the SEC enforcement action and the criminal complaint discussed above. Members of the class who opted out of the settlement, representing 1,457,969 shares of common stock, or less than 1% of the shares putatively purchased during the class action period, may bring or have brought their own state or federal law claims against us, referred to as opt-out claims.

Pursuant to the terms of the class action settlement, we paid $1.9 million and its insurance carrier paid $3.7 million into a settlement fund for a total of $5.6 million. Our $1.9 million payment was recorded in general and administrative expenses in the quarter ended September 30, 2005. All costs of preparing and distributing notices to members of the class and administration of the settlement, together with all fees and expenses awarded to plaintiffs counsel and certain other expenses, will be paid out of the settlement fund, which will be maintained by an escrow agent under the court s supervision.

Separate actions have been filed on behalf of the holders of approximately 1.1 million shares who either opted out of the class action settlement or were not covered by that settlement. The claims in those actions include claims against us and one or more of our former officers alleging securities and common law fraud, breach of contract, statutory treble damages, deceptive practices and/or rescissory damages liability, based on the restated results of one or more fiscal periods included in its restated consolidated financial statements referenced in the class action.

Those actions are:

- *Blecker, et al. v. Aspen Technology, Inc., et al.*, filed on June 5, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-2357-BLS1 in that court, which is an opt out claim asserted by persons who received 248,411 shares of our common stock in an acquisition;

- *Feldman v. Aspen Technology, Inc., et al.*, filed on July 17, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-3021-BLS2 in that court, which is an opt out claim asserted by an individual who received 323,324 shares of our common stock in an acquisition; and

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- *380544 Canada, Inc., et al. v. Aspen Technology, Inc.*, et al., filed on February 15, 2007 in the federal district court in Manhattan and docketed as Civ. A. No. 1:07-cv-01204-JFK in that court, which is a claim asserted by persons who purchased 566,665 shares of our common stock in a private placement.

On October 17, 2008, the plaintiffs in the Blecker action described above filed a new complaint in the Superior Court of the Commonwealth of Massachusetts, captioned *Herbert G. and Eunice E. Blecker v. Aspen Technology, Inc. et al.,* Civ. A. No. 08-4625-BLS1 (Blecker II). The sole claim in Blecker II is based on the Massachusetts Uniform Securities Act, and plaintiffs have indicated that if they are granted leave to assert that claim in the original Blecker action, they will voluntarily dismiss Blecker II.

The damages sought in these actions total more than $20 million, not including claims for treble damages and attorneys fees. If these actions are not dismissed or settled on terms acceptable to us, we plan to defend the actions vigorously. We can provide no assurance as to the outcome of these opt-out claims or the likelihood of the filing of additional opt-out claims, and these claims may result in judgments against us for significant damages. Regardless of the outcome, such litigation has resulted in the past, and may continue to result in the future, in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business.

We may be named as a defendant in securities litigation or derivative lawsuits by current or former stockholders in connection with the restatements of its consolidated financial statements. Further, we may be subject to claims relating to adverse tax consequences with respect to stock options covered by the restatements. Defending against potential claims will likely require significant attention and resources of management and could result in significant legal expenses.

Derivative suits

On December 1, 2004, a derivative action lawsuit captioned *Caviness v. Evans, et al*., Civil Action No. 04-12524, referred to as the Derivative Action, was filed in Massachusetts federal district court as a related action to the first filed of the putative class actions subsequently consolidated into the class action described above. The complaint, as subsequently amended, alleged, among other things, that the former and current director and officer defendants caused us to issue false and misleading financial statements, and brought derivative claims for the following: breach of fiduciary duty for insider trading, breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment. On August 18, 2005, the court granted the defendants motion to dismiss the Derivative Action for failure of the plaintiff to make a pre-suit demand on the board of directors to take the actions referenced in the Derivative Action complaint, and the Derivative Action was dismissed with prejudice.

On April 12, 2005, we received a letter on behalf of a purported stockholder, demanding that the board take actions substantially similar to those referenced in the Derivative Action. On February 28, 2006, we received a letter on behalf of the plaintiff in the Derivative Action, demanding that they take actions referenced in the Derivative Action complaint. The board responded to both of the foregoing letters that the board has taken the letters under advisement pending further regulatory investigation developments, which the board continues to monitor and with which we continue to cooperate. In its responses, the board also requested confirmation of each person s status as one of our stockholders and, with respect to the most recent letter, also referred the purported stockholder to the March 2006 settlement in the class action.

Other

We are currently defending claims that certain of our software products and implementation services have failed to meet customer expectations. On May 11, 2007, one of the claims resulted in an arbitration award against us in the amount of $1.4 million for which we recognized an expense in second and fourth quarters of fiscal 2007, which was recorded in general and administrative expense. We are defending another customer claim in excess of $5 million, as well as other general commercial claims. Although we are defending the claims vigorously, the results of litigation and claims cannot be predicted with certainty, and unfavorable resolutions are possible and could materially affect our results of operations, cash flows or financial position. In addition, regardless of the outcome, litigation could have an adverse impact on us because of defense costs, diversion of management resources and other factors.

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below before purchasing our common stock. The risks and uncertainties described below are not the only ones facing our company. Additional risks and uncertainties may also impair our business operations. If any of the

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following risks actually occur, our business, financial condition, results of operations or cash flows would likely suffer. In that case, the trading price of our common stock could fall, and you may lose all or part of the money you paid to buy our common stock.

Risks Related to Our Business

Fluctuations in our quarterly revenues, operating results and cash flow may cause the market price of our common stock to fall.

Our revenues, operating results and cash flows have fluctuated in the past and may fluctuate significantly in the future as a result of a variety of factors, many of which are outside of our control, including:

- implementation of new quotation and order entry applications and procedures for the automation of our contracting and software distribution process;
- demand for our products and services;
- our customers purchasing patterns;
- the length of our sales cycle;
- the size of customer orders;
- changes in the mix of our license revenues and service revenues;
- the timing of introductions of new solutions and enhancements by us and our competitors;
- seasonal weakness in the first quarter of each fiscal year (which for us is the three months ending September 30), primarily caused by a seasonal slowdown in business in some of our international markets;

- the timing of our investments in new product development;
- the mix of domestic and international sales;
- our continued ability to sell long-term installments receivable;
- changes in our operating expenses; and
- fluctuating economic conditions, particularly as they affect companies in the oil and gas, chemicals, petrochemicals and petroleum industries.

