Ocean Power Technologies, Inc.
Form 10-K/A
March 11, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 2)

[X] **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended April 30, 2018

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 001-33417

Ocean Power Technologies, Inc.

Delaware	**22-2535818**
(State or other jurisdiction of	*(I.R.S. Employer*
incorporation or organization)	*Identification No.)*

28 ENGELHARD DRIVE, SUITE B

MONROE TOWNSHIP, NJ 08831

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (609) 730-0400

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

Title of Each Class	**Name of Exchange on Which Registered**
Common Stock, par value $0.001	The Nasdaq Capital Market

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes [ ] No [X]

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes [ ] No [X]

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 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 whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes [X] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) 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]

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer [ ] Accelerated filer [ ] Non-accelerated filer [ ] Smaller reporting company [X]
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes [ ] No [X]

Emerging growth company [ ]

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.[ ]

The aggregate market value of the common stock of the registrant held by non-affiliates as of October 31, 2017, the last business day of the registrant’s most recently completed second fiscal quarter, was $22.6 million based on the closing sale price of the registrant’s common stock on that date as reported on the NASDAQ Capital Market.

The number of shares outstanding of the registrant’s common stock as of July 5, 2018 was 18,368,286.

EXPLANATORY NOTE

This Amendment No. 2 on Form 10-K/A (the "Form 10-K/A") hereby amends the Annual Report on Form 10-K for the fiscal year ended April 30, 2018, which Ocean Power Technologies, Inc. (the "Company") previously filed with the Securities and Exchange Commission ("SEC") on July 17, 2018 (the "Original Form 10-K"). The sole purpose of this Form 10-K/A is, at the request of KPMG LLP, to update their opinion to include sentences inadvertently omitted by KPMG LLP stating specifically, "The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion." These changes do not in any way change the conclusions expressed by KPMG LLP in the original report.

In accordance with applicable Securities and Exchange Commission ("SEC") rules and as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, Amendment No. 2 includes new certifications from the Company's Principal Executive Officer and Principal Financial Officer dated as of the date of filing of Amendment No. 2.

This Amendment No. 2 consists solely of the preceding cover page, this explanatory note, Part II., Item 8., "Financial Statements and Supplementary Data," in its entirety, Part IV., Item 15., "Exhibits and Financial Statement Schedules," in its entirety, the signature page, and the new certifications from the Company's Principal Executive Officer and Principal Financial Officer.

Amendment No. 2 speaks as of the date of the Original 10-K, does not reflect events that may have occurred after the date of the Original 10-K and does not modify or update in any way the disclosures made in the Original 10-K, except as described above. Amendment No. 2 should be read in conjunction with the Original 10-K and with the Company's subsequent filings with the SEC.

PART II

ITEM 8. ***FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA***

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Reports of Management

Management's Report on Consolidated Financial Statements

The accompanying consolidated financial statements have been prepared by the management of Ocean Power Technologies, Inc. (the Company) in conformity with generally accepted accounting principles to reflect the financial position of the Company and its operating results. The financial information appearing throughout this Annual Report is consistent with the consolidated financial statements. Management is responsible for the information and representations in such consolidated financial statements, including the estimates and judgments required for their preparation. The consolidated financial statements have been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report, which appears herein.

The Audit Committee of the Board of Directors, which is composed entirely of directors who are not officers or employees of the Company, meets regularly with management and the independent registered public accounting firm. The independent registered public accounting firm has had, and continues to have, direct access to the Audit Committee without the presence of other management personnel and have been directed to discuss the results of their audit work and any matters they believe should be brought to the Committee's attention. The independent registered public accounting firm reports directly to the Audit Committee.

Management's Annual Report on Internal Control over Financial Reporting

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company's internal control over financial reporting includes those policies and procedures that:

pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and
provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of April 30, 2018. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework (2013*). Based on this assessment using those criteria, management concluded that the Company's internal control over financial reporting was effective as of April 30, 2018.

/s/ George H. Kirby III
George H. Kirby III
President and Chief Executive Officer

/s/ Matthew T. Shafer
Matthew T. Shafer
Chief Financial Officer and Treasurer

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors

Ocean Power Technologies, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Ocean Power Technologies, Inc. and subsidiaries (the Company) as of April 30, 2018 and 2017, and the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for each of the years in the two-year period ended April 30, 2018, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of April 30, 2018 and 2017, and the results of its operations and its cash flows for each of the years in the two-year period ended April 30, 2018, in conformity with U.S. generally accepted accounting principles.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 (b) to the consolidated financial statements, as of April 30, 2018 the Company has cash and cash equivalents of $11.5 million, and the Company has suffered recurring losses from operations and has an accumulated deficit. These factors raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are described in Note 1 (b). The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2004.

