

HEARTLAND PAYMENT SYSTEMS INC
Form 10-12G/A
July 29, 2005

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**AMENDMENT NO. 3
TO
FORM 10-12G/A**

**GENERAL FORM FOR REGISTRATION OF SECURITIES
PURSUANT TO SECTION 12(b) OR 12(g) OF
THE SECURITIES EXCHANGE ACT OF 1934**

HEARTLAND PAYMENT SYSTEMS, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

22-3755714
(I.R.S. Employer Identification Number)

47 Hulfish Street, Suite 400
Princeton, New Jersey 08542
(Address, including zip code, of principal executive office)

(609) 683-3831
(Registrant's telephone number, including area code)

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

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

Common Stock, par value \$.001 per share

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We have made forward-looking statements in this registration statement that are based on our management's beliefs and assumptions and on information currently available to our management. Forward-looking statements include the information concerning our possible or assumed future results of operations, business strategies, financing plans, competitive position, industry environment, potential growth opportunities, the effects of future regulation and the effects of competition. Forward-looking statements include all statements that are not historical facts and can be identified by the use of forward-looking terminology such as the words "believe," "expect," "anticipate," "intend," "plan," "estimate" or similar expressions.

Forward-looking statements involve risks, uncertainties and assumptions. Actual results may differ materially from those expressed in the forward-looking statements. We do not have any intention or obligation to update forward-looking statements after the date of this registration statement.

You should understand that many important factors, in addition to those discussed elsewhere in this registration statement, could cause our results to differ materially from those expressed in the forward-looking statements. These factors include, without limitation, our competitive environment, the business cycles and credit risks of our merchants, chargeback liability, merchant attrition, problems with our bank sponsor, our reliance on other bank card payment processors, our inability to pass increased interchange fees along to our merchants, the unauthorized disclosure of merchant data, economic conditions, system failures and government regulation.

**INFORMATION REQUIRED IN REGISTRATION STATEMENT
CROSS-REFERENCE SHEET BETWEEN REGISTRATION STATEMENT ON FORM S-1
AND ITEMS OF FORM 10**

This Amendment No. 3 to Form 10-12G/A has been filed due to the fact that the Company has amended its registration statement on Form S-1 (333-118073), as amended (the "Registration Statement"), which gives effect to a two-for-one stock split of our outstanding common stock on July 26, 2005.

Item 1. Business

The information required by this item is contained under the sections "Summary," "Risk Factors," "Business" and "Where You Can Find More Information" of the Registration Statement, filed as an exhibit hereto. Those sections are incorporated herein by reference.

Item 2. Financial Information

The information required by this item is contained under the sections "Selected Historical Consolidated Financial Information and Other Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" of the Registration Statement. Those sections are incorporated herein by reference.

Item 3. Properties

The information required by this item is contained under the section "Business Properties" of the Registration Statement. That section is incorporated herein by reference.

Item 4. Security Ownership of Certain Beneficial Owners and Management

Set forth below is information relating to the beneficial ownership of our common stock as of July 15, 2005, by each person known by us to beneficially own more than 5% of our outstanding shares of common stock of each class, each of our directors and our named executive officers, and all of our directors and executive officers as a group.

Each stockholder's percentage ownership in the following table is based on 29,794,934 shares of common stock outstanding as of July 15, 2005, as adjusted to reflect the conversion of all outstanding shares of our Series A Senior Convertible Participating Preferred Stock and treating as outstanding all options held by that stockholder and exercisable within 60 days of July 15, 2005. As of July 15, 2005, there were 134 holders of our common stock.

Except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock held by them. Unless otherwise indicated, the address of each officer, director and 5% stockholder

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listed below is c/o Heartland Payment Systems, Inc., 47 Hulfish Street, Suite 400, Princeton, New Jersey 08542.

Name of Beneficial Owner	Number of Shares Beneficially Owned Prior to this Offering	Percentage of Shares Beneficially Owned	
		Prior to this Offering	After this Offering
5% Holders:			
Greenhill Capital Partners, L.P. and affiliated investment funds(1)	8,632,084	29.0%	20.5%
LLR Equity Partners, L.P. and affiliated investment fund(2)	5,209,252	17.5%	16.1%
Directors and Executive Officers			
Robert O. Carr(3)	10,942,000	36.3%	33.0%
Robert H.B. Baldwin, Jr.(4)	939,500	3.1%	2.9%
Michael C. Hammer(5)	524,500	1.8%	1.6%
Brooks L. Terrell(6)	674,500	2.3%	2.1%
Scott L. Bok(1)	8,632,084	29.0%	20.5%
Mitchell L. Hollin(2)	5,209,252	17.5%	16.1%
Robert H. Niehaus(1)	8,632,084	29.0%	20.5%
David L. Morris(7)	76,820	*	*
Thomas Sheridan(8)	160,000	*	*
Marc J. Ostro(9)	30,000	*	*
Jonathan J. Palmer(10)	20,000	*	*
George F. Raymond(11)	20,000	*	*
All directors and executive officers as a group (12 persons)(12)	25,188,656	81.2%	68.6%

