

RECOM MANAGED SYSTEMS INC DE/
Form SB-2/A
July 26, 2004

As filed with the Securities and Exchange Commission on July 23, 2004

Commission File No. 333 111683

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**Pre-Effective Amendment No. 3
to
Form SB-2
Registration Statement Under The Securities Act Of 1933**

Recom Managed Systems, Inc.
(Name of small business issuer in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

3845
(Primary Industrial Code)

87-0441351
(I.R.S. Employer
Identification No.)

Marvin H. Fink
Chief Executive Officer
4705 Laurel Canyon Boulevard, Suite 203
Studio City, California 91607
(818) 432-4560

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service of process)

Copies to

John M. Woodbury, Jr., Esq.
Of Counsel
Richardson & Patel LLP
10900 Wilshire Boulevard, Suite 500
Los Angeles, California 90024
Telephone (310) 208-1182

Approximate date of proposed sale to public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box:

If this Form is a post effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

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If delivery of this prospectus is expected to be made pursuant to Rule 434, please check the following box:

Calculation of Registration Fee

| Title of Each Class of Securities to be Registered | Amount to be Registered | Proposed Offering Price Per Share | Proposed Aggregate Offering Price | Amount of Registration Fee |
|--|--------------------------------|--|--|-----------------------------------|
| Common stock | 88,000 | \$ 7.23 (2) | \$ 635,800 | \$ 170.33 (5) |
| Common stock issued upon conversion of underlying series A convertible preferred stock (1) | 709,103 | \$ 3.15 (3) | \$ 2,233,674 | \$ 180.70 (4) |
| Common stock underlying series A convertible preferred stock | 55 | \$ 7.23 (2) | \$ 397 | \$ 0.11 |
| Common stock underlying series A convertible preferred stock | 1,083,817 | \$ 3.15 (3) | \$ 3,414,024 | \$ 276.19 (4) |
| Common stock underlying class C warrants | 28 | \$ 7.23 (2) | \$ 202 | \$ 0.05 |
| Common stock underlying class C warrants | 896,460 | \$ 3.15 (3) | \$ 2,823,849 | \$ 228.45 (4) |

| | | | | |
|--|------------------|----|----------|-------------------------------|
| Common stock underlying series A convertible preferred | | | | |
| stock underlying placement agent's warrants | 179,292 | \$ | 3.15 (3) | \$ 564,770 \$ 45.69 (4) |
| Common stock underlying placement agent's warrants | 89,646 | \$ | 3.15 (3) | \$ 282,385 \$ 22.84 (4) |
| Total | 3,046,401 | | | \$ 9,955,101 \$ 924.37 |

- (1) Included in prior filing of this registration statement as common stock underlying series A convertible preferred stock.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) of Regulation C as of the close of the market on April 30, 2004, based upon the average of the high and low prices for that date.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) of Regulation C as of the close of the market on December 26, 2003 based upon the average of the high and low prices for that date.
- (4) Previously paid in connection with the initial filing of this registration statement on January 2, 2004.
- (5) Previously paid in anticipation of the filing of amendment no. 2 to this registration statement.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We have filed a registration statement containing this prospectus with the Securities and Exchange Commission. The common Stock offered for sale under this prospectus may not be offered for sale or sold until that registration statement is declared effective by the Securities and Exchange Commission. This prospectus is not an offer to sell the common Shares and doesn't solicit an offer to purchase the common shares in any jurisdiction where this offer or sale is not otherwise permitted.

PRELIMINARY PROSPECTUS SUBJECT TO COMPLETION, DATED JULY 23, 2004

Prospectus

3,046,401 Common Shares

This prospectus relates to the offer and sale by some of our shareholders during the period in which the registration statement containing this prospectus is effective of up to 3,046,401 common shares, consisting of:

- 797,103 common shares;

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- 1,083,872 common shares underlying series A convertible preferred shares issued on October 2, 2003 to a number of investors pursuant to a private placement effected through Maxim Group, LLC, as placement agent;
- 896,488 common shares underlying class C common share purchase warrants issued to those investors under that private placement;
- 179,292 common shares underlying series A convertible preferred shares issuable under placement agent's unit purchase warrants granted to Maxim Group as agent's compensation under that private placement; and
- 89,646 common shares underlying class C common share purchase warrants also issuable under those placement agent's warrants.