Philadelphia, Pennsylvania

July 17, 2018

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Balance Sheets

(in thousands, except share data)

	April 30, 2018	April 30, 2017
ASSETS		
Current assets:		
Cash and cash equivalents	$11,499	$8,421
Marketable securities	25	25
Restricted cash- short-term	572	334
Accounts receivable	171	48
Unbilled receivables	71	296
Litigation receivable	350	-
Other current assets	567	622
Total current assets	13,255	9,746
Property and equipment, net	712	170
Restricted cash- long-term	154	154
Other noncurrent assets	-	3
Total assets	$14,121	$10,073
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$290	$586
Accrued expenses	2,261	3,059
Litigation payable	350	-
Warrant liabilities	201	323
Current portion of capital lease obligations	23	35
Unearned revenue	18	-
Deferred credits payable current	600	600
Total current liabilities	3,743	4,603
Long-term portion of capital lease obligations	-	23
Deferred rent	142	-
Total liabilities	3,885	4,626
Commitments and contingencies		
Ocean Power Technologies, Inc. stockholders' equity:		
Preferred stock, $0.001 par value; authorized 5,000,000 shares, none issued or outstanding	-	-
Common stock, $0.001 par value; authorized 50,000,000 shares, issued 18,424,939 and 6,313,996 shares, respectively	18	6
Treasury stock, at cost; 74,012 and 48,065 shares, respectively	(300)	(263)
Additional paid-in capital	208,216	193,234
Accumulated deficit	(197,538)	(187,370)
Accumulated other comprehensive loss	(160)	(160)

Total stockholders' equity	10,236	5,447
Total liabilities and stockholders' equity	$14,121	$10,073

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Statements of Operations

(in thousands, except per share data)

	Twelve months ended April 30, 2018	2017
Revenues	$511	$843
Cost of revenues	763	938
Gross loss	(252)	(95)
Operating expenses:		
Product development costs	4,320	5,029
Selling, general and administrative costs	6,988	6,563
Total operating expenses	11,308	11,592
Operating loss	(11,560)	(11,687)
Gain due to the change in fair value of warrant liabilities	122	1,491
Interest income, net	83	28
Other income	4	-
Foreign exchange gain/(loss)	75	(16)
Loss before income taxes	(11,276)	(10,184)
Income tax benefit	1,119	698
Net loss	$(10,157)	$(9,486)
Basic and diluted net loss per share	$(0.66)	$(2.23)
Weighted average shares used to compute basic and diluted net loss per share	15,346,602	4,259,172

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Statements of Comprehensive Loss

(in thousands)

	Twelve months ended April 30,	
	2018	2017
Net loss	$(10,157)	$(9,486)
Foreign currency translation adjustment	-	(38)
Total comprehensive loss	$(10,157)	$(9,524)

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Statements of Stockholders' Equity

(in thousands, except share data)

	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balances, April 30, 2016	2,352,100	$ 2	(6,894)	$ (138)	$ 181,670	$ (177,884)	$ (122)	$ 3,528
Net loss						(9,486)		(9,486)
Stock based compensation					278			278
Issuance of restricted stock, net	189,896	-			954			954
Sale of stock	3,772,000	4			10,332			10,336
Acquisition of treasury stock			(41,171)	(125)				(125)
Other comprehensive loss							(38)	(38)
Balances, April 30, 2017	6,313,996	$ 6	(48,065)	$ (263)	$ 193,234	$ (187,370)	$ (160)	$ 5,447
Net loss						(10,157)		(10,157)
Stock based compensation					329			329
Issuance of restricted stock, net	178,756	-			-			-
Sale of stock, net of financing costs	11,932,187	12			14,642			14,654
Acquisition of treasury stock			(25,947)	(37)				(37)
Adoption of accounting standard update related to stock compensation accounting (ASU 2016-09)					11	(11)		-
Other comprehensive loss							-	-
Balances, April 30, 2018	18,424,939	$ 18	(74,012)	$ (300)	$ 208,216	$ (197,538)	$ (160)	$ 10,236

See accompanying notes to consolidated financial statements

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OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows

(in thousands)