*
Less than 1% of the outstanding stock

(1) Beneficial ownership consists of 5,285,438 shares of common stock held by Greenhill Capital Partners, L.P.; 1,612,082 shares of common stock held by Greenhill Capital, L.P.; 853,228 shares of common stock held by Greenhill Capital Partners (Executives), L.P.; and 881,336 shares of common stock held by Greenhill Capital Partners (Cayman), L.P. By virtue of their ownership and positions as the Senior Members of GCP 2000, LLC and as Managing Directors of Greenhill Capital Partners, LLC, which control the general partners of Greenhill Capital Partners, L.P. and its affiliated investment funds, Scott L. Bok, Robert F. Greenhill and Robert H. Niehaus may be deemed to beneficially own these shares. In addition, GCP Managing Partner, L.P. and GCP, L.P., the general partners of Greenhill Capital Partners, L.P. and its affiliated investment funds, as well as Greenhill Capital Partners, LLC and GCP 2000, LLC, which control the general partners, and Greenhill & Co., Inc., the sole member of Greenhill Capital Partners, LLC, may be deemed to beneficially own these shares. Beneficial ownership includes 1,250,000 shares of common stock that are subject to an option granted to Robert O. Carr. Each of Scott L. Bok and Robert H. Niehaus disclaims beneficial ownership of these shares except to extent of each of their pecuniary interest therein.

(2) Beneficial ownership consists of 4,729,296 shares of common stock held by LLR Equity Partners, L.P. and 479,956 shares of common stock held by LLR Equity Partners Parallel, L.P. By virtue of his position as a Partner of LLR Capital, L.P., which is the General Partner of LLR Equity Partners and its affiliated investment funds, Mr. Hollin may be deemed to beneficially own these shares. Beneficial ownership includes 750,000 shares of common stock that are subject to an option granted to Robert O. Carr.

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- (3) Beneficial ownership consists of 8,143,488 shares of common stock held by Carr Holdings, L.L.C., a New Jersey limited liability company owned and managed by Robert O. Carr and Jill Carr, Mr. Carr's wife; 400,000 shares of common stock held by The Robert O. Carr 2001 Charitable Remainder Unitrust; 10,780 shares of common stock held by The Robert O. Carr 2000 Irrevocable Trust for Emily Carr; 10,780 shares of common stock held by The Robert O. Carr 2000 Irrevocable Trust for Ryan Carr; 10,780 shares of common stock held by The Robert O. Carr 2000 Irrevocable Trust for Kelly Carr; 8,086 shares of common stock held by The Robert O. Carr 2003 Grantor Retained Annuity Trust; 8,086 shares of common stock held by The Jill A Carr 2003 Grantor Retained Annuity Trust; options to purchase 350,000 shares of common stock under our 2000 Equity Incentive Plan; and an option from Greenhill Capital Partners, L.P. and its affiliated funds and LLR Equity Partners, L.P. and its affiliated investment fund, to purchase up to 2,000,000 shares of common stock.
- (4) Beneficial ownership consists of 333,476 shares of common stock held by Mr. Baldwin, 138,524 shares of common stock held by Margaret J. Sieck and Whitney H. Baldwin as Trustees for an Indenture created June 30, 2004 and options to purchase 467,500 shares of common stock under our 2000 Equity Incentive Plan.
- (5) Beneficial ownership consists of 400,000 shares of common stock held by the MCMJH Limited Partnership, an Arizona Limited Partnership of which Michael C. Hammer is the Managing Partner and options to purchase 124,500 shares of common stock under our 2000 Equity Incentive Plan.
- (6) Beneficial ownership consists of 550,000 shares of common stock held by the B. Terrell Limited Partnership, a Texas limited partnership of which Brooks L. Terrell is the general partner; and options to purchase 124,500 shares of common stock under our 2000 Equity Incentive Plan.
- (7) Beneficial ownership consists of 50,000 shares of common stock held by Mr. Morris and his wife, Lisa T. Morris, jointly; options to purchase 26,820 shares of common stock under our 2000 Equity Incentive Plan.
- (8) Beneficial ownership consists of 40,000 shares of common stock held by Mr. Sheridan; options to purchase 80,000 shares of common stock under our 2000 Equity Incentive Plan; and an option from Carr Holdings, L.L.C. to purchase 40,000 shares of common stock.
- (9) Beneficial ownership consists of options to purchase 30,000 shares of common stock under our 2000 Equity Incentive Plan.
- (10) Beneficial ownership consists of options to purchase 20,000 shares of common stock under our 2000 Equity Incentive Plan.
- (11) Beneficial ownership consists of options to purchase 20,000 shares of common stock under our 2000 Equity Incentive Plan.
- (12) Includes options to purchase an aggregate of 1,243,320 shares of common stock exercisable within 60 days of July 15, 2005 under our 2000 Equity Incentive Plan.

Item 5. Directors and Executive Officers

The information required by this item is contained under the section "Management" of the Registration Statement. That section is incorporated herein by reference.

Item 6. Executive Compensation

The information required by this item is contained under the section "Management Compensation of Executive Officers and Other Information" of the Registration Statement. That section is incorporated herein by reference.

Item 7. Certain Relationships and Related Transactions

The information required by this item is contained under the section "Related Party Transactions" of the Registration Statement. That section is incorporated herein by reference.

Item 8. Legal Proceedings

The information required by this item is contained under the section "Business Legal Proceedings" of the Registration Statement. That section is incorporated herein by reference.

