

Edgar Filing: ESPEED INC - Form 10-K/A

ESPEED INC
Form 10-K/A
October 18, 2002

=====

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A

FOR ANNUAL AND TRANSITION REPORTS PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2001

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM TO

COMMISSION FILE NUMBER 0-28191

ESPEED, INC.

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE
(State or Other
Jurisdiction of Incorporation)

13-4063515
(I.R.S. Employer
Identification No.)

135 E. 57TH STREET, NEW YORK, NEW YORK
(Address of Principal Executive Offices)

10022
(Zip Code)

(212) 938-5000

(Registrant's telephone number, including area code)

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

TITLE OF EACH CLASS

NAME OF EACH EXCHANGE ON WHICH REGISTERED

None

None

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

CLASS A COMMON STOCK, \$. 01 PAR VALUE
(Title of Class)

Indicate by check mark whether the registrant: (1) has filed all reports
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of
1934 during the preceding 12 months (or for such shorter period that the

Edgar Filing: ESPEED INC - Form 10-K/A

Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes |X| No |_|

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

The aggregate market value of voting common equity held by non-affiliates of the registrant, based upon the closing price of the Class A common stock on March 15, 2002 as reported on the Nasdaq National Market, was approximately \$308,686,582.

Indicate the number of shares outstanding of each of the Registrant's classes of common stock, as of the latest practicable date.

Class	Outstanding at March 15, 2002
CLASS A COMMON STOCK, PAR VALUE \$.01 PER SHARE	28,290,779 SHARES
CLASS B COMMON STOCK, PAR VALUE \$.01 PER SHARE	26,688,814 SHARES

DOCUMENTS INCORPORATED BY REFERENCE.

NONE.

=====

eSPEED, INC.
2001 FORM 10-K/A ANNUAL REPORT

TABLE OF CONTENTS

	Page
INTRODUCTORY NOTE.....	ii
PART III	
ITEM 11. EXECUTIVE COMPENSATION.....	1
ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.....	3

INTRODUCTORY NOTE

We are filing this Form 10-K/A in order to amend and restate the information disclosed in Item 11 and Item 13 of Part III. In Item 11, the principal change we made was to amend the bonus compensation amount for Joseph C. Noviello, our Chief Information Officer and Executive Vice President, and to amend the Value of Unexercised In-The-Money Options at Fiscal Year End. The principal change we made to Item 13 was to add disclosure regarding our employees' purchase of Cantor Fitzgerald, L.P. partnership units. This Form 10-K/A does not reflect events occurring after the filing of the original Form 10-K.

Edgar Filing: ESPEED INC - Form 10-K/A

ii

PART III

ITEM 11. EXECUTIVE COMPENSATION

The following table provides certain summary information concerning all compensation earned for the year ended December 31, 2001, the year ended December 31, 2000 and the period from March 10, 1999 through December 31, 1999 by our Chief Executive Officer and each of our other executive officers required to be included in the table (collectively, the Named Executive Officers).

SUMMARY COMPENSATION TABLE

NAME AND PRINCIPAL POSITION -----	YEAR ----	SALARY (\$) -----	BONUS (\$) -----	LONG-TERM COMPENSATION
				----- AWARDS SECURITIES UNDERLYING OPTIONS (#) -----
Howard W. Lutnick..... Chairman, Chief Executive Officer and President	2001	400,000	600,000	1,500,000
	2000	350,000	650,000	625,000
	1999	280,000	--	2,500,000
Frederick T. Varacchi*.....	2001	354,167	500,000	--
	2000	500,000	500,000	200,000
	1999	400,000	--	800,000
Douglas B. Gardner*.....	2001	177,083	350,000	--
	2000	250,000	350,000	75,000
	1999	200,000	--	375,000
Lee M. Amaitis..... Global Chief Operating Officer	2001	107,418	300,000	375,000
	2000	107,418	333,333	50,000
	1999	--	--	325,000
Joseph C. Noviello..... Chief Information Officer and Executive Vice President	2001	275,000	1,000,000 (1)	200,000
	2000	250,000	350,500	65,000
	1999	175,000	250,000	85,000
Stephen M. Merkel..... General Counsel, Executive Vice President and Secretary	2001	150,000	400,000	200,000
	2000	150,000	300,000	100,000
	1999	120,000	--	100,000

*Messrs. Varacchi and Gardner were lost as a result of the terrorist attacks on September 11, 2001.