This offering is not being underwritten. The common shares offered under this prospectus may be sold by the selling shareholders on the public market, in negotiated transactions with a broker-dealer or market maker as principal or agent, or in privately negotiated transactions not involving a broker or dealer. We will not receive any of the proceeds from those sales.

Our common shares trade on the Over-The-Counter Bulletin Board, also called the OTCBB, under the trading symbol RECM .

An investment in the common shares offered for sale under this prospectus involves a high degree of risk.

**See Risk Factors beginning on page
of this prospectus.**

Neither the United States Securities and Exchange Commission nor any state securities commission has approved or disapproved of the common shares offered for sale under this prospectus or the merits of that offering, or has determined that this prospectus is truthful or complete.

Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2004

**4705 Laurel Canyon Boulevard, Suite 203, Studio City, California 91607
(818) 432-4560**

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PROSPECTUS SUMMARY

This summary highlights important information about our company and business. Because it is a summary, it may not contain all of the information that is important to you. To understand this offering fully, you should read this entire prospectus and the financial statements and related notes included in this prospectus carefully. Unless the context requires otherwise, *Recom*, *we*, *us*, *our* and similar terms refer to Recom Managed Systems, Inc.

On April 11, 2003, we effected a split in our common shares on a 3:1 forward basis through the mechanism of a stock dividend. Whenever we make any reference in this prospectus to the grant or issuance of common shares or options or warrants to purchase common shares, such reference shall, for comparison purposes, be made in reference to post-split numbers and, in the case of options and warrants, exercise prices, unless we state otherwise.

The Company And Business

Recom is a development stage medical device company focused on researching, developing and marketing medical devices which monitor and measure physiological signals in order to detect diseases that impact an individual's health. Physiological signals are small bioelectrical signals generated by the body. Our initial product will be patient modules used as part of a heart monitor system to acquire, amplify and process physiological signals associated with a patient's cardiovascular system. Heart monitor systems are used by heart specialists known as cardiologists to collect physiological data for electrocardiogram or ECG tests for the purpose of detecting and identifying cardiovascular disease. Our patient module will operate using a proprietary and patented amplification technology which provides the capability to enlarge and process the physiological signals to discriminate them from ambient or background electromagnetic noise and to facilitate the examination of the signal data for diagnostic purposes. Our amplification technology is an enhancement of an amplification technology first developed for the United States Air Force to record bioelectrical signals from a pilot's brain, known as an electroencephalogram or EEG. The technology was also used by the National Institute of Health as well as companies such as Titan Systems and Teledyne, Inc. for purposes of monitoring different physiological signals.

We are in the process of completing development work on our first product for commercialization, our battery-operated, digital 12-lead Recom Model 100 Patient Module or Model 100 Module. The Model 100 Module will be used as the primary component of a 12-lead ambulatory heart monitor system, referred to as the Model 100 Monitor System. The Model 100 Monitor System is an ambulatory patient heart monitor or recording system that will allow a patient's heart to be continuously monitored over a period of 24 to 48 hours while the patient carries out his or her daily activities away from the physician's office or hospital. We anticipate that we will complete a pre production model of the Model 100 Module by the end of 2004, and that we will commence marketing the Model 100 Module by the end of 2005.

As of July 15, 2004, we had issued and outstanding 34,082,941 common shares, 1,083,872 series A preferred shares, and common share purchase options and warrants entitling the holders to purchase up to 5,398,801 common shares.

Our corporate offices are located at 4705 Laurel Canyon Boulevard, Suite 203, Studio City, California 91607. Our telephone number is (818) 432-4560.