Historically, a majority of each quarter s revenues from software licenses has come from license agreements that have been entered into in the final weeks of the quarter. Therefore, a delay in the consummation of an agreement and the completion of all criteria for revenue recognition, including product delivery, may cause our revenues to fall below expectations of public market analysts and investors for that quarter.

Since a substantial majority of our expenses are fixed in advance of a particular quarter, we are not able to adjust our spending quickly enough to compensate for any revenue shortfall in any given quarter and any such shortfall would likely have a disproportionately adverse effect on our operating results for that quarter. We expect that the factors listed above will continue to affect our operating results for the foreseeable future. Because of the factors listed above, we believe that period-to-period comparisons of our operating results are not necessarily meaningful and should not be relied upon as indications of future performance.

Term license renewal negotiations may be difficult and more time consuming than negotiations for new licenses. Moreover, customers may choose not to renew term licenses, resulting in reduced revenue to us. In addition, customers may wish to negotiate renewals of term licenses on terms and conditions that require us to change the way we recognize revenue

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under our existing revenue recognition practices at the time of such renewal with such customers. Any such changes could result in a material adverse effect on our results. In addition, many of our license transactions are very large and/or complex and the criteria in U.S. GAAP applicable to software revenue recognition are equally complex, thus, resulting in the risk that license bookings may not translate into recognized revenue in the same period of the booking.

If, due to one or more of the foregoing factors or an unanticipated cause, our operating results fail to meet the expectations of public market analysts and investors in a future quarter, the market price of our common stock would likely decline.

Our lengthy sales cycle makes it difficult to predict quarterly revenue levels and operating results.

Because license and implementation fees for our software products are substantial and the decision to purchase our products typically involves members of our customers senior management, the sales process for our solutions is lengthy and can exceed one year. Accordingly, the timing of our license revenues is difficult to predict, and the delay of an order could cause our quarterly revenues to fall substantially below our expectations and those of public market analysts and investors. Moreover, to the extent that we license our integrated aspenONE product suite rather than stand-alone software products, our sales cycle may lengthen, which could increase the likelihood of delays and cause the effect of a delay to become more pronounced. Delays in sales could cause significant shortfalls in our revenues and operating results for any particular period.

We derive a majority of our total revenues from customers in or serving the oil and gas, chemicals, petrochemicals and petroleum industries, which are highly cyclical, and our operating results may suffer if these industries experience an economic downturn.

We derive a majority of our total revenues from companies in or serving the oil and gas, chemicals, petrochemicals and petroleum industries. Accordingly, our future success depends upon the continued demand for manufacturing optimization software and services by companies in these process manufacturing industries. The oil and gas, chemicals, petrochemicals and petroleum industries are highly cyclical and highly reactive to the price of oil, as well as general economic conditions. At least one of our customers has filed for bankruptcy protection, which may affect associated cash receipts and the extent to which revenue from our customer may be recognized. There is no assurance that other customers may not also seek bankruptcy or other similar relief from creditors, which could adversely affect our results of operations.

Adverse changes in the economy and global economic and political uncertainty have previously caused delays and reductions in information technology spending by our customers and a consequent deterioration of the markets for our products and services, particularly our manufacturing/supply chain product suites. If adverse economic conditions occur, we would likely experience reductions, delays and postponements of customer purchases that will negatively impact our revenue and operating results.

In addition, in the past, worldwide economic downturns and pricing pressures experienced by oil and gas, chemical, petrochemical and petroleum companies have led to consolidations and reorganizations. These downturns, pricing pressures and reorganizations have caused delays and reductions in capital and operating expenditures by many of these companies. These delays and reductions have reduced demand for products and services like ours. A recurrence of these industry patterns, including any recurrence that may occur in connection with current global economic events, as well as general domestic and foreign economic conditions and other factors that reduce spending by companies in these industries, could harm our operating results in the future.

Securities and derivative litigation and government investigations based on our restatement of our consolidated financial statements due to our prior software accounting practices may subject us to substantial damages and expenses, may require significant management time and may damage our reputation.

In January 2007, the SEC filed civil enforcement complaints in the United States District Court in and for the District of Massachusetts alleging securities fraud and other violations against three of our former executive officers, David McQuillin, Lisa Zappala and Lawrence Evans, arising out of six transactions in 1999 through 2002 that were reflected in our originally filed consolidated financial statements for fiscal 2000 through 2004, the accounting for which we restated in March 2005 (we and each of these former executive officers had also received Wells Notice letters of possible enforcement proceedings by the SEC in June and July 2006). On the same day the SEC complaints were filed, the U.S. Attorney s Office for the Southern District of New York filed a criminal complaint against David McQuillin alleging criminal securities fraud violations arising out of two of those transactions. Mr. McQuillin pled guilty in March 2007 and was sentenced in October 2007. On November 12, 2008, Mr. McQuillin and Mr. Evans entered into final settlements of the civil enforcement actions with the SEC without admitting or denying liability, and the Court also entered a stay of discovery in Ms. Zappala s case inasmuch as the parties had reached an agreement in principle to settle that matter as well.

As previously disclosed, on July 31, 2007, we entered into a settlement order with the SEC relating to the Wells Notice we received. No enforcement action was filed by the SEC against us, and under the Wells Notice

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settlement order, we agreed to cease and desist from violations of certain provisions of the federal securities laws, and to comply with certain undertakings. No civil penalty was assessed by the SEC in connection with that settlement order, and we have not admitted or denied any wrongdoing in connection with that settlement order.

We continue to cooperate with the SEC and U.S. Attorney s Office. The SEC enforcement complaints and the U.S. Attorney s Office criminal action were not filed against us or any of our current officers or directors, but only against the former executive officers referenced above. We can provide no assurance, however, that the U.S. Attorney s Office, the SEC or another regulatory agency will not file an enforcement complaint against us, our officers and employees or additional former officers and employees in connection with the consolidated financial statements that were restated in March 2005. Any such enforcement action or similar proceeding could have a material adverse effect on our financial position and results of operation.