(1) The after-tax portion of \$600,000 of such bonus was used to purchase units in Cantor Fitzgerald, L.P. See "Item 13. Certain Relationships and Related Transactions."

Edgar Filing: ESPEED INC - Form 10-K/A

1

The following table sets forth the options granted during 2001 to, and the value of the options held on December 31, 2001 by, our Named Executive Officers. Messrs. Varacchi and Gardner were not granted any options during 2001.

OPTION GRANTS IN LAST FISCAL YEAR
Individual Grants

NAME	NUMBER OF SHARES UNDERLYING OPTIONS GRANTED	PERCENT OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN 2001	EXERCISE OR BASE PRICE (\$/SHARE)	EXPIRATION
Howard W. Lutnick.....	1,500,000 (1)	42.2	5.10	10/1
Lee M. Amaitis.....	375,000 (1)	10.5	5.10	10/1
Joseph C. Noviello.....	200,000 (1)	5.6	5.10	10/1
Stephen M. Merkel.....	200,000 (1)	5.6	5.10	10/1

(1) The options vest quarterly over a four year period from the date of grant, October 19, 2001.

(2) The fair value of the options was estimated using a modified Black-Scholes option pricing model and the following assumptions: risk-free interest rate of 3.25%, no expected dividends, expected stock price volatility of 80% and assumed to be exercised at 80% of their original life.

The following table provides information, with respect to the Named Executive Officers, concerning options and SARs held as of December 31, 2001.

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR
AND FISCAL YEAR-END OPTION/SAR VALUES

NAME	SHARES ACQUIRED ON EXERCISE (#)	VALUE REALIZED ON EXERCISE (\$)	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS/SARS AT FISCAL YEAR END (#)		IN-
			Exercisable	Unexercisable	
Howard W. Lutnick.....	0	0	1,425,000	3,200,000	
Frederick T. Varacchi*.....	0	0	1,000,000	0	
Douglas B. Gardner*.....	0	0	450,000	0	
Lee M. Amaitis.....	0	0	140,000	610,000	
Joseph C. Noviello.....	0	0	58,750	291,250	
Stephen M. Merkel.....	0	0	60,000	340,000	

(1) Based on the last reported price of \$8.28 for our Class A common stock on December 31, 2001.

* Messrs. Varacchi and Gardner were lost as a result of the terrorist attacks on September 11, 2001.

Edgar Filing: ESPEED INC - Form 10-K/A

COMPENSATION OF DIRECTORS

Directors who are also our employees do not receive additional compensation for serving as directors. On October 19, 2001, we granted each of our three non-employee directors at the time options to purchase 30,000 shares of our Class A common stock at an exercise price per share equal to \$5.10, which was the price of our Class A common

2

stock on October 18, 2001. These options vest in three equal installments beginning on the first of three semi-anniversaries of the date of grant. Effective February 11, 2002, Mr. Dalton was granted an option to purchase 30,000 shares of our Class A common stock at an exercise price per share of \$8.95 in connection with his election to our board. Our non-employee directors receive annual compensation of \$25,000. They also receive compensation for each quarterly meeting of the board of directors attended of \$2,000 and options to purchase 1,500 shares of our Class A common stock, which options vest in three equal installments beginning on the first of three semi-anniversaries of the date of grant, and they receive \$1,000 for each additional meeting of our board of directors or committee of our board of directors actually attended, whether by telephone or otherwise. If both a meeting of our board of directors and of a committee of our board of directors are held on the same date, an aggregate of \$1,000 will be paid for attendance at both meetings. Non-employee directors also are reimbursed for all out-of-pocket expenses incurred in attending meetings of our board of directors or committees of our board of directors.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