The Offering

This prospectus relates to the offer and sale by some of our shareholders during the period in which the registration statement containing this prospectus is effective of up to 3,046,401 common shares, consisting of:

- 797,103 common shares;

- 1,083,872 common shares underlying series A convertible preferred shares issued on October 2, 2003 to a number of investors pursuant to a private placement effected through Maxim Group, LLC, as placement agent;
- 896,488 common shares underlying class C common share purchase warrants issued to those investors under that private placement;
- 179,292 common shares underlying series A convertible preferred shares issuable under placement agent's unit purchase warrants granted to Maxim Group as agent's compensation under that private placement; and
- 89,646 common shares underlying class C common share purchase warrants also issuable under those placement agent's warrants.

The common shares offered under this prospectus may be sold by the selling shareholders on the public market, in negotiated transactions with a broker-dealer or market maker as principal or agent, or in privately negotiated transactions not involving a broker or dealer. Information regarding the selling shareholders, the common shares they are offering to sell under this prospectus, and the times and manner in which they may offer and sell those shares is provided in the sections of this prospectus captioned *Selling Shareholders*, *Registration Rights* and *Plan of Distribution*. We will not receive any of the proceeds from those sales. Should the selling shareholders in their discretion exercise the class C common share purchase warrants underlying the common shares offered under this prospectus, we would, however, receive the exercise price for those warrants. The registration of common shares pursuant to this prospectus does not necessarily mean that any of those shares will ultimately be offered or sold by the selling shareholders.

Summary Financial Data

The following tables summarize the consolidated statements of operations and balance sheet data for our company for the periods or as of the dates indicated, respectively:

| | Three-Month Interim Period Ended | | Year Ended | |
|--|----------------------------------|----------------|----------------|--------------|
| | March 31, | | December 31, | |
| | 2004 | 2003 | 2003 | 2002 |
| Consolidated Statements of Operations Data: | | | | |
| Revenue | \$ | \$ | \$ | \$ |
| Research and development expenses | \$ (190,255) | \$ (30,083) | \$ (497,631) | \$ (67,500) |
| General and administrative expenses | \$ (946,154) | \$ (1,369,126) | \$ (4,813,746) | \$ (144,454) |
| Net loss | \$ (1,136,409) | \$ (1,399,209) | \$ (5,311,377) | \$ (211,954) |
| Preferred dividend | \$ (109,334) | \$ | \$ (1,953,170) | \$ |
| Net loss attributed to common stockholders | \$ (1,245,743) | \$ (1,399,209) | \$ (7,264,547) | \$ (211,954) |
| Basic and diluted loss per share | \$ (0.03) | \$ (0.04) | \$ (0.17) | \$ (0.02) |
| Basic and diluted loss per share attributed to common stockholders | \$ (0.04) | \$ (0.04) | \$ (0.23) | \$ (0.02) |
| Weighted average shares outstanding, basic and diluted | 33,072,549 | 31,250,844 | 31,765,404 | 11,609,162 |
| Consolidated Balance Sheet Data: | | | | |
| Current assets | \$ 3,341,174 | | \$ 4,088,469 | |
| Total assets | \$ 3,682,235 | | \$ 4,415,596 | |

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| | | |
|--|--------------|--------------|
| Current liabilities | \$ 372,308 | \$ 590,856 |
| Total liabilities | \$ 372,308 | \$ 590,586 |
| Total stockholders' equity | \$ 3,309,927 | \$ 3,824,740 |
| Total liabilities and stockholders' equity | \$ 3,682,235 | \$ 4,415,596 |

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RISK FACTORS

An investment in our common shares involves a high degree of risk and is subject to many uncertainties. These risks and uncertainties may adversely affect our business, operating results and financial condition. In such an event, the trading price for our common shares could decline substantially, and you could lose all or part of your investment. In order to attain an appreciation for these risks and uncertainties, you should read this prospectus in its entirety and consider all of the information and advisements contained in this prospectus, including the following risk factors and uncertainties.

Risks Relating To Our Business

Our limited operating history will make it difficult for you to predict our future operating results and to otherwise assess or predict the likelihood of our business success.