	Twelve months ended April 30, 2018	2017
Cash flows from operating activities:		
Net loss	$(10,157)	$(9,486)
Adjustments to reconcile net loss to net cash used in operating activities:		
Foreign exchange (gain)/loss	(75)	16
Depreciation	122	140
Loss on disposal of property, plant and equipment	5	-
Compensation expense related to stock option grants and restricted stock	329	1,232
Change in fair value of warrant liabilities	(122)	(1,491)
Payment for litigation settlement	-	(500)
Changes in operating assets and liabilities:		
Accounts receivable	(123)	(48)
Unbilled receivable	225	(258)
Other receivable	(166)	-
Other assets	360	(212)
Accounts payable	(296)	213
Accrued expenses	(821)	395
Deferred rent	5	-
Unearned revenues	18	(39)
Net cash used in operating activities	(10,696)	(10,038)
Cash flows from investing activities:		
Purchases of marketable securities	(25)	-
Maturities of marketable securities	25	50
Leasehold improvements and purchase of equipment	(658)	(37)
Net cash (used in) provided by investing activities	(658)	13
Cash flows from financing activities:		
Proceeds from issuance of common stock and related warrants, net of costs	14,654	12,150
Payment of capital lease obligations	(35)	(28)
Payment of debt	-	(50)
Acquisition of treasury stock	(37)	(125)
Net cash provided by financing activities	14,582	11,947
Effect of exchange rate changes on cash, cash equivalents and restricted cash	88	(43)
Net increase in cash, cash equivalents and restricted cash	3,316	1,879
Cash, cash equivalents and restricted cash, beginning of period	8,909	7,030
Cash, cash equivalents and restricted cash, end of period	$12,225	$8,909

Supplemental schedule of cash flows information:

Cash paid for interest	$3	$6
Supplemental disclosure of noncash investing activities:		
Acquisition of equipment pursuant to capital leases	$-	$4
Acquisition of leasehold improvements and equipment through accrued expenses	11	-

See accompanying notes to the consolidated financial statements

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Background and Liquidity

(a) Background

Ocean Power Technologies, Inc. (the "Company") was founded in 1984 in New Jersey, commenced business operations in 1994 and re-incorporated in Delaware in 2007. The Company is developing and commercializing its proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The Company uses proprietary technologies that convert the mechanical energy created by the heaving motion of ocean waves into electricity. The Company has designed and continues to develop the PowerBuoy™ product line which is based on modular, ocean-going buoys, which the Company has been periodically ocean testing since 1997. The Company markets its PowerBuoys™ in the United States and internationally. Since fiscal 2002, government agencies have accounted for a significant portion of the Company's revenues. These revenues were largely for the support of product development efforts. The Company's goal is that an increased portion of its revenues be from the sale or lease of products and maintenance services, as compared to revenue to support its product development efforts. As the Company continues to advance its proprietary technologies, it expects to continue to have a net decrease in cash from operating activities unless and until it achieves positive cash flow from the planned commercialization of its products and services.

(b) Liquidity/Going Concern

Our consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of $197.5 million at April 30, 2018. At April 30, 2018, the Company had approximately $11.5 million in cash on hand. The Company generated revenues of only $0.5 million and $0.8 million during the years ended April 30, 2018 and 2017, respectively. Based on the Company's cash and cash equivalents and marketable securities balances as of April 30, 2018, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending April 30, 2019, including $0.6 million of payments due by August 30, 2018 as a return of an option due to ineligibility for certain emission credits. The Company will require additional equity and/or debt financing to continue its operations. The Company cannot provide assurances that it will be able to secure additional funding when needed or at all, or, if secured, that such funding would be on favorable terms. These factors raise substantial doubt about the Company's ability to continue as a going concern.

The consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded assets amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty.

Management is evaluating different strategies to obtain the required additional funding for future operations. These strategies may include, but are not limited to, additional funding from current or new investors, officers and directors; borrowings of debt; a public offering of the Company's equity or debt securities; partnerships and/or collaborations. There can be no assurance that any of these future-funding efforts will be successful.