The Compensation Committee of our board of directors consists of Messrs. Breeden, Carter and Moran. All of the members of the Compensation Committee are non-employee directors and are not former officers. During 2001, none of our executive officers served as a member of the board of directors or on the compensation committee of a corporation where any of its executive officers served on our Compensation Committee or on our board of directors.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

THE FORMATION TRANSACTIONS

Concurrently with our initial public offering, Cantor contributed to us certain of our assets. These assets primarily consist of the proprietary software, network distribution systems, technologies and related contractual rights that comprise our eSpeed(R) system. In exchange for these assets, we issued to Cantor 43,999,900 shares of our Class B common stock, representing approximately 98% of the voting power of our capital stock outstanding at the time. Cantor converted 3,350,000 of these shares into the shares of our Class A common stock which it sold in our initial public offering in December 1999.

We entered into the agreements described below in connection with the formation transactions and to help define the terms of our relationship with Cantor in the future. In an effort to mitigate conflicts of interest between us and Cantor, we and Cantor have agreed that none of these agreements may be amended without the approval of a majority of our disinterested directors.

JOINT SERVICES AGREEMENT

Under our Amended and Restated Joint Services Agreement, as amended, with Cantor and services agreements with TradeSpark, Freedom and Municipal Partners, LLC, we

Edgar Filing: ESPEED INC - Form 10-K/A

own and operate the electronic trading systems and are responsible for providing electronic brokerage services, and Cantor, TradeSpark, Freedom and Municipal Partners, LLC provide voice-assisted brokerage services, clearance, settlement and other fulfillment and related services, such as credit and risk management services, oversight of client suitability and regulatory compliance, sales positioning of products and other services customary to brokerage operations. Our agreement with Cantor provides for a perpetual term.

3

REVENUE SHARING ARRANGEMENTS

Under our Amended and Restated Joint Services Agreement, as amended, with Cantor and services agreements with TradeSpark, Freedom and Municipal Partners, LLC, we own and operate the electronic trading system and are responsible for providing electronic brokerage services, and Cantor, TradeSpark, Freedom or Municipal Partners, LLC provides voice-assisted brokerage services, fulfillment services, such as clearance and settlement, and related services, such as credit risk management services, oversight of client suitability and regulatory compliance, sales positioning of products and other services customary to marketplace intermediary operations. In general, for fully electronic transactions, we receive 65% of the transaction revenues and Cantor, TradeSpark or Freedom receives 35% of the transaction revenues. We and Municipal Partners, LLC each receive 50% of the fully electronic revenues related to municipal bonds. In general, for voice-assisted brokerage transactions we receive 7% of the transaction revenues, in the case of Cantor transactions, and 35% of the transaction revenues, in the case of TradeSpark or Freedom transactions. In addition, we receive 25% of the net revenues from Cantor's gaming business.

SOFTWARE SOLUTION SERVICES

We also provide to Cantor, TradeSpark, Freedom and Municipal Partners, LLC software solution services, including (1) systems administration; (2) internal network support; (3) support and procurement for desktops of end-user equipment; (4) operations and disaster recovery services; (5) voice and data communications; (6) support and development of systems for clearance, settlement and other fulfillment services; (7) systems support for broker; (8) electronic applications systems and network support and development; and (9) provision and/or implementation of existing electronic applications systems, including improvements and upgrades thereto, and use of the related intellectual property rights. In general, we charge Cantor, TradeSpark and Freedom the actual direct and indirect costs, including overhead, that we incur in performing these services. We charge Municipal Partners, LLC an amount based on the actual direct and indirect costs, including overhead, of providing such services. In exchange for a 25% share of the net revenues from Cantor's gaming businesses, we are obligated to spend and do not get reimbursed for the first \$750,000 each quarter of costs of providing support and development services for such gaming businesses.