To date, we are a development stage company principally engaged in research and development, organizational and startup activities which has not yet introduced our heart monitoring products to market. Our limited operating history will make it difficult, if not impossible, to predict future operating results and to assess the likelihood of our business success in considering an investment in our company. Risks and issues inherent in the establishment and expansion of a new business enterprise which we face include, among others, problems of entering new markets, marketing new technologies, hiring and training personnel, acquiring reliable facilities and equipment, and implementing operational controls. As a development stage company, we are also subject to risks and or levels of risk that are often greater than those encountered by companies with established operations and relationships. Development stage companies often require significant capital from sources other than operations. Since we are a start-up business, our management and employees will shoulder the burdens of the business operations and a workload associated with company growth and capitalization that is disproportionately greater than that for an established business. We cannot give you any assurance that we will successfully address these risks. Our prospects must be considered speculative, which may limit our ability to encourage further investment in our company.

We have no revenues to date and have accumulated losses since our inception. Our continued inability to generate revenues and profits could cause us to go out of business.

We have incurred cumulative net losses after preferred dividends in the amount of \$8,808,913 from our inception through March 31, 2004. We have no commercial product sales or revenues to date, and do not anticipate that we will commence commercial sales of our heart monitoring products until the end of fiscal 2005. Once we commence marketing our heart monitoring products, we project that we will not be cash flow positive based solely on projected sales and service revenues less manufacturing, general and administrative, marketing expenses and other operating costs revenues for an indefinite period of time. We anticipate that we will continue to incur substantial operating losses for the foreseeable future, notwithstanding any anticipated revenues we may receive when our products are initially introduced to markets, due to the significant costs associated with the development and marketing of our products and services.

Our inability to raise additional working capital would impede our ability to fund our operations and to otherwise execute our business plan, leading to the reduction or suspension of our operations and ultimately our going out of business.

We currently have approximately \$2,500,000 of cash on hand, which we project will fund our anticipated costs through mid-August 2005, although this coverage could be less than that period as the result of changes in our anticipated level of operations, higher than expected costs such as through an acquisition of new products, or changes in our business plans. As noted in the prior risk factor, we do not anticipate that we will commence commercial sales of our heart monitoring products until the end of fiscal 2005, and further anticipate that after such introduction we will continue to be cash flow negative due to our costs exceeding our revenues for an indefinite

period of time. Based upon the foregoing, we believe that it is highly likely that we will need to raise additional cash and working capital to cover an expected shortfall in our cash and working capital until such time, if any, as we become cash-flow positive. We currently do not have any binding commitments for, or readily available sources of, additional financing. Should we determine it to be necessary to raise additional cash in the future as our current cash and working capital resources are depleted, we will seek to raise it through the public or private sales of debt or equity securities, the procurement of advances on contracts or licenses, funding from joint-venture or strategic partners, debt financing or short-term loans, or a combination of the foregoing. We may also seek to satisfy indebtedness without any cash outlay through the private issuance of debt or equity securities. We cannot give you any assurance that we will be able to secure the additional cash or working capital we may require to continue our operations.

Even if we are able to raise additional financing, we might not be able to obtain it on terms that are not unduly expensive or burdensome to the company or disadvantageous to our existing shareholders.

Even if we are able to raise additional cash or working capital through the public or private sale of debt or equity securities, the procurement of advances on contracts or licenses, funding from joint-venture or strategic partners, debt financing or short-term loans, or the satisfaction of indebtedness without any cash outlay through the private issuance of debt or equity securities, the terms of such transactions may be unduly expense or burdensome to the company or disadvantageous to our existing shareholders. For example, we may be forced to sell or issue our securities at significant discounts to market, or pursuant to onerous terms and conditions, including the issuance of preferred stock with disadvantageous dividend, voting or veto, board membership, conversion, redemption or liquidation provisions; the issuance of convertible debt with disadvantageous interest rates and conversion features; the issuance of warrants with cashless exercise features; the issuance of securities with anti-dilution provisions; and the grant of registration rights with significant penalties for the failure to quickly register. If we raise debt financing, we may be required to secure the financing with all of our business assets, which could be sold or retained by the creditor should we default in our payment obligations. We also might be required to sell or license our products or technologies under disadvantageous circumstances we would not otherwise consider, including granting licenses with low royalty rates and exclusivity provisions.

