Owens Corning
Form 4
August 06, 2008

FORM 4

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL

OMB Number:	3235-0287
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(Print or Type Responses)

1. Name and Address of Reporting Person *
COLVILLE WILLIAM W
(Last) (First) (Middle)
ONE OWENS CORNING PARKWAY
(Street)
TOLEDO, OH 43659
(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
Owens Corning [OC]

3. Date of Earliest Transaction (Month/Day/Year)
08/04/2008

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer
(Check all applicable)
__X__ Director _____ 10% Owner
_____ Officer (give title below) _____ Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			
$.01 Par Value Common	08/04/2008		A		717 (1)	A	$ 0	10,536	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Nu Deriv Secur Bene Owne Follo Repo Trans (Instr
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares		

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
COLVILLE WILLIAM W ONE OWENS CORNING PARKWAY TOLEDO, OH 43659	X			

Signatures

Rodney A. Nowland by POA filed 10/27/06	08/06/2008
**Signature of Reporting Person	Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) Deferred share portion of quarterly Director retainer/fees.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. expenses due to reduced headcount of 14% from the 2002 Quarter to the 2003 Quarter (including reductions in force implemented in April and October of 2002 and January 2003), (ii) reduced marketing and travel related expenses, (iii) reduced legal fees, and (iv) reduced facility related expenses, including office rent, depreciation and utilities primarily resulting from the consolidation of field offices and the move of the corporate headquarters to a new facility. As we continue to realize the savings from 19 the consolidations of office space and continue to scrutinize all discretionary expenses and evaluate reductions in non-strategic programs, we anticipate selling, general and administration expenses as a percentage of total revenues will remain flat or decrease in future periods. Research and development costs. Research and development costs decreased by $400,000 or 7%, to $5.4 million in the 2003 Quarter, from $5.8 million in the 2002 Quarter and by $3.0 million or 16%, to $15.3 million in the 2003 Period, from $18.3 million in the 2002 Period. The decrease in both the 2003 Quarter and 2003 Period was primarily due to a decrease in salaries and related expenses due to the reductions in force implemented in April and October of 2002, which reduced headcount by 26% in these departments from the 2002 Quarter to the 2003 Quarter. These reductions were primarily related to the decision not to continue developing, marketing or selling the PortalMinder product. The decrease was partially offset by an increase in consulting expenses related to the continued leverage of offshore third-party contractors used to perform certain testing of our products. We recognize that our

investment in research and development is required to remain competitive and, therefore, we expect that our research and development expenses may increase in future periods due to the continued development of our products and services. Other income, net. Other income, net, which is comprised primarily of interest income earned on our cash and marketable securities, decreased by $100,000 or 20%, to $400,000 in the 2003 Quarter, from $500,000 in the 2002 Quarter and by $700,000 or 37%, to $1.2 million in the 2003 Period, from $1.9 million in the 2002 Period. The decrease in both the 2003 Quarter and 2003 Period was attributable primarily to a decline in the average interest rates earned on our marketable securities balances coupled with slightly lower average cash and marketable securities balances as compared to the prior year. Provision for income taxes. The provision for income taxes was $63,000 in the 2003 Quarter as compared to $0 in the 2002 Quarter and was $122,000 in the 2003 Period and $40,000 in the 2002 Period. The increase in both the 2003 Quarter and 2003 Period was attributable to an increase in state and foreign taxes in the current periods over the same periods of the prior year. LIQUIDITY AND CAPITAL RESOURCES Cash provided by operating activities in the 2003 Period was $7.5 million, primarily due to a decrease in accounts receivable as the result of strong cash collections in the 2003 Period and an increase in deferred revenue as a result of an increase in maintenance renewals, partially offset by the net loss for the period and a decrease in accrued expenses primarily related to the timing of payments. Cash used in investing activities was $24.3 million in the 2003 Period. Investing activities for the period consisted primarily of the purchases of marketable securities of approximately $60.2 million, and the purchase of $1.9 million of property and equipment, primarily computer related equipment and software, offset by the proceeds from sales and maturities of marketable securities of approximately $37.5 million. Cash provided by financing activities in the 2003 Period was approximately $1.1 million, which related to the exercise of employee stock options and stock purchased by employees as part of the employee stock purchase plan. As of September 30, 2003, we had cash and cash equivalents totaling $10.0 million, short-term available-for-sale securities of approximately $62.4 million and working capital of $57.8 million. In addition, we had long-term available-for-sale securities totaling $20.7 million as of September 30, 2003. Pursuant to the terms of an asset purchase agreement dated October 10, 2003, we sold certain assets and liabilities related to our portal technology for approximately $5.1 million in cash. In conjunction with this