Item 9. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

The information required by this item is contained under the section "Dividend Policy" of the Registration Statement and under the section "Item 11 Description of Registrant's Securities to be Registered" herein. Each section is incorporated herein by reference.

Item 10. Recent Sales of Unregistered Securities

The information required by this item is contained under the section "Item 15 Recent Sales of Unregistered Securities" of the Registration Statement. That section is incorporated herein by reference.

Item 11. Description of Registrant's Securities to be Registered

General

The following is a summary of the rights of our common stock and Series A Senior Convertible Participating Preferred Stock and related provisions of our certificate of incorporation and bylaws.

Our authorized capital stock consists of 110,000,000 shares, each with a par value of \$0.001 per share, of which:

100,000,000 shares are designated as common stock.

10,000,000 shares are designated as Series A Senior Convertible Participating Preferred Stock.

At July 15, 2005, we had outstanding 16,461,600 shares of common stock, held of record by 134 stockholders, and 7,619,048 shares of Series A Senior Convertible Participating Preferred Stock, held of record by 6 stockholders.

In addition, at March 31, 2005, 9,261,002 shares of our common stock were subject to outstanding options, and 168,904 shares of our common stock were subject to outstanding warrants.

Common Stock

The holders of our common stock are entitled to one vote per share on any matter to be voted upon by stockholders. The holders of our common stock are entitled to dividends as our board of directors may declare from time to time from legally available funds subject to the preferential rights of the holders of any shares of our Series A Senior Convertible Participating Preferred Stock.

Our amended and restated certificate of incorporation does not provide for cumulative voting in connection with the election of directors. Accordingly, directors will be elected by a plurality of the shares voting once a quorum is present. No holder of our common stock will have any preemptive right to subscribe for any shares of capital stock issued in the future.

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of our common stock are entitled to share, on a pro rata basis, all assets remaining after payment to creditors and subject to prior distribution rights of any shares of Series A Senior Convertible Participating Preferred Stock that we may issue in the future. All of the outstanding shares of common stock are fully paid and non-assessable.

Preferred Stock

The number of authorized shares of our preferred stock is 10,000,000 shares, \$0.001 par value, 7,619,048 of which are designated as Series A Senior Convertible Participating Preferred Stock and 7,619,048 of which were issued and outstanding at July 15, 2005. The rights, privileges, preferences and restrictions of our Series A Senior Convertible Participating Preferred Stock are as follows:

Dividend Rights

The holders of our Series A Senior Convertible Participating Preferred Stock are entitled to receive dividends prior and in preference to any dividends on our common stock, if and when declared by our board of directors.

Liquidation Rights

In the event we decide to liquidate, dissolve or wind-up, the holders of our Series A Senior Convertible Participating Preferred Stock shall be entitled to receive, prior to any distribution of any of our assets to the holders of the common stock, an amount equal to the greater of (i) \$10.50 plus any accrued but unpaid dividends and (ii) the amount that would have been payable on the number of shares of Common Stock into which such shares of Series A Senior Convertible Participating Preferred Stock were convertible immediately prior to such event for each share held by them (the "Liquidation Value"). Prior to October 2, 2006, any sale, conveyance, exchange or transfer of all or substantially all of our property or assets and any merger, reorganization, consolidation or other transaction in which the holders of our capital stock immediately prior to such transaction do not retain a majority of the voting power in the continuing entity shall be deemed, at the election of holders of at least two-thirds of the Series A Senior Convertible Participating Preferred Stock then outstanding, to be a liquidation, dissolution or winding-up of our company. If such election is made, then we may, at our option, pay the holders of our Series A Senior Convertible Participating Preferred Stock either (i) the full Liquidation Value of all shares of Series A Senior Convertible Participating Preferred Stock in cash or (ii) a new series of Series A Senior Convertible Participating Preferred Stock. In the event the assets and funds available for distribution to the holders of our Series A Senior Convertible Participating Preferred Stock shall be insufficient to permit the payment of full preferential amounts, then our entire assets shall be distributed ratably among the holders of our Series A Senior Convertible Participating Preferred Stock.

Voting Rights

The holder of each share of our Series A Senior Convertible Participating Preferred Stock is entitled to notice of any stockholder's meeting in accordance with our bylaws and any other matter submitted to the vote of stockholders and shall be entitled to vote, together with the holders of common stock, with respect to any matters upon which the holders of our common stock have the right to vote.

Election of Directors

Holders of our Series A Senior Convertible Participating Preferred Stock, voting as a single class, shall be entitled to elect three directors to our board of directors. In addition, the holders of our Series A Senior Convertible Participating Preferred Stock are entitled to vote together with the holders of our common stock (voting together as a single class and on an as-converted to common stock basis) for the election of the remaining directors.

Voluntary Conversion

At the option of the holder, each share of our Series A Senior Convertible Participating Preferred Stock is convertible into shares of our common stock at the then effective and applicable conversion rate.