Any such proceeding would divert the resources of management and could result in significant legal expenses and judgments against us for significant damages. In addition, even if we are successful in defending against such an enforcement action, such a proceeding may cause our customers, employees and investors to lose confidence in our company, which could result in significant costs to us and adversely affect the market price of our common stock.

We are required to advance legal fees (subject to undertakings of repayment if required) and may be required to indemnify certain of our current or former directors and officers (including one or more of the three former executive officers discussed above) in connection with civil, criminal or regulatory proceedings or actions, and such indemnification commitments may be costly. Our executive and organization liability insurance policies provide only limited liability protection relating to such actions against us and certain of our officers and directors and may not cover the costs of director and officer indemnification or other liabilities incurred by us. If these policies do not adequately cover expenses and liabilities relating to any proceeding or lawsuit, or if we are unable to achieve a favorable settlement thereof, our financial condition could be materially harmed. Also, increased premiums could materially harm our financial results in future periods. Our inability to obtain coverage due to prohibitively expensive premiums would make it more difficult to retain and attract officers and directors and expose us to potentially self-funding any potential future liabilities ordinarily mitigated by such liability insurance.

In March 2006, we settled class action litigation, including related derivative claims, arising out of our restated consolidated financial statements that include the periods referenced in the SEC enforcement action and the criminal complaint discussed above. Members of the class who opted out of the settlement (representing 1,457,969 shares of common stock, or less than 1% of the shares putatively purchased during the class action period) may bring or have brought their own state or federal law claims against us, which we refer to as opt-out claims.

Separate actions have been filed on behalf of the holders of approximately 1.1 million shares who either opted out of the class action settlement or were not covered by that settlement. The claims in those actions include claims against us and one or more of our former officers alleging securities and common law fraud, breach of contract, statutory treble damages, deceptive practices and/or rescissory damages liability, based on the restated results of one or more fiscal periods included in our restated consolidated financial statements referenced in the class action.

Those actions are:

- *Blecker, et al. v. Aspen Technology, Inc., et al.*, filed on June 5, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-2357-BLS1 in that court, which is an opt out claim asserted by persons who received 248,411 shares of our common stock in an acquisition;

- *Feldman v. Aspen Technology, Inc., et al.*, filed on July 17, 2006 in the Business Litigation Session of the Massachusetts Superior Court for Suffolk County and docketed as Civ. A. No. 06-3021-BLS2 in that court, which is an opt out claim asserted by an individual who received 323,324 shares of our common stock in an acquisition; and

- *380544 Canada, Inc., et al. v. Aspen Technology, Inc.*, et al., filed on February 15, 2007 in the federal district court in Manhattan and docketed as Civ. A. No. 1:07-cv-01204-JFK in that court, which is a claim asserted by persons who purchased 566,665 shares of our common stock in a private placement.

On October 17, 2008, the plaintiffs in the Blecker action described above filed a new complaint in the Superior Court of the Commonwealth of Massachusetts, captioned *Herbert G. and Eunice E. Blecker v. Aspen Technology, Inc. et al.,* Civ. A. No. 08-4625-BLS1 (Blecker II). The sole claim in Blecker II is based on the Massachusetts Uniform Securities Act, and plaintiffs have indicated that if they are granted leave to assert that claim in the original Blecker action, they will voluntarily dismiss Blecker II.

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The damages sought in these actions total more than $20 million, not including claims for treble damages and attorneys fees. If these actions are not dismissed or settled on terms acceptable to us, we plan to defend these actions vigorously. We can provide no assurance as to the outcome of these opt-out claims or the likelihood of the filing of additional opt-out claims, and these claims may result in judgments against us for significant damages. Regardless of the outcome, such litigation has resulted in the past, and may continue to result in the future, in significant legal expenses and may require significant attention and resources of management, all of which could result in losses and damages that have a material adverse effect on our business.

On December 1, 2004, a derivative action lawsuit captioned *Caviness v. Evans, et al*., Civil Action No. 04-12524, referred to as the Derivative Action, was filed in Massachusetts federal district court as a related action to the first filed of the putative class actions subsequently consolidated into the class action described above. The complaint, as subsequently amended, alleged, among other things, that the former and current director and officer defendants caused us to issue false and misleading financial statements, and brought derivative claims for the following: breach of fiduciary duty for insider trading, breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment. On August 18, 2005, the court granted the defendants motion to dismiss the Derivative Action for failure of the plaintiff to make a pre-suit demand on the board of directors to take the actions referenced in the Derivative Action complaint, and the Derivative Action was dismissed with prejudice.

On April 12, 2005, we received a letter on behalf of a purported stockholder, demanding that the board take actions substantially similar to those referenced in the Derivative Action. On February 28, 2006, we received a letter on behalf of the plaintiff in the Derivative Action, demanding that we take actions referenced in the Derivative Action complaint. The board responded to both of the foregoing letters that the board has taken the letters under advisement pending further regulatory investigation developments, which the board continues to monitor and with which we continue to cooperate. In its responses, the board also requested confirmation of each person s status as one of our stockholders and, with respect to the most recent letter, also referred the purported stockholder to the March 2006 settlement in the class action.

A determination that we have failed to comply with our existing consent decree with the Federal Trade Commission could have a material adverse effect on our business and financial condition.

In December 2004, we entered into a consent decree with the Federal Trade Commission, or FTC, with respect to a civil administrative complaint filed by the FTC in August 2003 alleging that our acquisition of Hyprotech in May 2002 was anticompetitive in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act. In connection with the consent decree, we entered into an agreement with Honeywell International, Inc., which we refer to as the Honeywell agreement, pursuant to which we transferred our operator training business and our rights to the intellectual property of various legacy Hyprotech products. In addition, we transferred our AXSYS product line to Bentley Systems, Inc.

We are subject to ongoing compliance obligations under the FTC consent decree. We have been responding to requests by the Staff of the FTC for information relating to the Staff s investigation of whether we have complied with the consent decree. In addition, the FTC has voted to recommend to the Consumer Litigation Division of the U.S. Department of Justice that it commence litigation against us relating to our alleged failure to comply with certain aspects of the decree. A decision is still pending at the Division on whether to pursue litigation, and no action has been filed. Although we believe that we have complied with the consent decree and that the assertions by the FTC Staff are without merit, we are engaged in settlement discussions with the FTC Staff regarding this matter. If we and the FTC are unable to reach a settlement on favorable terms and/or if litigation were to ensue, we could be required to pay substantial legal fees and, if the FTC or a court were to determine that we have not complied with our obligations under the consent decree, we could be subject to one or more of a variety of penalties, fines, injunctive relief and other remedies, any of which might materially limit our ability to operate under our current business plan and might have a material adverse effect on our operating results and financial condition.