sale, we also closed our Bellevue facility and consolidated our research and development operations in Waltham. As a result of these transactions, we expect to report a net gain in the range of $4.0 - $4.5 million during the fourth quarter of 2003. Any increase or decrease in our accounts receivable balance and accounts receivable days outstanding (calculated as net accounts receivable divided by revenue per day) will affect our cash flow from operations and liquidity. Our accounts receivable and accounts receivable days outstanding may increase due to changes in factors such as the timing of when sales are invoiced and length of customers' payment cycles. We also record deferred maintenance billings as accounts receivable, and the timing of these billings affects the accounts receivable days outstanding. Historically, international and indirect customers pay at a lower rate than domestic and direct customers. An increase in revenues generated from international and indirect customers may increase our accounts receivable days outstanding and accounts receivable balance. Due to the current economic climate, we may observe an increase in the length of our customers' payment cycles and as a result our days sales outstanding may increase in future periods. To the extent that our accounts receivable balance increases, we may incur increased bad debt expense and will be subject to greater general credit risks. 20 In the past, we experienced a period of rapid growth, which resulted in significant increases in our operating expenses. Over the past two years, due to the effects of general economic conditions, we have made considerable efforts to reduce our operating expenses through constrained spending, reductions in workforce and better alignment of our cost structure to our revenues. While we anticipate that our operating expenses and capital expenditures will constitute a material use of our cash resources, we may also utilize cash resources to fund acquisitions or investments in businesses, technologies, products or services that are complementary to our business. We believe that our existing cash and cash equivalent balances together with our available-for-sale securities will be sufficient to meet our anticipated cash requirements for working capital and capital expenditures for at least the next twelve months. COMMITMENTS, CONTRACTUAL OBLIGATIONS, AND OFF-BALANCE SHEET ARRANGEMENTS We have commitments that expire at various times through 2010. Operating leases shown below are primarily for facility costs for our corporate headquarters and worldwide sales offices. Other contractual obligations primarily consist of minimum royalty fees payable by Netegrity in connection with a software license and distribution agreement, which we entered into in January 2003. There were no off-balance sheet arrangements as of September 30, 2003. LESS THAN 1 AFTER 5 TOTAL YEAR 1-3 YEARS 4-5 YEARS YEARS -------- ------- --------- --------- ------- (IN THOUSANDS) Operating Leases................ $ 10,087 $

2,750 $ 3,449 $ 3,467 $ 421 Other Contractual Obligations.... 3,325 1,375 1,950 -- -- -------- ------- ------- ------- ------ Total........................... $ 13,412 $ 4,125 $ 5,399 $ 3,467 $ 421 ======== ======= ======= ======= ====== Included in the operating lease commitments above is approximately $400,000 related to excess facilities which have been accrued in purchase accounting and are payable through April 2004. We incurred total operating lease expense, primarily related to certain facilities and equipment under non-cancelable operating leases, of approximately $1.0 million and $3.0 million for the three and nine months ended September 30, 2003, respectively. In April 2002, we entered into an agreement with a system integrator to assist us in the development and launch of one of our products. Under the terms of the agreement, for consideration of the system integrator's time in assisting with the development of the product, we agreed to promote the system integrator as an integrator of the developed product. Our obligation under the agreement will be considered satisfied once the system integrator receives consulting revenues totaling approximately $3.9 million from our customers, or by April 2004, whichever occurs first. In the event that we recommend a competitor of the system integrator to perform the integration work for a customer, we could potentially owe a royalty to the system integrator based on the net license fee. As of September 30, 2003, no royalties were due to the system integrator. In August 2002, we entered into a five year non-cancelable operating lease for an office building for our corporate headquarters. We moved into the new facility in March 2003. In connection with the lease agreement, we delivered an irrevocable, unconditional, negotiable letter of credit in the amount of $800,000 as a security deposit. Additionally, we spent approximately $1.0 million in leasehold improvements to build out the new facility in the nine months ended September 30, 2003. In January 2003, we entered into a software license and distribution agreement, as amended in March 2003, under which we were granted the right to sublicense the use of a provisioning application software program. In addition, we were granted certain rights to integrate or combine the software into our existing products. In exchange for these rights, we have agreed to pay a quarterly royalty fee based on a percentage of the net license fees we charge our customers for the software. The minimum royalty fees due in the first, second and third years of the agreement are approximately $1.0 million, $1.4 million and $1.6 million, respectively. The initial term of this agreement is three years. After the first year of the agreement, we have the right to terminate the agreement without cause. As of September 30, 2003, we became obligated to pay $675,000 in royalties under this agreement, of which $450,000 had been paid and $225,000 was accrued. We enter into standard indemnification agreements with our business partners or customers in our ordinary course of business. Pursuant to these agreements, we agree to repair or replace the product, pay royalties for a right to use, or reimburse the indemnified party for actual damages awarded by a court against the indemnified party for an intellectual property infringement claim by a third party with respect to our products. The term of these indemnification agreements is generally perpetual. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited. We have never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, we believe the estimated fair 21 value of these agreements is minimal. Accordingly, we have no liabilities recorded for these agreements as of September 30, 2003. We enter into standard indemnification agreements with our customers, whereby we indemnify them for certain damages, such as personal property damage, which may be caused in connection with consulting services performed at a customer site by our employees or our subcontractors. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited. However, we have general and umbrella insurance policies that enable us to recover a portion of any amounts paid. We have never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, we believe the estimated fair value of these agreements is minimal. Accordingly, we have no liabilities recorded for these agreements as of September 30, 2003. We generally warrant for ninety days from delivery to a customer that our software products will perform free from material errors which prevent performance in accordance with user documentation. Additionally, we warrant that our consulting services will be performed consistent with generally accepted industry standards. We have never incurred significant expense under our product or service warranties. As a result, we believe the estimated fair value of these agreements is minimal. Accordingly, we have no liabilities recorded for these agreements as of September 30, 2003. We have entered into employment and executive retention agreements with certain employees and executive officers, which, among other things, include certain severance and change of control provisions. We have also entered into agreements whereby we indemnify our officers and directors for certain events or occurrences while the officer or director is, or was, serving at our request in such capacity. From time to time, we are involved in litigation relating to claims arising out of our operations in the normal course of business. We are not presently a party to any legal proceedings, the adverse outcome of which, in our opinion, would have a material adverse effect on our results of operations or financial position. CERTAIN FACTORS THAT MAY AFFECT FUTURE RESULTS WE HAVE INCURRED SUBSTANTIAL LOSSES AND MAY NOT BE PROFITABLE IN THE FUTURE. In recent years, we have incurred substantial operating losses. While we recently returned to profitability, we cannot predict if we will maintain profitability for any substantial period of time. To sustain operating profitability on a quarterly and annual basis, we will need to continue to increase our revenues, particularly our license revenues. Failure to maintain levels of profitability as expected by investors may adversely affect the market price of our common stock. In the nine months ended September 30, 2003, we had a net loss of $6.7 million and an accumulated deficit of $113.5 million as of September 30, 2003. OUR QUARTERLY RESULTS MAY FLUCTUATE WIDELY. Our quarterly revenues and operating results are difficult to predict and may continue to fluctuate significantly from quarter to quarter for several reasons, including, but not limited to, the following: - customers choosing to delay their purchase commitments or purchase in smaller than expected quantities due to a general slowdown in the economy or in anticipation of the introduction of new products by us or our competitors; - market acceptance of our SiteMinder(R), IdentityMinder(TM)and TransactionMinder(R)products; - our success in obtaining follow-on sales to existing customers; - the long sales and deployment cycle of our products; - our ability to hire and retain personnel, particularly in development, services and sales and marketing; - the loss of or changes in key management personnel; - the timing of the release of new versions of SiteMinder, IdentityMinder and TransactionMinder products or other products; - pricing pressures that result in increased discounts or changes in our or competitors' pricing policies; 22 - changes in our operating expenses; - the development of our direct and indirect distribution channels; - integration issues with acquired technology; and - general economic conditions. In addition, because our revenues from services, particularly maintenance revenues, are largely correlated with our software revenues, a decline in software revenues could also cause a decline in our services revenues in the same quarter or in subsequent quarters. Other factors, many of which are outside our control, could also cause variations in our quarterly revenues and operating results. Most of our expenses, such as employee compensation and rent, are relatively fixed. As a result, any shortfall in revenues in relation to our expectations could cause significant changes in our operating results from quarter to quarter and could result in future losses. OUR SUCCESS WILL DEPEND ON OUR ABILITY TO MARKET OUR PRODUCTS AND RELATED SERVICES SUCCESSFULLY. Our revenues