INTELLECTUAL PROPERTY

Cantor has granted to us a license covering Cantor's patents and patent applications that relate to our eSpeed(R) system. The license is perpetual, irrevocable, worldwide and royalty free and is exclusive, except in the event that (1) we are unwilling to provide to Cantor any requested services covered by the patents with respect to a marketplace and Cantor elects not to require us to do so, or we are unable to provide such services or (2) we do not exercise our right of first refusal to provide to Cantor electronic brokerage services with respect to a marketplace, in which events Cantor will have a limited right to use the patents and patent applications solely in connection with the operation

Edgar Filing: ESPEED INC - Form 10-K/A

of that marketplace. Cantor will cooperate with us, at our expense, in any attempt by us to prevent any third party infringement of our patent rights under the license. Cantor has also granted to us a non-exclusive, perpetual, irrevocable worldwide, royalty-free right and license to use the servicemarks "Cantor Exchange(SM)," "Interactive Matching(SM)," "MOLE(SM)" and "CX(SM)".

NON-COMPETITION AND MARKET OPPORTUNITY PROVISIONS

The Joint Services Agreement imposes performance obligations on us and restricts our ability to compete with Cantor and Cantor's ability to compete with us in markets that we and Cantor traditionally operate. We and Cantor have agreed to exclude the TradeSpark and Freedom marketplaces from the provisions of the Joint Services Agreement in order to enable us to enter into separate agreements in connection with the new marketplaces.

4

ADMINISTRATIVE SERVICES AGREEMENT

Under our Administrative Services Agreement with Cantor, Cantor provides certain administrative and management services to us. Cantor makes available to us some of its administrative and other staff, including its internal audit, treasury, legal, tax, insurance, human resources, facilities, corporate development and accounting staffs. Members of these staffs arrange for our insurance coverage and provide a wide array of services, including administration of our personnel and payroll operations, benefits administration, internal audits, facilities management, promotional sales and marketing, legal, risk management, accounting and tax preparation and other services. We reimburse Cantor for the actual costs incurred by Cantor, plus other reasonable costs, including reasonably allocated overhead and any applicable taxes. We have also entered into arrangements with Cantor under which we have the right to use certain assets, principally computer equipment, from Cantor. These assets are subject to operating leases with third party leasing companies. Under the Administrative Services Agreement, we provide sales, marketing and public relations services to Cantor. Cantor reimburses us for the actual costs incurred by us, plus other reasonable costs, including reasonably allocated overhead. The Administrative Services Agreement has a three-year term which will renew automatically for successive one-year terms unless canceled by either us or Cantor upon six months' prior notice; provided, however, that our right to use our London office space expires at the earlier of (1) the time Cantor's lease expires in 2016 or (2) until Cantor ceases to be an affiliate of ours and Cantor asks us to vacate.

Pursuant to the Administrative Services Agreement, Cantor is required to obtain for us, among other things, property and casualty insurance of not less than \$40 million and business interruption insurance of \$25 million. Cantor has procured insurance coverage for us in these respective amounts; however, we are listed on this insurance policy as one of several insured parties, together with Cantor and several of its affiliates. This insurance policy is for aggregate amounts in excess of the amounts set forth above. The Administrative Services Agreement does not provide for the allocation of the proceeds among the named insureds. Insurance proceeds paid to date have been paid to Cantor on behalf of all parties named on the policy, and Cantor has allocated these proceeds among the insured parties. Pursuant to this allocation, we received approximately \$20.5 million of property insurance proceeds in 2001 with respect to fixed assets of ours that were destroyed as a result of the September 11 Events.

REGISTRATION RIGHTS AGREEMENT

Pursuant to the Registration Rights Agreement entered into by Cantor and us, Cantor has received piggyback and demand registration rights.

Edgar Filing: ESPEED INC - Form 10-K/A

The piggyback registration rights allow Cantor to register the shares of our Class A common stock issued or issuable to it in connection with the conversion of its shares of our Class B common stock whenever we propose to register any shares of our Class A common stock for our own or another's account under the Securities Act for a public offering, other than any shelf registration of shares of our Class A common stock to be used as consideration for acquisitions of additional businesses and registrations relating to employee benefit plans.

Cantor also has the right, on three occasions, to require that we register under the Securities Act any or all of the shares of our Class A common stock issued or issuable to it in connection with the conversion of its shares of our Class B common stock. The demand and piggyback registration rights apply to Cantor and to any transferee of shares held by Cantor who agrees to be bound by the terms of the Registration Rights Agreement.