Our products are highly regulated. We may be unsuccessful in obtaining regulatory approvals for our products in various key markets, which would impede our ability to grow our revenues, generate profits and to otherwise execute our business plan. Our failure to receive the regulatory approvals in the United States would likely cause us to go out of business.

The manufacture, sale, promotion and marketing of our heart monitoring products and other products we intend to develop are subject to regulation by the FDA and similar government regulatory bodies in other countries. As we develop or obtain new products we will be required to determine what regulatory requirements, if any, we must comply with in order to market and sell our products in the United States and worldwide. The process of obtaining regulatory approval could take years and be very costly, if approval can be obtained at all. If we fail to comply with these requirements, we could be subjected to enforcement actions such as an injunction to stop us from marketing the product at issue or a possible seizure of our assets. We intend to work diligently to assure compliance with all applicable regulations that impact our business. We cannot assure you, however, that we will be able to obtain regulatory approval for all of our products or that, in the future, additional regulations will not be enacted which might adversely impact our operations.

Because we are not diversified, we are subject to a greater risk of going out of business should our single proposed product line fail.

The only business opportunities we are presently pursuing are the heart monitoring or ECG market and, later, using the same technology, the neurological brain scan or EEG market. Unlike many established companies that are

diversified, we do not presently have other businesses, properties, investments or other income producing assets upon which we could rely upon should our single product line fail, thereby increasing the risk of our going out of business.

The inability of our customers to receive third party reimbursements for our products would impede our ability to grow our revenues, generate profits and to otherwise execute our business plan.

We intend to sell our heart monitoring products to individual patients and doctors, hospitals and clinics who will seek reimbursement from various third party payers, including government health programs, private health insurance plans, managed care organizations and other similar programs. We cannot assure you that reimbursement will be available from third party payers or, if available, that the reimbursement policies of the third party payers will not adversely affect our ability to sell our product profitably. If our customers are not reimbursed by third party payers or if the reimbursement by third party payers is too low, our business may be adversely affected and the value of your investment will decline.

We intend to rely upon licensees, strategic partners or third party marketing and distribution partners to provide a significant part of our marketing and sales functions. Should these outside parties fail to perform as expected, we will need to develop or procure other marketing and distribution channels, which would cause delays or interruptions in our product supply and result in the loss of significant sales or customers.

We currently have no internal sales, marketing and distribution capabilities, and will rely extensively on third-party licensees, strategic partners or third party marketing and distribution companies to perform a significant part of those functions. As a consequence of that reliance, our ability to effectively market and distribute our products will be dependent in large part on the strength and financial condition of others, the expertise and relationships of those third-parties with customers, and the interest of those parties in selling and marketing our products. Prospective third-party licensees, strategic partners and marketing and distribution parties may also market and distribute the products of other companies. If our relationships with any third-party licensees, strategic partners or marketing and distribution partners were to terminate, we would need to either develop alternative relationships or develop our own internal sales and marketing forces to continue to sell our products. Even if we are able to develop our internal sales, marketing and distribution capabilities, these efforts would require significant cash and other resources that would be diverted from other uses, if available at all, and could cause delays or interruptions in our product supply to customers, which could result in the loss of significant sales or customers. We can give you no assurance that we will be successful in our efforts to engage licensees, strategic partners or third party marketing and distribution companies to meet our sales, marketing and distribution requirements.

We intend to rely upon the third-party FDA-approved manufacturers or suppliers to manufacture our heart monitoring products. Should these manufacturers fail to perform as expected, we will need to develop or procure other manufacturing sources, which would cause delays or interruptions in our product supply and result in the loss of significant sales or customers.