are primarily generated from the sale of perpetual licenses for our proprietary SiteMinder(R), IdentityMinder(TM) and TransactionMinder(R) products and related services. Broad market acceptance of our products will depend on the continued development of a market for identity and access management, the education of our customers on the use of business software applications in general and the relevance of our products specifically. Market acceptance for our products, and customer demand for the services they provide, may not develop. We have recently released several new product offerings. If we fail to gain market acceptance for these products, it could have a material adverse effect on our business, operating results and financial position. Additionally, with the reduction in information technology spending in all industries we will need to be successful in conveying the value of our products to customers who may be hesitant to replace a "homegrown" system due to the costs involved with switching to a purchased solution. Our ability to succeed in the market for our products depends in part on our ability to provide support services on a 24 hour per day, seven-day per week basis. Any damage or disruptions to our service centers, including our service center in Malaysia, whether as a result of employee attrition, acts of terrorism or some other cause, or language barriers, could seriously impact our ability to provide the necessary service to our customers and fulfill our service contracts. OUR SUCCESS IS DEPENDENT ON OUR ABILITY TO ENHANCE OUR PRODUCT LINES AND DEVELOP NEW PRODUCTS. We believe our success is dependent, in large part, on our ability to enhance and broaden our product lines to meet the evolving needs of the business market. We may be unable to respond effectively to technological changes or new industry standards or developments. Although we recently released two new products on time, product development cycles are unpredictable and in the past, we have delayed the introduction of several new product versions due to delays in development of these versions. We have arrangements with a third party located in India to perform certain testing of our products and with third party software vendors who provide software which is embedded in our products. Any adverse change in our relationship with these third parties could result in delays in the release of our products. In the future, we could be adversely affected and be at a competitive disadvantage if we incur significant delays or are unsuccessful in enhancing our product lines or developing new products, or if any of our enhancements or new products do not gain market acceptance. Additionally, as we continue to release new versions of our existing software we may be required to assist customers in migrating to the latest version once a product is announced to be at the end of its life. We could be adversely affected if there are significant migration issues and a decline in customer satisfaction related to such transitions. 23 OUR PERFORMANCE DEPENDS ON OUR ABILITY TO WIN BUSINESS AND OBTAIN FOLLOW-ON SALES IN PROFITABLE SEGMENTS. Customers typically place small initial orders for our products to allow them to evaluate our products' performance. A key element of our strategy is to pursue more significant follow-on sales after these initial installations. Our financial performance depends on successful initial deployments of our products that, in turn, lead to follow-on sales. If the initial deployments of our products are not successful or if our customers do not remain satisfied with our products and services, we may be unable to obtain follow-on sales. In addition, even if initial deployments are successful, there can be no assurances that customers will choose to make follow-on purchases, which could have a material adverse effect on our ability to generate revenues. WE FACE SIGNIFICANT COMPETITION FROM OTHER TECHNOLOGY COMPANIES AND WE MAY NOT BE ABLE TO COMPETE EFFECTIVELY. The market for identity and access management is highly competitive. We expect the level of competition to increase as a result of the anticipated growth of the identity and access management market. Our primary competitor in the identity and access management market is the Tivoli Division of IBM. We also compete against traditional security and software companies and stack vendors such as Oblix, RSA, Novell, Waveset and Sun MicroSystems. In addition, a number of other security and software companies are beginning to offer products that may compete with our identity and access management solution. Competition may also develop as the market matures and other companies begin to offer similar products, and as our product offerings expand to other segments of the marketplace. We also face competition from Web development professional services organizations. We expect that additional competitors will emerge in the future. Current and potential competitors have established, or may in the future establish, cooperative selling relationships with third parties to increase the distribution of their products to the marketplace. Accordingly, it is possible that new competitors may emerge and acquire significant market share. It is possible that current and potential competitors may attempt to hire our employees and although we have non-compete agreements in place with most of our employees they may or may not be enforceable. It is possible that new competitors or alliances may emerge and rapidly acquire significant market share. Today, many of our competitors have shorter operating histories and fewer financial and technical resources than we have. In addition, these smaller competitors have smaller customer bases. Some of our other competitors, however, are