In March 2007, we were served with a complaint and petition to compel arbitration filed by Honeywell in New York State Supreme Court. The complaint alleges that we failed to comply with our obligations to deliver certain technology under the Honeywell agreement referred to above, that we owe approximately $800,000 to Honeywell under the agreement and that Honeywell is entitled to some portion of the $1.2 million holdback retained by Honeywell under the holdback provisions of the agreement, plus unspecified monetary damages. In accordance with the Honeywell Agreement, certain of Honeywell s claims relating to the holdback were the subject of a proceeding before an independent accountant, who determined in December 2008 that we were entitled to a portion of the holdback. Although we believe many of Honeywell s claims to be without merit and intend to defend the claims vigorously, we and Honeywell have engaged in settlement negotiations. If we

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and Honeywell are unable to reach a settlement on terms acceptable to us it is possible that the resolution of the claims may have an adverse impact on our financial position and results of operations.

In preparing our consolidated financial statements, we identified material weaknesses in our internal control over financial reporting, and our failure to remedy effectively the five material weaknesses identified as of June 30, 2007 could result in material misstatements in our financial statements.

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Securities Exchange Act. Our management identified five material weaknesses in our internal control over financial reporting as of June 30, 2007. A material weakness is defined as a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

The material weaknesses identified by management as of June 30, 2007 consisted of:

- Inadequate and ineffective controls over the periodic financial close process;
- Inadequate and ineffective controls over the accounting for transfers of customer installment and accounts receivables under receivable sale facilities;
- Inadequate and ineffective controls over income tax accounting and disclosure;
- Inadequate and ineffective controls over the recognition of revenue; and
- Ineffective and inadequate controls over the accounts receivable function.

As a result of these material weaknesses, our management concluded as of June 30, 2007 that our internal control over financial reporting was not effective based on criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control-Integrated Framework.*

We are implementing remedial measures designed to address these material weaknesses. If these remedial measures are insufficient to address these material weaknesses, or if additional material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, we may fail to meet our future reporting obligations on a timely basis, our consolidated financial statements may contain material misstatements, we could be required to restate our prior period financial results, our operating results may be harmed, we may be subject to class action litigation and if we regain listing on a public exchange, our common stock could be delisted from that exchange. For example, material weaknesses that remain unremediated could result in material post-closing adjustments in future financial statements. Any failure to address the identified material weaknesses or any additional material weaknesses in our internal control could also adversely affect the results of the periodic management evaluations regarding the effectiveness of our internal control over financial reporting that are required to be included in our annual reports on Form 10-K. Internal control deficiencies could also cause investors to lose confidence in our reported financial information. We can give no assurance that the measures we have taken to date or any future measures will remediate the material weaknesses identified or that any additional material weaknesses or additional restatements of financial results will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting or circumvention of these controls. In addition, even if we are successful in strengthening our controls and procedures, those controls and procedures may not be adequate to prevent or identify irregularities or errors or to facilitate the fair presentation of our consolidated financial statements.

If we do not become current in our SEC filings, or if in the future we are not current in our SEC fillings, we will face several adverse consequences.

If we are unable to become or remain current in our financial filings, investors in our securities will not have information regarding our business and financial condition with which to make decisions regarding investment in our securities. In addition, we are and would not be able to have a registration statement under the Securities Act of 1933, covering a public offering of securities, declared effective by the SEC, and we will not be able to make offerings pursuant to existing registration statements or pursuant to certain private placement rules of the SEC under Regulation D to any purchasers not qualifying as accredited investors. The lack of an effective registration statement also results in our employees being unable to exercise vested options, which could affect our ability to attract and retain qualified personnel.

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We also are and would not be eligible to use a short form registration statement on Form S-3 for a period of 12 months after the time we become current in our filings. These restrictions may impair our ability to raise funds should we desire to do so and may adversely affect our financial condition. If we are unable to become or remain current in our filings, and we are not able to obtain waivers under our financing arrangements, it might become necessary to repay certain borrowings.

Our common stock has been delisted from The NASDAQ Stock Market and transferred to the Pink Sheets electronic quotation service, which may, among other things, reduce the price of our common stock and the levels of liquidity available to our stockholders.

As a result of our inability to timely file the Form 10-K for the year ended June 30, 2007, Nasdaq issued a Staff Determination to us that, in the absence of a request for a hearing, would have resulted in suspension of trading of our common stock, and filing of a Form 25-NSE with the SEC to remove our securities from listing and registration on The NASDAQ Stock Market. Nasdaq subsequently issued an Additional Staff Determination citing our inability to timely file our Form 10-Q for the quarterly period ended September 30, 2007 as an additional basis for delisting our securities. An oral hearing was held at our request on November 15, 2007. At the hearing, we requested an extension of time to cure our SEC filing deficiency. The NASDAQ Listing Qualifications Panel, or the Panel, determined on January 7, 2008 to grant our request for continued listing, subject to certain conditions, including filing our Form 10-K for the year ended June 30, 2007 and our Form 10-Q for the quarterly period ended September 30, 2007, by January 18, 2008. On January 28, 2008, the Panel granted our request for an extension for continued listing on The NASDAQ Global Market through February 8, 2008. On February 14, 2008, we received a letter advising us that the NASDAQ Listing Qualifications Panel had determined to delist our shares from The NASDAQ Stock Market, and trading of our shares was suspended effective at the open of business on February 19, 2008. Our common stock has been quoted on the Pink OTC Markets Inc. electronic quotation service beginning on February 19, 2008.