In fiscal 2018 and 2017, the Company has continued to make investments in ongoing product development efforts in anticipation of future growth. The Company's future results of operations involve significant risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, risks from lack of available financing and insufficient capital, performance of PowerBuoys™, its inability to market and commercialize its PowerBuoys™, technology development, scalability of technology and production, dependence on skills of key personnel, concentration of customers and suppliers, deployment risks and laws, regulations and permitting In order to continue to implement its business strategy, the Company requires additional equity and/or debt financing. The Company closed five equity financing arrangements during the two year period ended April 30, 2018. The Company does not currently have any committed sources of debt or equity financing, and the Company cannot assure that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. Historically, the Company has raised capital through securities sales in the public capital markets. If sufficient additional financing is not obtained when needed, the Company may be required to further curtail or limit operations, product development costs, and/or selling, general and administrative activities in order to reduce its cash expenditures. This could cause the Company to be unable to execute its business plan, take advantage of future opportunities and may cause it to scale back, delay or eliminate some or all of its product development activities and/or reduce the scope of or cease its operations.

On June 2, 2016, the Company entered into a securities purchase agreement, which was amended on June 7, 2016 (as amended, the "Purchase Agreement") with certain institutional purchasers (the "June Purchasers"). Pursuant to the terms of the Purchase Agreement, the Company sold an aggregate of 417,000 shares of Common Stock together with warrants to purchase up to an aggregate of 145,952 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.35 of a share of Common Stock at a combined purchase price of $4.60. The net proceeds to the Company from the offering were approximately $1.7 million, after deducting placement agent fees and estimated offering expenses payable by the Company, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The warrants have an exercise price of $6.08 per share, became exercisable on December 3, 2016 ("Initial Exercise Date"), and will expire five years following the Initial Exercise Date. The Company paid the placement agents approximately $0.1 million as placement agent fees in connection with the sale of securities in the offering. The Company also reimbursed the placement agents $35 thousand for their out of pocket and legal expenses in connection with the offering.

On July 22, 2016, the Company entered into the Second Amendment to the Purchase Agreement (the "Second Amended Purchase Agreement") with certain purchasers (the "July Purchasers"). Pursuant to the terms of the Second Amended Purchase Agreement, the Company sold an aggregate of 595,000 shares of Common Stock together with warrants to purchase up to an aggregate of 178,500 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.30 of a share of Common Stock at a combined purchase price of $6.75. The net proceeds to the Company from the offering were approximately $3.6 million, after deducting placement agent fees and estimated offering expenses payable by the Company, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The Warrants were exercisable immediately at an exercise price of $9.36 per share. The Warrants will expire on the fifth (5th) anniversary of the initial date of issuance.

On October 19, 2016, the Company sold 2,760,000 shares of common stock at a price of $2.75 per share, which includes the sale of 360,000 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $6.9 million, after deducting underwriter fees and offering expenses payable by the Company.

On May 2, 2017, the Company sold 6,192,750 shares of common stock at a price of $1.30 per share, which includes the sale of 807,750 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $7.2 million, after deducting underwriter fees and offering expenses payable by the Company.

On October 23, 2017, the Company sold 5,739,437 shares of common stock at a price of $1.42 per share in a best efforts public offering. The net proceeds to the Company from the offering were approximately $7.4 million, after deducting placement fees and offering expenses payable by the Company.

The sale of additional equity or convertible securities could result in dilution to stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with the Company's Common Stock and could contain covenants that would restrict its operations. Financing may not be available in amounts or on terms acceptable to the Company, or at all. If the Company is unable to obtain required financing, it may be required to reduce the scope of its operations, including its planned product development and marketing efforts, which could materially and adversely harm its financial condition and operating results. If the Company is unable to secure additional financing, it may be forced to cease operations.

(2) Summary of Significant Accounting Policies

(a) Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation. Participation of stockholders other than the Company in the net assets and in the earnings or losses of a consolidated subsidiary is reflected as a non-controlling interest in the Company's Consolidated Balance Sheets and Statements of Operations, which adjusts the Company's consolidated results of operations to reflect only the Company's share of the earnings or losses of the consolidated subsidiary

The Company also periodically evaluates its relationships with other entities to identify whether they are variable interest entities, and to assess whether it is the primary beneficiary of such entities. If the determination is made that the Company is the primary beneficiary, then that entity is included in the consolidated financial statements. As of April 30, 2018, there were no such entities.

(b) Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include fair value of warrant liabilities; estimated costs to complete projects and percentage of completion of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates. The current economic environment, particularly the macroeconomic pressures in certain European countries, has increased the degree of uncertainty inherent in those estimates and assumptions.

(c) Revenue Recognition

The Company's contracts are either cost plus or fixed price contracts and may include a lease component. Under cost plus contracts, customers are billed for actual expenses incurred plus an agreed-upon fee. Under cost plus contracts, a profit or loss on a project is recognized depending on whether actual costs are more or less than the agreed upon amount.