We have agreed to pay all costs of one demand and all piggyback registrations, other than underwriting discounts and commissions. We have also agreed to indemnify Cantor and any transferee for certain liabilities they may

5

incur in connection with the exercise of their registration rights. All of these registration rights are subject to conditions and limitations, including (1) the right of underwriters of an offering to limit the number of shares included in that registration; (2) our right not to effect any demand registration within six months of a public offering of our securities; and (3) that Cantor agrees to refrain from selling its shares during the period from 15 days prior to and 90 days after the effective date of any registration statement for the offering of our securities.

POTENTIAL CONFLICTS OF INTEREST AND COMPETITION WITH CANTOR

Various conflicts of interest between us and Cantor may arise in the future in a number of areas relating to our past and ongoing relationships, including potential acquisitions of businesses or properties, the election of new directors, payment of dividends, incurrence of indebtedness, tax matters, financial commitments, marketing functions, indemnity arrangements, service arrangements, issuances of our capital stock, sales or distributions by Cantor of its shares of our common stock and the exercise by Cantor of control over our management and affairs. Four of our directors and a majority of our officers also serve as directors and/or officers of Cantor. Simultaneous service as an eSpeed director or officer and service as a director or officer, or status as a partner, of Cantor could create or appear to create potential conflicts of interest when such directors, officers and/or partners are faced with decisions that could have different implications for us and for Cantor. Mr. Lutnick, our Chairman, President and Chief Executive Officer, is the sole stockholder of the managing general partner of Cantor. As a result, Mr. Lutnick controls Cantor. Cantor owns shares of our Class A common stock and Class B common stock representing approximately 90.4% of the Total Voting Power of our capital stock. Mr. Lutnick's simultaneous service as our Chairman, President and Chief Executive Officer and his control of Cantor could create or appear to create potential conflicts of interest when Mr. Lutnick is faced with decisions that could have different implications for us and for Cantor.

Our relationship with Cantor may result in agreements that are not the result of arm's-length negotiations. As a result, the prices charged to us or by us for services provided under agreements with Cantor may be higher or lower than prices that may be charged by third parties and the terms of these agreements may be more or less favorable to us than those that we could have negotiated

Edgar Filing: ESPEED INC - Form 10-K/A

with third parties. However, transactions between us and Cantor and/or its other affiliates are subject to the approval of a majority of our independent directors. In addition, Cantor can compete with us under certain circumstances.

WILLIAMS AND DYNEGY

On June 5, 2000, each of Williams Energy Marketing & Trading and Dynegy purchased a unit consisting of (a) 789,071 shares of our Class A common stock and (b) warrants exercisable for the purchase of up to 666,666 shares of our Class A common stock, for an aggregate purchase price for the unit of \$25.0 million. The warrants have a per share exercise price of \$35.20, a 10-year term and are exercisable commencing on December 5, 2005, subject to acceleration under certain prescribed circumstances. Acceleration results from the investment by Williams and/or Dynegy, along with at least two additional participants, in four new electronic and telephonic verticals to be formed by us and Cantor, which we refer to as Qualified Verticals, by an agreed upon date. The initial agreed upon date of June 2001 has been extended by the parties for a period not to exceed two years. We refer to such period as the Presentment Period. The Presentment Period operates in three month increments, and is subject to the right of Dynegy and Williams to refuse to grant an additional three month extension on not less than 30 days' prior notice to us. In connection with the four Qualified Verticals, Williams and, subject to certain limitations, Dynegy, will be entitled to invest \$25.0 million in shares of our Class A common stock at a 10% discount to the trading price of our Class A common stock determined at the time of the investment in the Qualified Vertical. If we present Qualified Vertical opportunities in accordance with the terms of the agreements, and either Williams or Dynegy does not invest in at least four Qualified Verticals, the non-investing entity will be required to make a

6

\$2,500,000 payment to us for each investment not made, up to a maximum of \$10 million. Williams and Dynegy have already invested in the first Qualified Vertical presented to it, Tradespark.