There is no assurance that we will regain listing of our common stock on a public exchange. If we regain listing and thereafter fail to keep current in our SEC filings or to comply with the applicable continued listing requirements, our common stock might be and subsequently would trade in the Pink Sheets electronic quotation service, or the Pink Sheets. The trading of our common stock in the Pink Sheets may reduce the price of our common stock and the levels of liquidity available to our stockholders. In addition, the trading of our common stock in the Pink Sheets would materially adversely affect our access to the capital markets, and the limited liquidity and potentially reduced price of our common stock could materially adversely affect our ability to raise capital through alternative financing sources on terms acceptable to us or at all. Stocks that trade in the Pink Sheets are no longer eligible for margin loans, and a company trading in the Pink Sheets cannot avail itself of federal preemption of state securities or blue sky laws, which adds substantial compliance costs to securities issuances, including pursuant to employee option plans, stock purchase plans and private or public offerings of securities. If we regain listing and are delisted in the future and transferred to the Pink Sheets, there may also be other negative implications, including the potential loss of confidence by suppliers, customers and employees, the loss of institutional investor interest in our company.

Claims and litigation based on our restatement of our consolidated financial statements due to our prior accounting for stock-based compensation may require that we incur substantial additional expenses and expend significant additional management time.

In connection with the preparation of our consolidated financial statements for fiscal 2006, a subcommittee of independent members of the board of directors determined that certain stock option grants during fiscal 1995 through 2004 were accounted for incorrectly and concluded that stock-based compensation associated with certain grants was misstated in fiscal 1995 through 2005 and the nine months ended March 31, 2006. As a result of these errors, some of our employees realized nonqualified deferred compensation for purposes of Section 409A of the Internal Revenue Code and, therefore became subject to an excise tax on the value of the options in the year in which they vest.

We may be named as a defendant in securities litigation or derivative lawsuits by current or former stockholders in connection with the restatements of our consolidated financial statements. Further, we may be subject to claims relating to adverse tax consequences with respect to stock options covered by the restatements. Defending against potential claims will likely require significant attention and resources of management and could result in significant legal expenses.

On December 1, 2004, a derivative action lawsuit captioned *Caviness v. Evans, et al*., Civil Action No. 04-12524, referred to as the Derivative Action, was filed in Massachusetts federal district court as a related action to the first filed of the putative class actions subsequently consolidated into the class action described above. The complaint, as subsequently amended, alleged, among other things, that the former and current director and officer defendants caused us to issue false and misleading financial statements, and brought derivative claims for the following: breach of fiduciary duty for insider trading,

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breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment. On August 18, 2005, the court granted the defendants motion to dismiss the Derivative Action for failure of the plaintiff to make a pre-suit demand on the board of directors to take the actions referenced in the Derivative Action complaint, and the Derivative Action was dismissed with prejudice.

On April 12, 2005, we received a letter on behalf of a purported stockholder, demanding that the board take actions substantially similar to those referenced in the Derivative Action. On February 28, 2006, we received a letter on behalf of the plaintiff in the Derivative Action, demanding that we take actions referenced in the Derivative Action complaint. The board responded to both of the foregoing letters that the board has taken the letters under advisement pending further regulatory investigation developments, which the board continues to monitor and with which we continue to cooperate. In its responses, the board also requested confirmation of each person s status as one of our stockholders and, with respect to the most recent letter, also referred the purported stockholder to the March 2006 settlement in the class action.

Our international operations are complex and if we fail to manage those operations effectively, the growth of our business would be limited and our operating results would be adversely affected.

As of December 31, 2008, we had 27 offices in 21 countries. We sell our products primarily through a direct sales force located throughout the world. In the event that we are unable to adequately staff and maintain our foreign operations, we could face difficulties managing our international operations. We also rely, to a lesser extent, on distributors and resellers to sell our products and market our services internationally, and our inability to manage and maintain those relationships would limit our ability to generate revenue outside the United States. The complexities of our operations also require us to make significant expenditures to ensure that our operations are compliant with regulatory requirements in numerous foreign jurisdictions. To the extent we are unable to manage the various risks associated with our complex international operations effectively, the growth and profitability of our business may be adversely affected.

Our business may suffer if we fail to address challenges associated with transacting business internationally.

Customers outside the United States accounted for approximately 57% and 53% of our total revenues in fiscal 2006 and 2007, respectively. We anticipate that revenues from customers outside the United States will continue to account for a significant portion of our total revenues for the foreseeable future. Our operations outside the United States are subject to additional risks, including:

- unexpected changes in regulatory requirements, exchange rates, tariffs and other barriers;
- political and economic instability;
- less effective protection of intellectual property;

- difficulties and delays in translating products and product documentation into foreign languages;

- difficulties and delays in negotiating software licenses compliant with accounting revenue recognition requirements in the United States;

- difficulties in collecting trade accounts receivable in other countries; and

- adverse tax consequences.

In addition, the impact of future exchange rate fluctuations on our operating results cannot be accurately predicted. In recent years, we have increased the extent to which we denominate arrangements with international customers in the currencies of the countries in which the software or services are provided. From time to time we have engaged in, and may continue to engage in, economic hedging of a significant portion of installment contracts denominated in foreign currencies. Any hedging policies implemented by us may not be successful, and the cost of these hedging techniques may have a significant negative impact on our operating results.

Competition from software offered by current competitors and new market entrants, as well as from internally developed solutions, could adversely affect our ability to sell our software products and related services and could result in pressure to price our products in a manner that reduces our margins.

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Our markets in general are highly competitive:

- Our engineering software competes with products of businesses such as Honeywell, ABB, Chemstations, KBC, Shell Global Solutions, Simulation Sciences (a division of Invensys) and WinSim (formerly ChemShare).

- Our plant operations software competes with products of companies such as Honeywell, ABB, Invensys, Rockwell and Siemens and components of SAP s product offerings.

- Our supply chain management software competes with products of companies such as Honeywell, i2 Technologies, Manugistics (a subsidiary of JDA Software Group) and Infor and components of SAP s supply chain offering.

As we expand our engineering solutions into other markets we may face competition from companies that we have not typically competed against in the past or competition from companies in areas where we have not competed in the past, such as Dassault Systems, Oracle, SAP and Siemens. We also face competition in all areas of our business from large companies in the process industries that have internally developed their own proprietary software solutions.

Many of our current and potential competitors have greater financial, technical, marketing, service and other resources than we have. As a result, these companies may be able to offer lower prices, additional products or services, or other incentives that we cannot match or offer. These competitors may be in a stronger position to respond more quickly to new technologies and may be able to undertake more extensive marketing campaigns. They also may adopt more aggressive pricing policies and make more attractive offers to potential customers, employees and strategic partners. In addition, many of our competitors have established, and may in the future continue to establish, cooperative relationships with third parties to improve their product offerings and to increase the availability of their products in the marketplace. Competitors with greater financial resources may make strategic acquisitions to increase their ability to gain market share or improve the quality or marketability of their products.