larger companies who have large financial resources, well-established development and support teams, and large customer bases. These larger competitors may initiate pricing policies that would make it more difficult for us to maintain our competitive position against these companies. It is also possible that current and potential competitors may be able to respond more quickly to new or emerging technologies or customer requirements, resulting in increased market share. If, in the future, a competitor chooses to bundle a competing point product with other applications within a suite, the demand for our products might be substantially reduced. Because of these factors, many of which are out of our control, we may be unable to maintain or enhance our competitive position against current and future competitors. REGULATIONS OR CONSUMER CONCERNS REGARDING THE USE OF "COOKIES" ON THE INTERNET COULD REDUCE THE EFFECTIVENESS OF OUR SOFTWARE PRODUCTS. Certain of our products use cookies to support their single sign-on functionality. A cookie is information keyed to a specific user that is stored on the hard drive of the user's computer, typically without the user's knowledge. Cookies are generally removable by the user, and can be refused by the user at the point at which the information would not be stored on the user's hard drive. A number of governmental bodies and commentators in the United States and abroad have urged passage of laws limiting or abolishing the use of cookies. The passage of laws limiting or abolishing the use of cookies, or the widespread deletion or refusal of cookies by Web site users, could reduce or eliminate the effectiveness of our single sign-on functionality and could reduce market demand for our products. WE MAY BE UNABLE TO HIRE AND RETAIN SKILLED PERSONNEL. Qualified personnel are in great demand throughout the software industry. Our success depends, in large part, upon our ability to attract, train, motivate and retain highly skilled employees, particularly software engineers, professional services personnel, sales and marketing personnel and other senior personnel. Our failure to attract and retain the highly trained technical personnel that are integral to our product development, professional services and direct sales teams, particularly software engineers, may limit the rate at which we can generate sales, develop new products or product enhancements or transfer technical knowledge across our employee base. A change in key management could result in transition and attrition in the affected department. This could have a material adverse effect on our business, operating results and financial condition. OUR SUCCESS DEPENDS ON OUR ABILITY TO OPTIMIZE OUR DIRECT SALES AND INDIRECT DISTRIBUTION 24 CHANNELS. To increase our revenues, we must optimize our direct sales force and continue to enhance relationships with systems integrators, resellers and technology partners to increase the leverage of our partner channel. There is intense competition for sales personnel in our business, and we cannot be sure that we will be successful in attracting, integrating, motivating and retaining sales personnel. In addition, we must effectively leverage our relationships with our strategic partners and other third-party system integrators, vendors of Internet-related systems and application software and resellers in order to reach a larger customer population than we could reach alone through our direct sales and marketing efforts. We may not be able to find appropriate strategic partners or may not be able to enter into relationships on commercially favorable terms, particularly if these partners decide to compete directly in the identity and access management market. Furthermore, the relationships we do enter into may not be successful. Our strategic relationships are generally non-exclusive, and therefore, our strategic partners may decide to pursue alternative technologies or to develop alternative products in addition to or instead of our product, either on their own or in collaboration with our competitors. WE RELY ON THIRD PARTY TECHNOLOGY TO ENHANCE OUR PRODUCTS. We incorporate into our products software licensed from third party software companies that enhances, enables or provides functionality for our products and, therefore, we need to create relationships with third parties, including some of our competitors, to ensure that our products will interoperate with the third parties' products. Third party software may not continue to be available on commercially reasonable terms or with acceptable levels of support or functionality, or at all. Failure to maintain those license arrangements, failure of the third party vendors to provide updates, modifications or future versions of their software or defects and errors in or infringement claims against those third party products could delay or impair our ability to develop and sell our products and potentially cause us to incur additional cost. In addition, if we discover that third party products are no longer available as a result of changes in the third party's operations or financial position, there can be no assurance that we would be able to offer our product without substantial reengineering, or at all. Often these third party software companies require prepayment of royalties on their products and, in the past, we have had to expense these prepaid royalties to cost of sales when it was determined that they may not have future realizable value. OUR FAILURE TO EXPAND OUR RELATIONSHIP WITH GLOBAL SYSTEMS INTEGRATORS COULD LIMIT OUR ABILITY TO SUPPORT OUR CUSTOMERS' DEPLOYMENT OF OUR PRODUCTS. Our professional services organization and our relationship with global systems integrators provide critical support to our