Automatic Conversion

Each share of our Series A Senior Convertible Participating Preferred Stock automatically converts into shares of our common stock at the then effective and applicable conversion rate immediately prior to (i) the closing of an initial public offering where common stock is sold to the public for net proceeds of at least \$25 million and where our company has an implied valuation of at least \$250 million, (ii) the closing of (A) any merger, reorganization, consolidation or other transaction in which the holders of our capital stock immediately prior to such transaction do not retain a majority of the voting power in the continuing entity or (B) any sale, conveyance, exchange or transfer of all or substantially all of our property or assets, provided that in either case the consideration per share of common stock in such transaction exceeds \$10.50 plus any accrued but unpaid dividends thereon and (iii) the election of the holders of at least two-thirds of the shares of our outstanding Series A Senior Convertible Participating Preferred Stock.

Antidilution Protection

In the event we issue certain additional securities without consideration or for consideration per share less than the applicable conversion price of our Series A Senior Convertible Participating Preferred Stock, then the conversion rate of the Series A Senior Convertible Participating Preferred Stock shall be reduced concurrently with such issuance.

Protective Provisions

Our certificate of incorporation contains provisions that limit our ability to take certain actions without the approval of the holders of at least two-thirds of our Series A Senior Convertible Participating Preferred Stock. These actions include, among other things: (i) amending or repealing any provision of our certificate of incorporation or bylaws if such action would materially or adversely affect the preferences, rights, privileges or powers of the Series A Senior Convertible Participating Preferred Stock; (ii) authorizing or issuing shares of any class or series of stock, other than issuance of options and common stock pursuant to such options and as permitted by the Securities Purchase Agreement entered into between the holders of the Series A Senior Convertible Participating Preferred Stock and us; and (iii) effecting a sale of us, either by way of merger, sale or otherwise.

Description of Outstanding Warrants

We have outstanding five-year mandatory redeemable warrants to purchase 168,904 shares of our common stock for \$0.005 per share.

Registration Rights

We have entered into a shareholders' agreement with the holders of our Series A Senior Convertible participating Preferred Stock and some of the holders of our common stock. The holders of 28,580,398 shares of common stock and Series A Senior Convertible Participating Preferred Stock on an as-converted to common stock basis are entitled to registration rights with respect to their shares. Any group of holders of at least 10% of the securities with registration rights can require us to register all or part of their shares at any time following six months after our initial public offering, so long as the thresholds in the shareholders' agreement are met with respect to the amount of securities to be sold. After we have completed four such registrations we are no longer subject to these demand registration rights. In addition, the holders of securities with registration rights may also require us to include their shares in future registration statements that we file, subject to reduction at the option of the underwriters of such an offering. Upon any of these registrations, these shares will be freely tradable in the public market without restriction. We are obligated under the shareholders' agreement to pay the registration expenses incurred in connection with any registration, qualification or compliance relating to the exercise of a holder's registration rights. Additionally, we have agreed to indemnify and hold harmless holders (and their affiliates) of registrable securities covered by a registration statement against certain liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the holders (or their affiliates) may be required to make because of any of those liabilities.

Voting Agreement

On March 21, 2003, we entered into a letter agreement with Carr Holdings, LLC, LLR Equity Partners, L.P., LLR Equity Partners Parallel, L.P., Greenhill Capital Partners, L.P., Greenhill Capital Partners (Cayman), L.P., Greenhill Capital Partners, (Executives), L.P. and Greenhill Capital, L.P. Pursuant to such agreement, Carr Holdings, LLC agreed to sell an aggregate of 370,000 common shares to LLR Equity Partners, L.P., LLR Equity Partners Parallel, L.P., Greenhill Capital Partners, L.P., Greenhill Capital Partners (Cayman), L.P., Greenhill Capital Partners, (Executives), L.P. and Greenhill Capital, L.P. In connection with such sale, each buyer agreed either (i) not to vote any of the shares purchased by it in connection with any designation of directors under the Amended and Restated Shareholders' Agreement dated October 11, 2001, or (ii) to vote the shares purchased by it in favor of the directors designated by holders of a majority of our issued and outstanding shares of common stock, in each case for so long as Carr Holdings, LLC, The Robert O. Carr 2001 Charitable Remainder Unitrust and each of their respective permitted transferees own, in the aggregate, more than 50% of our issued and outstanding common stock.

Anti-Takeover Effects of Delaware Law

We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless:

prior to that date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned by persons who are directors and also officers and by excluding employee stock plans in which employee participants do not

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have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

on or subsequent to that date, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66²/₃% of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines "business combination" to include the following:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

Anti-Takeover Effects of Our Amended and Restated Certificate of Incorporation and Bylaws

Amended and Restated Certificate of Incorporation and Bylaw Provisions

Our amended and restated certificate of incorporation and bylaws include provisions that may have the effect of discouraging, delaying or preventing a change in control or an unsolicited acquisition proposal that a stockholder might consider favorable, including a proposal that might result in the payment of a premium over the market price for the shares held by stockholders.

Listing

We are not listed on any stock market or exchange.

Item 12. Indemnification of Directors and Officers

The information required by this item is contained under the section "Item 14 Indemnification of Officers and Directors" of the Registration Statement. That section is incorporated herein by reference.

Item 13. Financial Statements and Supplementary Data

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Heartland Payment Systems, Inc.

We have audited the accompanying consolidated balance sheets of Heartland Payment Systems, Inc. and subsidiary (the "Company") as of December 31, 2003 and 2004, and the related consolidated statements of operations, changes in stockholders' (deficit) equity, and cash flows for each of the three years in the period ended December 31, 2004. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States of America). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2003 and 2004, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 21, the accompanying consolidated financial statements have been restated.