We currently have no internal manufacturing capability, and will rely extensively on FDA-approved licensees, strategic partners or third party contract manufacturers or suppliers. A delay or interruption in the supply of components or finished products could adversely affect our ability to introduce our products onto the market. Should we be forced to manufacture our products, we cannot give you any assurance that we will be able to develop an internal manufacturing capability or procure third party suppliers. Moreover, we cannot give you any assurance that any contract manufacturers or suppliers we procure will be able to supply our product in a timely or cost effective manner or in accordance with applicable regulatory requirements or our specifications.

We are dependent for our success on a few key executive officers. Were we to lose one or more of these key executive officers, we would be forced to expend significant time and money in the pursuit of a replacement, which would result in both a delay in the implementation of our business plan and the diversion of working capital.

Our success depends to a critical extent on the continued efforts of services of our Chief Executive Officer, Mr. Marvin H. Fink, and our Vice President and Chief Technology Officer, Dr. Budimir S. Drakulic. Were we to lose one or more of these key executive officers, we would be forced to expend significant time and money in the pursuit of a replacement, which would result in both a delay in the implementation of our business plan and the diversion of working capital. We can give you no assurance that we can find satisfactory replacements for these key executive officers at all, or on terms that are not unduly expensive or burdensome to our company. Although Mr. Fink has signed an employment agreement pursuant to which he will provide continued services to the company until October 12, 2006, and Dr. Drakulic is employed as a consultant under a loan-out agreement through October 15, 2012, these agreements will not preclude either of these key officers from leaving the company. We currently maintain key man life insurance policies in the amount of \$1 million with respect to Mr. Fink and \$3 million with respect to Dr. Drakulic which will assist us in recouping some of our costs in the event of the death of those officers.

Our inability to protect our intellectual property rights could allow competitors to use our property rights and technologies in competition against our company, which would impede our ability to introduce our heart monitoring products to market and to otherwise grow our revenues and generate profits.

We rely on a combination of patent, patent pending, copyright, trademark and trade secret laws, proprietary rights agreements and non-disclosure agreements to protect our intellectual properties. We cannot give you any assurance that these measures will prove to be effective in protecting our intellectual properties. Our inability to protect our intellectual property rights could allow competitors to use our property rights and technologies in competition against our company, which would impede our ability to introduce our heart monitoring products to market and to otherwise grow our revenues and generate profits.

In the case of patents, we cannot give you any assurance that our existing patents will not be invalidated, that any patents that we currently or prospectively apply for will be granted, or that any of these patents will ultimately provide significant commercial benefits. Further, competing companies may circumvent any patents that we may hold by developing products which closely emulate but do not infringe our patents. While we intend to seek patent protection for our products in selected foreign countries, those patents may not receive the same degree of protection as they would in the United States. We can give you no assurance that we will be able to successfully defend our patents and proprietary rights in any action we may file for patent infringement. Similarly, we can give you any assurance that we will not be required to defend against litigation involving the patents or proprietary rights of others, or that we will be able to obtain licenses for these rights. Legal and accounting costs relating to prosecuting or defending patent infringement litigation may be substantial.

We also rely on proprietary designs, technologies, processes and know-how not eligible for patent protection. We cannot give you any assurance that our competitors will not independently develop the same or superior designs, technologies, processes and know-how.

While we have and will continue to enter into proprietary rights agreements with our employees and third parties giving us proprietary rights to certain technology developed by those employees or parties while engaged by our company, we can give you no assurance that courts of competent jurisdiction will enforce those agreements.

Risks Relating To An Investment In Our Securities

Our common shares are sporadically or thinly traded, so you may be unable to sell at or near ask prices or at all if you need to sell your shares to raise money or otherwise desire to liquidate your shares

Our common shares have historically been sporadically or thinly traded on the OTCBB, meaning that the number of persons interested in purchasing our common shares at or near ask prices at any given time may be relatively small or non-existent. This situation is attributable to a number of factors, including the fact that we are a small company which is relat