customers' installation and deployment of our products. If we fail to adequately develop our relationship with global systems integrators, our ability to increase products sales may be limited. In addition, if we or our partners cannot adequately support product installations, our customers may not be able to use our products, which could harm our reputation and hurt our business. OUR LENGTHY SALES CYCLE MAKES IT DIFFICULT TO PREDICT OUR QUARTERLY OPERATING RESULTS. The length of our sales cycle varies depending on the size, type and complexity of the customer contemplating a purchase, whether we have conducted business with a potential customer in the past and the size of the deal. In addition, some of our customers may also need to invest substantial resources and modify their computer network infrastructures to take advantage of our products. As a result, these potential customers frequently need to obtain approvals from multiple decision makers prior to making purchase decisions, a process that has been, at times, further lengthened as a result of the current market conditions surrounding technology spending. Our long sales cycle, which can range from several weeks to several months or more, makes it difficult to predict the quarter in which sales will occur. Delays in sales could cause significant variability in our revenues and operating results for any particular quarterly period. Our sales cycle is subject to a number of uncertainties such as: - the need to educate potential customers regarding the benefits of our products; - customers' budgetary constraints; - the timing of customers' budget cycles; 25 - customers' willingness to make changes in their network infrastructures; and - delays caused by customers' internal review processes. OUR FAILURE TO EFFECTIVELY MANAGE CHANGES IN THE BUSINESS ENVIRONMENT IN WHICH WE OPERATE COULD HURT OUR BUSINESS. Our failure to effectively manage changes in the business environment in which we operate could have a material adverse effect on the quality of our products, our ability to retain key personnel and our business, operating results and financial condition. Historically, we experienced a period of rapid growth that placed a significant strain on all of our resources. Over the past two years, based upon economic factors beyond our control, we implemented reductions in workforce. We may experience similar changes in the future. Additionally, we may experience disruptions as a result of attacks from electronic viruses which could result in reduced productivity. To effectively manage changes in the business environment in which we operate we must maintain and enhance our financial and accounting systems and controls, maintain the security of our infrastructure, maintain our ability to retain key personnel, integrate new personnel and manage operations. IF WE LOSE THE SERVICES OF BARRY BYCOFF OR ANY OTHER MEMBER OF OUR MANAGEMENT TEAM, OUR BUSINESS COULD SUFFER. Our future success depends, to a significant degree, on the skill, experience and efforts of Barry Bycoff, our chief executive officer, and the rest of our management team. A change in our management team or the inability of our officers and key employees to work effectively as a team could have a material adverse effect on our business, operating results and financial condition. AS WE CONTINUE TO OPERATE IN INTERNATIONAL MARKETS, WE WILL FACE CONTINUED RISKS TO OUR SUCCESS. At the current time, we have no plans to significantly expand beyond our current international operations. However, if in the future we decide to expand our international operations, the expansion will require additional resources and management attention, and will subject us to increased regulatory, economic and political risks. We have limited experience in international markets and we cannot be sure that our continued expansion into global markets will be successful. In addition, we will face increased risks in conducting business internationally, including the ability to develop, market and distribute localized versions of our products in a timely manner or at all. These risks could reduce demand for our products and services, increase the prices at which we can sell our products and services, or otherwise have an adverse effect on our operating results. Among the risks we believe are most likely to affect us are: - longer decision making cycles; - longer payment cycles and problems in collecting accounts receivable; - adverse changes in trade and tax regulations, including restrictions on the import and export of sensitive technologies, such as encryption technologies, that we use or may wish to use in our software products; - the absence or significant lack of legal protection for intellectual property rights; - selling under contracts governed by local law; - difficulties in managing an organization spread over multiple countries, including complications arising from cultural, language and time differences that may lengthen sales and implementation cycles and delay the resolution of customer support issues; - currency risks, including fluctuations in exchange rates; - political and economic instability; - localization of technology, including delays in localizing the most recent versions of our products; - increased use of contractors on a global basis for both professional services and development, that may result in increased cost of services and/or less direct control; and 26 - disruption caused by terrorist activities in various regions around the world. OUR SUCCESS DEPENDS ON OUR ABILITY TO PROTECT OUR PROPRIETARY RIGHTS. Our success depends to a significant degree upon the protection of our software and other proprietary technology. The unauthorized reproduction or other misappropriation of our