/s/ Deloitte & Touche LLP

Princeton, New Jersey
March 28, 2005
(July 26, 2005
as to the effects of the matters
described in Note 20; July 18, 2005 as to
the restatement described in Note 21.)

HEARTLAND PAYMENT SYSTEMS, INC. AND SUBSIDIARY

CONSOLIDATED BALANCE SHEETS

(In thousands, except share data)

	December 31,		March 31,
	2003	2004	2005
	(As Restated See Note 21)	(As Restated See Note 21)	(As Restated See Note 21) (unaudited)
Assets			
Current assets			
Cash and cash equivalents	\$ 13,004	\$ 13,237	\$ 12,706
Receivables	44,934	64,325	64,664
Investments	1,354	1,100	1,340
Inventory	966	818	362
Prepaid expenses	611	2,151	2,989
Current deferred tax assets, net	3,684	2,129	2,179
	<u>64,553</u>	<u>83,760</u>	<u>84,240</u>
Total current assets	64,553	83,760	84,240
Capitalized customer acquisition costs, net	22,321	34,247	35,586
Deferred tax assets, net	7,783	4,651	4,488
Property and equipment, net	5,499	10,944	11,827
Deposits and other assets	586	324	251
	<u>100,742</u>	<u>133,926</u>	<u>136,392</u>
Total assets	\$ 100,742	\$ 133,926	\$ 136,392
Liabilities and stockholders' (deficit) equity			
Current liabilities			
Due to sponsor bank	\$ 34,225	\$ 45,153	\$ 45,465
Accounts payable	17,923	27,103	26,891
Current portion of accrued buyout liability	17,985	9,327	10,258
Merchant deposits and loss reserves	4,761	7,175	8,145
Accrued expenses and other	5,685	6,701	5,932
Current portion of borrowings and financing arrangement	3,654	5,286	5,227
	<u>84,233</u>	<u>100,745</u>	<u>101,918</u>
Total current liabilities	84,233	100,745	101,918
Long-term portion of borrowings and financing arrangements	12,312	7,808	7,324
Warrants with mandatory redemption provisions	2,111	1,566	1,655
Long-term portion of accrued buyout liability		17,708	16,665
	<u>98,656</u>	<u>127,827</u>	<u>127,562</u>
Total liabilities	98,656	127,827	127,562
Commitments and contingencies (Note 15)			
Series A Senior Convertible Participating Preferred Stock, \$80 million liquidation preference, \$.001 par value, 10,000,000 shares authorized, 7,619,048 issued and outstanding	43,401		
Stockholders' (deficit) equity:			
Series A Senior Convertible Participating Preferred Stock, \$80 million liquidation preference, \$.001 par value, 10,000,000 shares authorized, 7,619,048 issued and outstanding			
		8	8

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	<u>December 31,</u>	<u>March 31,</u>	
Common Stock, \$.001 par value, 100,000,000 shares authorized, 16,019,196, 16,437,760 and 16,451,080 issued and outstanding in 2003, 2004 and at the period ending March 31, 2005, respectively	8	8	8
Warrants outstanding	1,500		
Additional paid-in capital	1,001	41,065	41,110
Accumulated other comprehensive income (loss)	3	(10)	(18)
Accumulated deficit	(43,827)	(34,972)	(32,278)
	<u>(41,315)</u>	<u>6,099</u>	<u>8,830</u>
Total stockholders' (deficit) equity			
Total liabilities and stockholders' (deficit) equity	<u>\$ 100,742</u>	<u>\$ 133,926</u>	<u>\$ 136,392</u>

See notes to consolidated financial statements.

HEARTLAND PAYMENT SYSTEMS, INC. AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share data)

	Year Ended December 31,			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
	(unaudited)				
	(As Restated See Note 21)	(As Restated See Note 21)	(As Restated See Note 21)	(As Restated See Note 21)	
Revenue:					
Gross processing revenue	\$ 330,975	\$ 414,715	\$ 595,524	\$ 119,202	\$ 166,172
Other revenue, net	9,607	7,522	7,225	2,002	3,693
Total net revenue	340,582	422,237	602,749	121,204	169,865
Costs of services:					
Interchange	242,407	302,057	438,738	86,372	122,416
Dues and assessments	12,616	15,945	23,348	4,785	6,415
Processing and servicing	44,224	50,805	70,232	14,748	19,820
Customer acquisition costs	12,422	13,380	18,908	4,135	5,841
Depreciation and amortization	1,587	2,571	3,912	876	1,283
Total costs of services	313,256	384,758	555,138	110,916	155,775
Selling and administrative	20,786	25,751	31,501	7,233	8,989
Total expenses	334,042	410,509	586,639	118,149	164,764
Income from operations	6,540	11,728	16,110	3,055	5,101
Other income (expense):					
Interest income	171	124	182	38	110
Interest expense	(1,182)	(1,188)	(1,385)	(298)	(435)
Fair value adjustment for warrants with mandatory redemption provisions	(509)	(893)	(509)		(90)
Other, net	(62)	(740)	833	833	(3)
Total other income (expense)	(1,582)	(2,697)	(879)	573	(418)
Income before income taxes	4,958	9,031	15,231	3,628	4,683
Provision for (benefit from) income taxes	51	(11,102)	6,376	1,482	1,989
Net income	\$ 4,907	\$ 20,133	\$ 8,855	\$ 2,146	\$ 2,694
Accretion of Series A Senior Convertible Participating Preferred Stock	(6,509)				