Competition could seriously impede our ability to sell additional software products and related services on terms favorable to us. Businesses may continue to enhance their internally developed solutions, rather than investing in commercial software such as ours. Our current and potential commercial competitors may develop and market new technologies that render our existing or future products obsolete, unmarketable or less competitive. In addition, if these competitors develop products with similar or superior functionality to our products, we may need to decrease the prices for our products in order to remain competitive. If we are unable to maintain our current pricing due to competitive pressures, our margins will be reduced and our operating results will be negatively affected. We cannot assure you that we will be able to compete successfully against current or future competitors or that competitive pressures will not materially adversely affect our business, financial condition and operating results.

If we fail to develop new software products or enhance existing products and services, we will be unable to implement our product strategy successfully and our business could be seriously harmed.

Enterprises are requiring their application software vendors to provide greater levels of functionality and broader product offerings. Moreover, competitors continue to make rapid technological advances in computer hardware and software technology and frequently introduce new products, services and enhancements. We must continue to enhance our current product line and develop and introduce new products and services that keep pace with increasingly sophisticated customer requirements and the technological developments of our competitors. Our business and operating results could suffer if we cannot successfully respond to the technological advances of competitors or if our new products or product enhancements and services do not achieve market acceptance.

Under our business plan, we are implementing a product strategy that unifies our software solutions under the aspenONE brand with differentiated aspenONE vertical solutions targeted at specific process industry segments. We cannot assure you that our product strategy will result in products that will meet market needs and achieve significant market acceptance.

Defects or errors in our software products could harm our reputation, impair our ability to sell our products and result in significant costs to us.

Our software products are complex and may contain undetected defects or errors. We have not suffered significant harm from any defects or errors to date, but we have from time to time found defects in our products and we may discover additional defects in the future. We may not be able to detect and correct defects or errors before releasing products.

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Consequently, we or our customers may discover defects or errors after our products have been implemented. We have in the past issued, and may in the future need to issue, corrective releases of our products to remedy defects or errors. The occurrence of any defects or errors could result in:

- lost or delayed market acceptance and sales of our products;
- delays in payment to us by customers;
- product returns;
- injury to our reputation;
- diversion of our resources;
- legal claims, including product liability claims, against us;
- increased service and warranty expenses or financial concessions; and
- increased insurance costs.

Defects and errors in our software products could result in an increase in service and warranty costs or claims for substantial damages against us.

We may be subject to significant expenses and damages because of liability claims related to our products and services.

We may be subject to significant expenses and damages because of liability claims related to our products and services. The sale and implementation of certain of our software products and services, particularly in the areas of advanced process control, supply chain and optimization, entail the risk of product liability claims and associated damages. Our software products and services are often integrated with our customers networks and software applications and are used in the design, operation and management of manufacturing and supply chain processes at large facilities, often for mission critical applications. Any errors, defects, performance problems or other failure of our software could result in significant liability to us for damages or for violations of environmental, safety and other laws and regulations. We are currently defending claims that certain of our software products and implementation services have failed to meet customer expectations. On May 11, 2007, one of the claims (originally for an amount in excess of $8 million) resulted in a $1.4 million arbitration award against us. We are defending another customer claim in excess of $5 million, as well as other general commercial claims. In addition, our software products and implementation services could continue to give rise to warranty and other claims. We currently are unable to determine whether resolution of any of these matters will have a material adverse impact on our financial position, cash flows or results of operations, or, in many cases, reasonably estimate the amount of the loss, if any, that may result from the resolution of these matters.

Our agreements with our customers generally contain provisions designed to limit our exposure to potential product liability claims. It is possible, however, that the limitation of liability provisions in our agreements may not be effective as a result of federal, foreign, state or local laws or ordinances or unfavorable judicial decisions. A substantial product liability judgment against us could materially and adversely harm our operating results and financial condition. Even if our software is not at fault, a product liability claim brought against us could be time consuming, costly to defend and harmful to our operations. In addition, although we carry general liability insurance, our current insurance coverage may be insufficient to protect us from all liability that may be imposed under these types of claims.

Implementation of our products can be difficult and time-consuming, and customers may be unable to implement our products successfully or otherwise achieve the benefits attributable to our products.

Our products are intended to work with complex business processes. Some of our software, such as scheduling applications and integrated supply chain products, must integrate with the existing computer systems and software programs of our customers. This can be complex, time-consuming and expensive. As a result, some customers may have difficulty in implementing or be unable to implement these products successfully or otherwise achieve the benefits attributable to these products. Delayed or ineffective implementation of the software products or related services may limit our ability to expand our revenues and may result in customer dissatisfaction, harm to our reputation and may result in customer unwillingness to pay the fees associated with these products.

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We may suffer losses on fixed-price engagements.

We derive a substantial portion of our total revenues from service engagements and a significant percentage of these engagements have been undertaken on a fixed-price basis. Under these fixed-price engagements, we bear the risk of cost overruns and inflation, and as a result, any of these engagements may be unprofitable. In the past, we have had cost overruns on fixed-price service engagements. In addition, to the extent that we are successful in shifting customer purchases to our integrated suites of software and services and we price those engagements on a fixed-price basis, the size of our fixed-price engagements may increase, which could cause the impact of an unprofitable fixed-price engagement to have a more pronounced impact on our operating results.

We may not be able to protect our intellectual property rights, which could make us less competitive and cause us to lose market share.

We regard our software as proprietary and rely on a combination of copyright, patent, trademark and trade secret laws, license and confidentiality agreements, and software security measures to protect our proprietary rights. We have registered or have applied to register several of our significant trademarks in the United States and in certain other countries. We generally enter into non-disclosure agreements with our employees and customers, and historically have restricted access to our software products source codes, which we regard as proprietary information. In a few cases, we have provided copies of the source code for some of our products to customers solely for the purpose of special product customization and have deposited copies of the source code for some of our products in third-party escrow accounts as security for ongoing service and license obligations. In these cases, we rely on non-disclosure and other contractual provisions to protect our proprietary rights.