At such time as Williams and Dynegy (or their permitted affiliate assignees) have made an aggregate equity investment in us of an amount equal to at least \$100.0 million, valued on a cost basis (and for so long as such parties maintain ownership of equity securities having such cost basis), Cantor will use its best efforts to cause one designee jointly selected by Williams and Dynegy to be nominated to our board of directors and to vote its shares of common equity in favor of such designee.

In connection with the Williams and Dynegy transactions, we purchased from Cantor 789,071 shares of our Class A common stock, representing half of the number of shares of our Class A common stock sold by us to Williams and Dynegy, for a purchase price of \$25.0 million. In addition, Cantor has agreed to sell half of the number of shares to be purchased by Williams and Dynegy, in the aggregate, each time an additional investment right is exercised in connection with a new Qualified Vertical for the same purchase price per share as is paid by Williams and Dynegy at the time.

TRADESPARK

On September 22, 2000, we made a cash investment in TradeSpark of \$2.0 million in exchange for a 5% interest in TradeSpark, and Cantor made a cash investment of \$4.25 million in TradeSpark and agreed to contribute to TradeSpark certain assets relating to its voice brokerage business in certain energy products in exchange for a 28.33% interest in TradeSpark. We and Cantor also executed an amendment to the Joint Services Agreement in order to enable each of us to

Edgar Filing: ESPEED INC - Form 10-K/A

engage in this business transaction. The remaining 66.67% interest in TradeSpark was purchased by energy industry market participants (EIPs). In connection with such investment, we entered into a perpetual technology services agreement with TradeSpark pursuant to which we provide the technology infrastructure for the transactional and technology related elements of the TradeSpark marketplace as well as certain other services to TradeSpark in exchange for specified percentages of transaction revenues from the marketplace. If a transaction is fully electronic, we receive 65% of the aggregate transaction revenues and TradeSpark receives 35% of the transaction revenues. In general, if TradeSpark provides voice-assisted brokerage services with respect to a transaction, then we receive 35% of the revenues and TradeSpark receives 65% of the revenues. Cantor also entered into an administrative services agreement with TradeSpark pursuant to which it provides administrative services to TradeSpark at cost. We and Cantor each received representation rights on the management committee of TradeSpark in proportion to our ownership interests in TradeSpark.

In order to provide incentives to the EIPs to trade on the TradeSpark electronic marketplace, which will result in commissions to us under the TradeSpark technology services agreement, we issued 5,500,000 shares of our Series A preferred stock and 2,500,000 shares of our Series B preferred stock to a limited liability company newly-formed by the EIPs to hold their investments in TradeSpark and the Series A and B preferred stock.

MUNICIPAL PARTNERS

In January 2002, Cantor sold the assets of the business known as Municipal Partners, Inc., a municipal bond broker, to a newly formed limited company, Municipal Partners, LLC, formed by Brian Kelly, a former employee of Cantor, in exchange for a 25% special interest in Municipal Partners LLC. Cantor had purchased substantially all of the assets of Municipal Partners, Inc. in July 2000. Cantor also loaned \$1,000,000 to Municipal Partners, LLC and is entitled to distributions equal to 5% of the gross revenues of the business less the amount of our revenue share for electronic transactions. Pending receipt of applicable licenses by Municipal Partners, LLC, Cantor provided Municipal Partners, LLC with interim services. In connection with the sale, we (1) granted Municipal Partners LLC a non-exclusive license to use our software and technology to operate a municipal bond

7

brokerage business; (2) will maintain our municipal bond trading platform and provide the software capabilities that were in place in Cantor's municipal bond business (we are to be compensated for upgrading the trading platform at cost plus a reasonable profit or at prevailing rates, at our election); (3) will provide web-hosting, technical and customer support at cost plus a reasonable fee to Municipal Partners LLC; (4) will receive 50% of gross revenues of Municipal Partners LLC with respect to electronic transactions; and (5) terminated existing arrangements with former brokers in the business (some of whom are deceased) pursuant to which we had given them shares of our Class A common stock valued at \$1,250,000 in exchange for promissory notes in the same amount with the result that the notes were terminated and the shares were cancelled.