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	Year Ended December 31,		Three Months Ended March 31,	
Income allocated to Series A Senior Convertible Participating Preferred Stock	(9,843)	(4,263)	(1,037)	(1,295)
Net (loss) income attributable to Common Stock	\$ (1,602)	\$ 10,290	\$ 4,592	\$ 1,109
Net income	\$ 4,907	\$ 20,133	\$ 8,855	\$ 2,146
Other comprehensive income, net of tax:				
Unrealized gains (losses) on investments	17	(14)	(13)	7
Comprehensive income	\$ 4,924	\$ 20,119	\$ 8,842	\$ 2,153
Earnings (loss) per share:				
Basic	\$ (0.10)	\$ 0.65	\$ 0.28	\$ 0.07
Diluted	\$ (0.10)	\$ 0.62	\$ 0.26	\$ 0.07
Weighted average number of shares outstanding:				
Basic	15,642	15,932	16,408	16,296
Diluted	15,642	32,231	33,786	32,871

See notes to consolidated financial statements.

HEARTLAND PAYMENT SYSTEMS, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' (DEFICIT) EQUITY
(In thousands)

	Preferred Stock		Common Stock			Additional Paid-In Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Warrants				
Balance, January 1, 2002 as previously reported		\$	15,440	\$	8	\$	\$	(47,916)	\$ (46,408)
Adjustments to as previously reported								(15,193)	(15,193)
Balance, January 1, 2002 (as restated see note 21)		\$	15,440	\$	8	\$	\$	(63,109)	\$ (61,601)
Issuance of Common Stock for commission buyout			124			282			282
Issuance of Common Stock in connection with Welsch Financial Merchant Services, Inc. purchase			284			670			670
Repurchase of Common Stock			(96)			(201)			(201)
Accretion of Series A Senior Convertible Participating Preferred Stock						(751)		(5,758)	(6,509)
Accumulated other comprehensive income							17		17
Net income for the period (as restated see note 21)								4,907	4,907
Balance, December 31, 2002 (as restated see note 21)		\$	15,752	\$	8	\$	\$	17	\$ (63,960) \$ (62,435)
Issuance of Common Stock for earnout provisions		\$	267	\$		\$			\$ 998
Issuance of Common Stock options exercised			2			11			11
Repurchase of Common Stock			(2)			(8)			(8)
Accumulated other comprehensive loss							(14)		(14)
Net income for the period (as restated see note 21)								20,133	20,133
Balance, December 31, 2003 (as restated see note 21)		\$	16,019	\$	8	\$	\$	3	\$ (43,827) \$ (41,315)
Reclassification of Series A Senior Convertible Participating Preferred Stock to stockholders' (deficit) equity	7,619	\$	8	\$		\$			\$ 43,401
Issuance of Common Stock options exercised			554			1,584			1,584
Redemption of warrants issued in connection with Series A Senior Convertible Participating Preferred					(1,500)	(3,750)			(5,250)

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	Preferred Stock		Common Stock		Accumulated Other Comprehensive Income	
Stock						
Repurchase of Common Stock					(1,231)	(1,231)
Deferred compensation on accelerated vesting of options		(135)			68	68
Accumulated other comprehensive income					(13)	(13)
Net income for the period (as restated see note 21)						8,855
Balance, December 31, 2004 (as restated see note 21)	7,619	\$ 8	16,438	\$ 8	\$ 41,065	(10) \$ (34,972) \$ 6,099
Issuance of Common Stock options exercised (unaudited)			13		45	45
Accumulated other comprehensive income (unaudited)					(8)	(8)
Net income for the period (unaudited)						2,694
Balance, March 31, 2005 (unaudited)	7,619	\$ 8	16,451	\$ 8	\$ 41,110	(18) \$ (32,278) \$ 8,830

See notes to consolidated financial statements.