The steps we have taken to protect our proprietary rights may not be adequate to deter misappropriation of our technology or independent development by others of technologies that are substantially equivalent or superior to our technology. Any misappropriation of our technology or development of competitive technologies could harm our business and could force us to incur substantial costs in protecting and enforcing our intellectual property rights. The laws of some countries in which our products are licensed do not protect our products and intellectual property rights to the same extent as the laws of the United States.

Third-party claims that we infringe upon the intellectual property rights of others may be costly to defend or settle and could damage our business.

We cannot be certain that our software and services do not infringe issued patents, copyrights, trademarks or other intellectual property rights of third parties. Litigation regarding intellectual property rights is common in the software industry, and we may be subject to legal proceedings and claims from time to time, including claims of alleged infringement of intellectual property rights of third parties by us or our licensees concerning their use of our software products and integration technologies and services. Although we believe that our intellectual property rights are sufficient to allow us to market our software without incurring liability to third parties, third parties may bring claims of infringement against us. Because our software is integrated with our customers networks and business processes, as well as other software applications, third parties may bring claims of infringement against us, as well as our customers and other software suppliers, if the cause of the alleged infringement cannot easily be determined. Such claims may be with or without merit.

Claims of alleged infringement may have a material adverse effect on our business and may discourage potential customers from doing business with us on acceptable terms, if at all. Defending against claims of infringement may be time-consuming and may result in substantial costs and diversion of resources, including our management s attention to our business. Furthermore, a party making an infringement claim could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from selling our software or require that we re-engineer some or all of our products. Claims of intellectual property infringement also might require us to enter costly royalty or license agreements. We may be unable, however, to obtain royalty or license agreements on terms acceptable to us or at all. Our business, operating results and financial condition could be harmed significantly if any of these events occurred, and the price of our common stock could be adversely affected. Furthermore, former employers of our current and future employees may assert that our employees have improperly disclosed confidential or proprietary information to us. In addition, we have agreed, and may agree in the future, to indemnify certain of our customers against claims that our software infringes upon the intellectual property rights of others. Although we carry general liability insurance, our current insurance coverage may not apply to, and likely would not protect us from, liability that may be imposed under any of the types of claims described above.

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Because some of our software products incorporate technology licensed from, or provided by, third parties, the loss of our right to use that third-party technology or defects in that technology could harm our business.

Some of our software products contain technology that is licensed from, or provided by, third parties. Any significant interruption in the supply or support of any such third-party software could adversely affect our sales, unless and until we can replace the functionality provided by the third-party software. Because some of our software incorporates software developed and maintained by third parties, we depend on these third parties to deliver and support reliable products, enhance our current software, develop new software on a timely and cost-effective basis and respond to emerging industry standards and other technological changes. In other instances, we provide third-party software with our current software, and we depend on these third parties to deliver reliable products, provide underlying product support and respond to emerging industry standards and other technological changes. The failure of these third parties to meet these criteria could harm our business.

New accounting standards or interpretations of existing accounting standards could adversely affect our operating results.

Generally accepted accounting principles in the United States are subject to interpretation by the FASB, the American Institute of Certified Public Accountants, the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results and could affect the reporting of transactions completed before the announcement of a change.

For example, we recognize software license revenue in accordance with SOP No. 97-2, as amended by SOP No. 98-4 and SOP No. 98-9, and in accordance with SOP No. 81-1. The accounting profession may continue to discuss certain provisions of relevant accounting literature with the objective of providing additional guidance on potential interpretations related to software revenue recognition and multiple element arrangements in which a single contract includes a software license, a maintenance services agreement and/or other elements that are bundled together in a total offering to the customer. These discussions and the issuance of interpretations, once finalized, could lead to unanticipated changes in our current revenue accounting practices, which could change the timing of revenue recognition.

If we are not successful in attracting, integrating and retaining highly qualified personnel, we may not be able to successfully implement our business strategy.

Our ability to establish and maintain a position of technology leadership in the highly competitive software market depends in large part upon our ability to attract, integrate and retain highly qualified managerial, sales, technical and accounting personnel. Competition for qualified personnel in the software industry is intense. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. Moreover, we have recently hired a significant number and percentage of the personnel in key areas of our operations, such as accounting and finance. Our management will need to devote significant attention and resources to strengthen relationships among these personnel, and our ability to grow our business will be impaired if these personnel are not able to work together effectively. Our future success will depend in large part on our ability to attract, integrate and retain a sufficient number of highly qualified personnel, and there can be no assurance that we will be able to do so.

If we are unable to develop or maintain strategic alliance relationships, our revenue growth, operating results, financial condition or cash flows may be materially and adversely affected.

An element of our growth strategy is to establish strategic alliances with selected third-party resellers, agents and systems integrators, which we refer to collectively as resellers, that market, sell and integrate our products and services. It is possible that our existing relationships with resellers might be terminated by us or the resellers, or that we will not adequately train, and enter into agreements with, a sufficient number of qualified resellers, or that potential resellers may focus their efforts on marketing competing products to the process industries.

In addition, the cessation or termination of certain relationships, by us or a reseller, may subject us to material liability and/or expense. This material liability and/or expense includes potential payments due upon the termination or cessation of the relationship by us or a reseller, costs related to the establishment of a direct sales presence or development of a new agent in the territory. No such events of termination or cessation have occurred. We are not able to reasonably estimate the amount of any such liability and/or expense if such an event were to occur, given the range of factors that could affect the ultimate determination of our liability. Actual payments could be in the range of zero to $30 million. If any of the foregoing were to occur, our future revenue growth could be limited or we may be subject to litigation and liability claims such that our operating results, cash flows and financial condition could be materially and adversely affected.

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In addition, if our resellers fail to implement our solutions for our customers properly, our reputation could be harmed and we could be subject to claims by our customers. We intend to continue to establish business relationships with resellers to accelerate the development and marketing of our products and services. To the extent that we are unsuccessful in maintaining our existing relationships and developing new relationships, our operating results and financial condition could be materially and adversely affected.

Risks Related to Our Common Stock

Our common stock may experience substantial price and volume fluctuations.

The equity markets have from time to time experienced extreme price and volume fluctuations, particularly in the high technology sector, and those fluctuations have often been unrelated to the operating performance of particular companies. In addition, factors such as our financial performance, announcements of technological innovations or new products by us or our competitors, as well as market conditions in the computer software or hardware industries, may have a significant impact on the market price of our common stock.