proprietary technology could enable third parties to benefit from our technology without paying us for it. This could have a material adverse effect on our business, operating results and financial condition. We depend upon a combination of patent, trademark, trade secret and copyright laws, license agreements and non-disclosure and other contractual provisions to protect proprietary and distribution rights in our products. In addition, we attempt to protect our proprietary information and the proprietary information of our vendors and partners through confidentiality and/or license agreements with our employees and others. Although we have taken steps to protect our proprietary technology, they may be inadequate and the unauthorized use of our source code could have an adverse effect on our business. Existing trade secret, copyright and trademark laws offer only limited protection. Moreover, the laws of other countries in which we market our products may afford little or no effective protection of our intellectual property. If we resort to legal proceedings to enforce our intellectual property rights, the proceedings could be burdensome and expensive, even if we were to prevail. CLAIMS BY OTHER COMPANIES THAT WE INFRINGE THEIR PROPRIETARY TECHNOLOGY COULD HURT OUR FINANCIAL CONDITION. If we discover that any of our products or third party products embedded in our products violates third-party proprietary rights, there can be no assurance that we would be able to reengineer our product or to obtain a license on commercially reasonable terms to continue offering the product without substantial reengineering. We do not conduct comprehensive patent searches to determine whether the technology used in our products infringes patents held by third parties. In addition, product development is inherently uncertain in a rapidly evolving technology environment in which there may be numerous patent applications pending for similar technologies, many of which are confidential when filed. Any claim of infringement, even if invalid, could cause us to incur substantial costs defending against the claim and could distract our management from our business. Furthermore, a party making such a 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 products. Any of these events could have a material adverse effect on our business, operating results and financial condition. OUR BUSINESS COULD BE ADVERSELY AFFECTED IF

OUR PRODUCTS CONTAIN ERRORS OR FLAWS. Software products as complex as ours may contain undetected errors or "bugs" that result in product failures. The occurrence of errors could result in loss of, or delay in, revenues, loss of market share, failure to achieve market acceptance, diversion of development resources, injury to our reputation, or damage to our efforts to build brand awareness, any of which could have a material adverse effect on our business, operating results and financial condition. Additionally, the security features included in our products to prevent unauthorized access to the application may not meet all of our customers' requirements. WE COULD INCUR SUBSTANTIAL COSTS RESULTING FROM PRODUCT LIABILITY CLAIMS RELATING TO OUR CUSTOMERS' USE OF OUR PRODUCTS. Many of the business applications supported by our products are critical to the operations of our customers' businesses. Any failure in a customer's Web site or application caused or allegedly caused by our products could result in a claim for substantial damages against us, regardless of our responsibility for the failure. Although we maintain general liability insurance, including coverage for errors and omissions, and contractually attempt to limit liability, we cannot be sure that our existing coverage will continue to be available on reasonable terms or will be available in amounts sufficient to cover one or more large claims, or that the insurer will not disclaim coverage as to any future claim. INCREASED UTILIZATION AND COSTS OF OUR TECHNICAL SUPPORT SERVICES AND INCREASED DEMANDS ON OUR OTHER TECHNICAL RESOURCES MAY ADVERSELY AFFECT OUR FINANCIAL RESULTS. Our products involve very complex technology and the failure or inability of our technical support staff to meet customer expectations in a timely manner or customer dissatisfaction with our product functionality or performance could result in loss of revenues, loss of market share, failure to achieve market acceptance, injury to our reputation, liability for service or warranty costs and 27 claims and other increased costs. We may be unable to respond to fluctuations in customer demand for support services as well as resolve customer issues in a manner that is timely and satisfactory to them. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. As we win business from larger, more complex customers there may be an increased demand on our resources, particularly product management and support, which may affect the allocation of our resources. Additionally, as we continue to sell our new products to existing customers our customers will expect us to provide the same level of product support on the new products as we do on the old products. This may put increased demand on our product support resources. OUR ACQUISITION OF OTHER COMPANIES MAY INCREASE THE RISKS WE FACE. In the future, we may pursue acquisitions to obtain complementary products, services and technologies. Any such acquisition may not produce the revenues, earnings or business synergies that we anticipated, and an acquired product, service or technology might not perform as we expected. In pursuing any acquisition, our management could spend a significant amount of time and effort in identifying and completing the acquisition. If we complete an acquisition, we would probably have to devote a significant