HEARTLAND PAYMENT SYSTEMS, INC. AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	Year Ended December 31,			Three Months Ended March 31,	
	2002	2003	2004	2004	2005
				(unaudited)	
	(As Restated See Note 21)	(As Restated See Note 21)	(As Restated See Note 21)	(As Restated See Note 21)	
Cash flows from operating activities:					
Net income	\$ 4,907	\$ 20,133	\$ 8,855	\$ 2,146	\$ 2,694
Adjustments to reconcile net income to net cash (used in) provided by operating activities:					
Depreciation and amortization	10,359	15,394	22,740	4,686	6,844
Fair value adjustment for warrants with mandatory redemption provisions	509	893	509		90
Deferred compensation charge on accelerated vesting of options			68		
(Gain) loss on disposal of property and equipment	(44)	64			
Deferred taxes		(11,467)	4,687	1,003	113
Changes in operating assets and liabilities:					
Increase in receivables	(6,029)	(11,499)	(19,391)	(4,144)	(338)
(Increase) decrease in inventory	(351)	349	147	106	456
Increase in capitalized customer acquisition costs	(13,068)	(19,911)	(30,739)	(6,142)	(6,924)
(Increase) decrease in prepaid expenses	(1,113)	254	(1,796)	(386)	(830)
Decrease in deposits and other assets	497	95	262	347	24
Increase in due to sponsor bank and accounts payable	6,190	11,115	20,108	5,101	100
Increase (decrease) in accrued expenses and other	1,621	1,591	1,013	612	(768)
(Decrease) increase in merchant deposits and loss reserves	(1,684)	(407)	2,414	177	970
Increase (decrease) in accrued buyout liability	1,182	5,433	9,050	1,710	(112)
Net cash provided by operating activities	2,976	12,037	17,927	5,216	2,319
Cash flows from investing activities:					
Purchase of investments	(1,631)	(310)	(120)	(250)	(250)
Maturities of investments	146	469	362	252	1
Purchases of property and equipment	(3,621)	(3,666)	(9,115)	(1,119)	(2,102)
Proceeds from disposal of property and equipment	45				
Net cash used in investing activities	(5,061)	(3,507)	(8,873)	(1,117)	(2,351)
Cash flows from financing activities:					
Redemption of warrants issued in connection with Series A Senior Convertible Participating Preferred Stock			(5,250)		
Redemption of warrants issued in connection with debt financing			(1,055)	(1,055)	
Proceeds from debt issuance	3,609	500			
Principal payments on borrowings and financing arrangements	(6,297)	(4,102)	(2,869)	(934)	(544)
Issuance of Common Stock		11	1,584	(37)	45
Repurchase of Common Stock	(201)	(8)	(1,231)		

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	Year Ended December 31,			Three Months Ended March 31,	
Net cash used in financing activities	(2,889)	(3,599)	(8,821)	(2,026)	(499)
Net increase (decrease) in cash	(4,974)	4,931	233	2,073	(531)
Cash and cash equivalents, beginning of period	13,047	8,073	13,004	13,004	13,237
Cash and cash equivalents, end of period	\$ 8,073	\$ 13,004	\$ 13,237	\$ 15,077	\$ 12,706
Supplemental cash flow information:					
Cash paid for interest	\$ 1,178	\$ 1,164	\$ 1,387	\$ 225	\$ 409
Cash paid for income taxes	43	116	851	273	801
Supplemental schedule of non cash activities:					
Accretion of Series A Senior Convertible Participating Preferred Stock	6,509				
Value of merchant contract conversions assigned to satisfy financing arrangement	2,196				
Stock issued to satisfy buyout and earnout liabilities	952	999			
Amortization of other assets	216	255	255	64	64

See notes to consolidated financial statements.

HEARTLAND PAYMENT SYSTEMS, INC. AND SUBSIDIARY

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. ORGANIZATION AND OPERATIONS

The accompanying consolidated financial statements include those of Heartland Payment Systems, Inc. (the "Company") and its wholly-owned subsidiary, Heartland Payroll Company ("HPC"). All intercompany balances and transactions with the Company's wholly-owned subsidiary have been eliminated upon consolidation. The Company provides payment-processing services related to bank card transactions for merchants throughout the United States. In addition, the Company provides certain other merchant services, including the sale and rental of terminal equipment and supplies. HPC provides payroll and related tax filing services throughout the United States.

The officers and directors of the Company represent a majority of the outstanding shares, and so control the Company.

As discussed in Note 20, all outstanding common shares, average common shares, earnings per common share and conversion amounts related to stock options, warrants and Series A Senior Convertible Participating Preferred Stock have been retroactively adjusted to reflect a two-for-one stock split on July 26, 2005.

Use of Estimates The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Estimates include the accrued buyout liability, capitalized customer acquisition costs, loss reserves, certain accounts payable and accrued expenses and certain tax assets and liabilities as well as the related valuation allowances. Actual results could differ from those estimates.

Concentrations The majority of the Company's merchant processing activity is processed by a single vendor. The Company believes that the vendor maintains appropriate backup systems and alternative arrangements to avoid a significant disruption of processing in the event of an unforeseen event.

Substantially all of the Company's revenue is derived from processing Visa and MasterCard bank card transactions. Because the Company is not a "member bank" as defined by Visa and MasterCard, in order to process these bank card transactions the Company has entered into a sponsorship agreement with a bank. The agreement with the bank sponsor requires, among other things, that the Company abide by the by-laws and regulations of the Visa and MasterCard associations and maintain a certificate of deposit with the bank sponsor. If the Company breaches the sponsorship agreement, the bank sponsor may terminate the agreement and, under the terms of the agreement, the Company would have 180 days to identify an alternative bank sponsor. The Company is dependent on its bank sponsor, Visa and MasterCard for notification of any compliance breaches. As of December 31, 2004, the Company has not been notified of any such issues by its bank sponsor, Visa or MasterCard.

The Company processes for merchants throughout the United States. California represented 15.3% of the Company's total processing volume in December 2004.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Cash and Cash Equivalents The Company considers all highly liquid investments with original maturities of three months or less when purchased to be cash equivalents.

Receivables The Company carries receivables from its merchants resulting from the practice of advancing interchange fees to most of its merchants during the month and collecting those fees from merchants at the beginning of the following month. During each month, the Company's sponsor bank advances interchange fees to most of the Company's merchants so that during the month a payable to the sponsor bank is incurred. The payable to the sponsor bank is repaid at the beginning of the following month out of the fees the Company collects from its merchants.