FREEDOM INTERNATIONAL BROKERAGE

On January 29, 2001, we and Cantor formed a limited partnership to acquire 66.7% of Freedom International Brokerage. On April 4, 2001, we contributed 310,770 shares of our Class A common stock to the limited partnership, which entitles us to 75% of the limited partnership's interest in Freedom. We share in 15% of the limited partnership's cumulative profits but not in its cumulative losses.

Edgar Filing: ESPEED INC - Form 10-K/A

Cantor contributed 103,589 shares of our Class A common stock as the general partner. Cantor will be allocated all of the limited partnership's cumulative losses and 85% of the cumulative profits. The limited partnership exchanged the 414,359 shares for its 66.7% interest in Freedom. In addition, we issued warrants to purchase 400,000 shares of our Class A common stock to provide incentives to the Freedom owner-participants other than us and Cantor to migrate to our fully electronic platform. To the extent necessary to protect us from any allocation of losses, Cantor is required to provide future capital contributions to the limited partnership up to an amount that would make Cantor's total contribution equal to our investment in the limited partnership.

Upon the closing of the transaction, we entered into a services agreement with Freedom to provide for electronic trading technology and services and infrastructure/back-offices services. Under this agreement, we are entitled to 65% of the electronic transaction services revenues and Freedom is entitled to 35% of the revenues. We also receive 35% of revenues derived from all voice-assisted transactions, other miscellaneous transactions and the sale of market data or other information that is not incidental to the above services.

OUR EMPLOYEES' PURCHASE OF CANTOR FITZGERALD, L.P. PARTNERSHIP UNITS

We paid a cash bonus to six of our employees totalling \$2.3 million in early 2001. These employees used the after-tax amount of the bonus to purchase units in Cantor Fitzgerald, L.P. Three of these persons, one of whom is Mr. Noviello, our Executive Vice President and Chief Information Officer, are still employees of ours. With respect to these persons, when an employee is no longer a partner of Cantor (typically if he ceases to be employed by us), and if the employee has been employed by us for a period of more than four years and does not go to work for a competitor, then the employee will receive his capital in Cantor in four equal annual installments, with interest at an applicable federal rate. Amounts not paid to an employee who leaves before the fourth anniversary, or who leaves and competes with us, Cantor or any of its affiliates, will be paid to us.

INDEMNIFICATION BY CANTOR

Although we do not expect to incur any losses with respect to pending lawsuits or supplemental allegations relating to Cantor and Cantor's limited partnership agreement, Cantor has agreed to indemnify us with respect to any liabilities we incur as a result of such lawsuits or allegations.

8

REVERSE REPURCHASE AGREEMENTS

We enter into overnight reverse repurchase agreements with Cantor. At December 31, 2001, the reverse repurchase agreements totaled \$157.3 million, including accrued interest. The securities collateralizing the reverse repurchase agreements are held under a custodial arrangement with a third party bank.

9

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Annual Report on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized, on the 15th day of October, 2002.

Edgar Filing: ESPEED INC - Form 10-K/A

eSPEED, INC.

By: /s/ Howard W. Lutnick

Name: Howard W. Lutnick
Title: Chairman of the Board,
Chief Executive Officer
and President

10

Certifications Pursuant to Section 302
of the Sarbanes-Oxley Act of 2002

I, Howard W. Lutnick, certify that:

1. I have reviewed this annual report on Form 10-K/A of eSpeed, Inc.; and
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report.

Date: October 15, 2002

/s/ Howard W. Lutnick

Howard W. Lutnick
Chairman of the Board,
Chief Executive Officer and President

I, Jeffrey M. Chertoff, certify that:

1. I have reviewed this annual report on Form 10-K/A of eSpeed, Inc.; and
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report.

Date: October 14, 2002

/s/ Jeffrey M. Chertoff

Jeffrey M. Chertoff
Senior Vice President and
Chief Financial Officer

11