In the past, following periods of volatility in the market price of a public company s securities, securities class action litigation has often been instituted against companies. This type of litigation could result in substantial liability and costs and divert management s attention and resources.

Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from executing our business plan.

We expect that our current cash balances, future cash flows from our operations, and continued ability to sell installment receivable contracts will be sufficient to meet our anticipated cash needs for at least the next twelve months. We may need to obtain additional financing thereafter or earlier, however, if our current plans and projections prove to be inaccurate or our expected cash flows prove to be insufficient to fund our operations because of lower-than-expected revenues, fewer sales of installment contracts, unanticipated expenses or other unforeseen difficulties.

Our ability to obtain additional financing will depend on a number of factors, including market conditions, our operating performance, the quality of our installment contracts, and the availability of capital in the credit markets. These factors may make the timing, amount, terms and conditions of any financing unattractive. If adequate funds are not available, or are not available on acceptable terms, we may have to forego strategic acquisitions or investments, reduce or defer our development activities or delay our introduction of new products and services.

Any additional capital raised through the sale of equity or convertible debt securities may dilute the existing shareholder percentage ownership of our common stock. Furthermore, any new securities we issue could have rights, preferences and privileges superior to our common stock. Capital raised through debt financings could require us to make periodic interest payments and could impose potentially restrictive covenants on the conduct of our business.

Our corporate documents and provisions of Delaware law may prevent a change in control or management that stockholders may consider desirable.

Section 203 of the Delaware General Corporation Law, our charter and our by-laws contain provisions that might enable our management to resist a takeover of our company.

These provisions include:

- limitations on the removal of directors;
- a classified board of directors so that not all members of our board are elected at one time;
- advance notice requirements for stockholder proposals and nominations;
- the inability of stockholders to act by written consent or to call special meetings;
- the ability of our board of directors to make, alter or repeal our by-laws; and

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- the ability of our board of directors to designate the terms of and issue new series of preferred stock without stockholder approval.

These provisions could:

- have the effect of delaying, deferring or preventing a change in control of our company or a change in our management that stockholders may consider favorable or beneficial;

- discourage proxy contests and make it more difficult for stockholders to elect directors and take other corporate actions; and

- limit the price that investors might be willing to pay in the future for shares of our common stock.

We have also adopted a stockholder rights plan that could significantly dilute the equity interests of a person seeking to acquire control of our company without the approval of the board of directors.

Sales of shares of common stock issued upon the conversion of our previously outstanding Series D-1 preferred stock may result in a decrease in the price of our common stock.

Private equity funds managed by Advent International Corporation have the right to require that we register under the Securities Act the shares of common stock that were issued upon the conversion of our previously outstanding Series D-1 preferred stock and upon the exercise of certain previously outstanding warrants. In addition, these funds could sell certain of such shares without registration. In May 2006, we received a demand letter from such funds requesting the registration of all of the shares of common stock covered by those registration rights, for sale in an underwritten public offering. Pursuant to this request, in April 2007 we filed a registration statement for a public offering of 18,000,000 shares of common stock held by such funds. The registration statement also covered 2,700,000 shares that would be subject to an option to be granted to the underwriters by such funds solely to cover over allotments. On July 30, 2008, we applied to withdraw this registration statement and requested the SEC s consent thereto. Any sale of common stock into the public market could cause a decline in the trading price of our common stock.

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Item 6. ***Exhibits***

Exhibit Number	Description	Filed with this Form 10-Q	Incorporated by Reference Form	Filing Date with SEC	Exhibit Number
10.1	Fourteenth Amendment dated December 28, 2007 to Non-Recourse Receivables Purchase Agreement dated December 31, 2003 between Silicon Valley Bank and Aspen Technology, Inc.		8-K	January 7, 2008	10.2
10.2	Fifteenth Amendment dated January 24, 2008 to Non-Recourse Receivables Purchase Agreement dated December 31, 2003 between Silicon Valley Bank and Aspen Technology, Inc.	x			
10.3	Sixteenth Amendment dated May 15, 2008 to Non-Recourse Receivables Purchase Agreement dated December 31, 2003 between Silicon Valley Bank and Aspen Technology, Inc.	x			
10.4	Seventeenth Amendment dated November 14, 2008 to Non-Recourse Receivables Purchase Agreement dated December 31, 2003 between Silicon Valley Bank and Aspen Technology, Inc.	x			
10.5	Eighteenth Amendment dated January 30, 2009 to Non-Recourse Receivables Purchase Agreement dated December 31, 2003 between Silicon Valley Bank and Aspen Technology, Inc.	x			
10.6	Seventeenth Loan Modification Agreement dated December 28, 2007 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company		8-K	January 7, 2008	10.3
10.7	Eighteenth Loan Modification Agreement dated January 24, 2008 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x			
10.8	Nineteenth Loan Modification Agreement dated April 11, 2008 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x			
10.9	Twentieth Loan Modification Agreement dated May 15, 2008 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x			

10.10	Twenty-first Loan Modification Agreement dated June 12, 2008 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x

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Exhibit Number	Description	Filed with this Form 10-Q	Incorporated by Reference Form	Filing Date with SEC	Exhibit Number
10.11	Twenty-second Loan Modification Agreement dated July 15, 2008 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x			
10.12	Twenty-third Loan Modification Agreement dated September 30, 2008 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x			
10.13	Twenty-fourth Loan Modification Agreement dated November 14, 2008 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x			
10.14	Twenty-fifth Loan Modification Agreement dated January 15. 2009 to Loan and Security Agreement dated January 30, 2003 among Silicon Valley Bank and Aspen Technology, Inc., AspenTech, Inc. and Hyprotech Company	x			
31.1	Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002	x			
31.2	Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002	x			
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	x			

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

	ASPEN TECHNOLOGY, INC.	
Date: February 19, 2009	By:	**/s/ Mark E. Fusco** **Mark E. Fusco** *President and Chief Executive Officer* *(Principal Executive Officer)*
Date: February 19, 2009	By:	**/s/ Bradley T. Miller** **Bradley T. Miller** *Senior Vice President and Chief Financial Officer* *(Principal Financial Officer)*

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