amount of management resources to integrate the acquired business with our existing business. To pay for an acquisition, we might use our stock or cash. Alternatively, we might borrow money from a bank or other lender. If we use our stock, our stockholders would experience dilution of their ownership interests. If we use cash or debt financing, our financial liquidity will be reduced. THE MARKET PRICE OF OUR COMMON STOCK HAS BEEN AND MAY CONTINUE TO BE VOLATILE. Our stock price, like that of other technology companies, has been extremely volatile. The announcement of new products, services, technological innovations, customers or distribution partners by us or our competitors, quarterly variations in our operating results, changes in coverage by securities analysts, changes in revenues or earnings estimates by securities analysts, speculation in the press or investment community and overall economic conditions are among the factors affecting our stock price. In addition, the stock market in general and the market prices for technology companies in particular have experienced extreme volatility that often has been unrelated to the operating performance of these companies. These broad market and industry fluctuations may adversely affect the market price of our common stock, regardless of our operating performance. Recently, when the market price of a stock has been volatile, holders of that stock have often instituted securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial costs defending the lawsuit. The lawsuit could also divert the time and attention of our management. The general economic uncertainties in the United States and abroad continue to cause significant volatility in the stock markets. The continued threat of terrorism in the United States and abroad and the ongoing military action and heightened security measures undertaken in response to that threat can be expected to cause continued volatility in securities markets. In addition, foreign political unrest may continue to adversely affect the economy. WE MAY LOSE MONEY ON FIXED-PRICE CONSULTING CONTRACTS. Although the majority of our services are performed on a time and material basis, we have in the past performed services under fixed price contracts at the request of a customer. In the future, it is possible that an increased portion of our services revenues could be derived from fixed-price contracts. We work with complex technologies in compressed time frames and it can be difficult to judge the time and resources necessary to complete a project. If we miscalculate the resources or time we need to complete work under fixed-price contracts, our operating results could be materially adversely affected. CONTINUED WEAKNESS IN THE GLOBAL ECONOMY MAY ADVERSELY AFFECT OUR BUSINESS The global economy is still weak and may continue to be weak in the foreseeable future. In addition, the United States' continued involvement in Iraq, as well as the political unrest in other parts of the world, have contributed to global economic uncertainty. We believe the current economic slowdown has caused some potential or current customers to defer purchases. In response to the current economic conditions, many companies have reduced their spending budgets for information technology products and services, which could reduce or eliminate potential sales of our products and services. 28 CERTAIN PROVISIONS OF OUR CHARTER AND OF DELAWARE LAW MAKE A TAKEOVER OF OUR COMPANY MORE DIFFICULT. Our corporate documents and Delaware law contain provisions that might enable us to resist a takeover of our company. These provisions might discourage or delay a change in the control of Netegrity or a change in our management. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors and take other corporate actions. The existence of these provisions could limit the price that investors might be willing to pay in the future for shares of our common stock. Additionally, we have entered into employment and executive retention agreements with certain employees and executive officers which, among other things, include certain severance and change of control provisions that may have similar effects. PART II. - OTHER INFORMATION ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K (a) Exhibits EXHIBIT ITEM NO. ITEM AND REFERENCE -------- ------------------ 10.1* Executive Retention Agreement entered into by and between Netegrity, Inc., and Steven McLaughlin dated August 29, 2003. 31.1* Rule 13a-14(a)/15d-14(a) Certification of President and Chief Executive Officer. 31.2* Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer and Treasurer. 31.3 Rule 13a-14(a)/15d-14(a) Certification of President and Chief Executive Officer. 31.4 Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer and Treasurer. 32.1* Section 1350 Certification of President and Chief Executive Officer. 32.2* Section 1350 Certification of Chief Financial Officer and Treasurer. 32.3 Section 1350 Certification of President and Chief Executive Officer. 32.4 Section 1350 Certification of Chief Financial Officer and Treasurer. * Previously filed. (b) Reports on Form 8-K On July 23, 2003, we furnished a Current Report on Form 8-K dated July 23, 2003 under Item 9 containing a copy of our earnings release for the period ended June 30, 2003 pursuant to Item 12 (Results of Operations and Financial Condition). 29 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. NETEGRITY, INC. Date: January 29, 2004 By: /s/ Barry N. Bycoff --------------------------------- Barry N. Bycoff President, Chief Executive Officer, Director and Chairman of the Board Date: January 29, 2004 By: /s/ Regina O. Sommer --------------------------------- Regina O. Sommer Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer) 30