Investments Investments consist of corporate and U.S. Government debt securities and certificates of deposit. The Company classifies its investments as available-for-sale and records them at the fair value of the investments based on quoted market prices. Cost is determined on a specific identification basis.

Inventories Inventories consist of point-of-sale terminal equipment held for sale to merchants, and are valued at the lower of cost or market price. Cost is arrived at using the first-in, first-out method. Market price is estimated based on current sales of equipment.

Capitalized Customer Acquisition Costs, net Capitalized customer acquisition costs consist of (1) up-front signing bonus payments made to Relationship Managers and sales managers for the establishment of new merchant relationships, and (2) a deferred acquisition cost representing the cost of buying out the commissions of vested sales employees. Pursuant to Staff Accounting Bulletin Topic 13, *Revenue Recognition*, and FASB Technical Bulletin No. 90-1, *Accounting for Separately Priced Extended Warranty and Product Maintenance Contracts*, capitalized customer acquisition costs represent incremental, direct customer acquisition costs that are recoverable through gross margins associated with merchant contracts. The capitalized customer acquisition costs are amortized using a method which approximates a proportional revenue approach over the initial three-year term of the merchant contract.

The up-front signing bonus is based on the estimated gross margin for the first year of the merchant contract. The signing bonus, amount capitalized, and related amortization are adjusted after one year to reflect the actual gross margin generated by the merchant contract during that year. The deferred customer acquisition cost asset is accrued over the first year of merchant processing, consistent with the build-up in the accrued buyout liability, as described below.

Management evaluates the capitalized customer acquisition costs for impairment at each balance sheet date by comparing, on a pooled basis by vintage month of origination, the expected future net cash flows from underlying merchant relationships to the carrying amount of the capitalized customer acquisition costs. If the estimated future net cash flows are lower than the recorded carrying amount, indicating an impairment of the value of the capitalized customer acquisition costs, the impairment loss will be charged to operations.

Property and Equipment Property and equipment are carried at cost, net of accumulated depreciation. Depreciation is computed straight-line over periods ranging from three to ten years for furniture and equipment. Leasehold improvements are amortized over the lesser of the economic useful life of the improvement or the term of the lease. The Company capitalizes the cost of computer software developed for internal use and amortizes such costs over an estimated useful life of three years.

Long-Lived Assets The Company evaluates the potential for impairment when changes in circumstances indicate that undiscounted cash flows estimated to be generated by the related assets are less than the carrying amount. Management believes that no such changes in circumstances or impairment have occurred as of December 31, 2004.

Merchant Deposits and Loss Reserves Disputes between a cardholder and a merchant periodically arise due to the cardholder's dissatisfaction with merchandise quality or the merchant's service, and the disputes may not always be resolved in the merchant's favor. In some of these cases, the transaction is "charged back" to the merchant and the purchase price is refunded to the cardholder by the credit card-issuing institution. If the merchant is unable to fund the refund, the Company is liable for the full amount of the transaction. The Company may have partial recourse to the Relationship Manager originally soliciting the merchant contract, if the Relationship Manager is still receiving income from the merchant's processing activities. During 2003, the Company adopted FIN 45. Under FIN 45 the Company's obligation to stand ready to perform is minimal. The Company maintains deposits or the pledge of a letter of credit from certain merchants as an offset to potential contingent liabilities that are the responsibility of such merchants. The Company evaluates its ultimate risk and records an estimate of potential loss for chargebacks related to merchant fraud based upon an assessment of actual historical fraud loss rates compared to expected processing volume levels.

Accrued Buyout Liability Relationship Managers and sales managers are paid residual commissions based on the gross margin generated by monthly merchant processing activity. Until May 2004, Relationship Managers and sales managers had the contractual right to sell their portfolio equity at a fixed multiple. The Company has the right to buy out some or all of these commissions, and intends to do so periodically. Because of the Company's intent and ability to execute purchases of the residual commissions, and the mutual understanding between the Company and the Relationship Managers and sales managers, the Company has accounted for this deferred compensation arrangement pursuant to the substantive nature of the plan. The Company therefore records the amount currently payable (the "settlement cost") to buy out non-servicing related commissions ("owned commissions") from vested Relationship Managers and sales managers, and an accrual, based on their progress towards vesting, for those unvested Relationship Managers and sales managers who are expected to vest in the future. As noted above, as the liability increases over the first year of a merchant contract, the Company also records for vested Relationship Managers and sales managers a related deferred acquisition cost asset. The accrued buyout liability associated with unvested Relationship Managers and sales managers is not included in the deferred acquisition cost asset since future services are required in order to vest. Subsequent changes in the settlement cost, due to account attrition, same-store sales growth and changes in gross margin, are included in the same income statement caption as customer acquisition cost amortization expense.

The accrued buyout liability is based on the merchants under contract at the balance sheet date, the gross margin generated over the prior 12 months, and the contractual buyout multiple. The liability related to a new merchant is therefore zero when the merchant is installed, and increases over the twelve months following the installation date. The same procedure is applied to unvested commissions over the expected vesting period, but is further adjusted to reflect the Company's experience that 31% of unvested Relationship Managers and sales managers become vested.

For December 31, 2004 and March 31, 2005, the classification of the accrued buyout liability between current and non-current liabilities on the consolidated balance sheet is based upon the