The Company has two types of fixed price contracts, firm fixed price and cost-sharing. Under firm fixed price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenues, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense.

Generally, revenue under fixed price or cost plus contracts is recognized using the cost to cost percentage-of-completion method, measured by the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when the customer acknowledges that such criteria have been satisfied. If an arrangement involves multiple deliverables, the delivered items are considered separate units of accounting if the items have value on a stand-alone basis. Amounts allocated to each element are based on its objectively determined fair value, such as the sales price for the product or service when it is sold separately or competitor prices for similar products or services.

In addition, recognition of revenue (and the related costs) may be deferred for fixed price contracts until contract completion if the Company is unable to reasonably estimate the total costs of the project prior to completion. These contracts are subject to interpretation and management may make a judgment as to the amount of revenue earned and recorded. Because the Company has a small number of contracts, revisions to the percentage-of-completion determination, management interpretation or delays in meeting performance and contractual criteria or in completing projects may have a significant effect on revenue for the periods involved. Upon anticipating a loss on a contract, the Company recognizes the full amount of the anticipated loss in the current period.

The Company classifies leases as either operating or capital lease arrangements in accordance with the authoritative accounting guidance contained within Accounting Standards Codification ("ASC") Topic 840, *"Leases"*. At inception of the contract, the Company evaluates the lease against the four lease classification criteria within ASC Topic 840. In general, if one of the four criteria is met, then the lease is accounted for as a capital lease. All others are treated as an operating lease. For operating leases, lessee payments are recorded to revenue on a straight-line basis over the term of the lease.

Unbilled receivables represent expenditures on contracts, plus applicable profit margin, not yet billed. Unbilled receivables are normally billed and collected within one year. Billings made on contracts are recorded as a reduction of unbilled receivables, and to the extent that such billings and cash collections exceed costs incurred plus applicable profit margin, they are recorded as unearned revenues.

(d) Cash and Cash Equivalents, Restricted Cash and Security Agreements

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. The Company invests excess cash in a money market account. The following table summarizes cash and cash equivalents for the years ended April 30, 2018 and 2017:

	April 30, 2018	April 30, 2017
	(in thousands)	
Checking and savings accounts	$1,332	$4,241
Overnight repurchase account	-	4,180
Money market account	10,167	-
	$11,499	$8,421

Restricted Cash and Security Agreements

A portion of the Company's cash is restricted under the terms of three security agreements.

One agreement is between the Company and Barclays Bank. Under this agreement, the cash is on deposit at Barclays Bank and serves as security for letters of credit and bank guarantees that are expected to be issued by Barclays Bank on behalf of OPT LTD, one of the Company's subsidiaries, under a credit facility established by Barclays Bank for OPT LTD. The credit facility is approximately €0.3 million ($0.4 million) and carries a fee of 1% per annum of the amount of any such obligations issued by Barclays Bank. The credit facility does not have an expiration date but is cancelable at the discretion of the bank. As of April 30, 2018, there was €0.3 million ($0.4 million) in letters of credit outstanding under this agreement.

The other two agreements are between the Company and Santander Bank. Under the first agreement, the cash is on deposit at Santander Bank and serves as security for letter of credit issued by Santander Bank for the lease of new warehouse/office space in Monroe Township, New Jersey. The agreement cannot be extended beyond January 31, 2025, and is cancelable at the discretion of the bank. Under the second the cash is on deposit at Santander Bank and serves as security for a performance bond issued by Santander Bank as a requirement of the Eni contract. The following table summarizes restricted cash for the years ended April 30, 2018 and 2017:

	April 30, 2018	April 30, 2017
	(in thousands)	
Barclay's Bank Agreement	$372	$334
Santander Bank	354	154
	$726	$488

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the statement of financial position that sum to the total of the same such amounts shown in the statement of cash flows for the years ended April 30, 2018 and 2017:

	April 30, 2018	April 30, 2017
	(in thousands)	
Cash and cash equivalents	$11,499	$8,421
Restricted cash- short term	572	334
Restricted cash- long term	154	154
	$12,225	$8,909

(e) Marketable Securities

Marketable securities with original maturities longer than three months but that mature in less than one year from the balance sheet date are classified as current assets. Marketable securities that the Company has the intent and ability to hold to maturity are classified as investments held-to-maturity and are reported at amortized cost. The difference between the acquisition cost and face values of held-to-maturity investments is amortized over the remaining term of the investments and added to or subtracted from the acquisition cost and interest income. As of April 30, 2018 and, 2017, all of the Company's investments were classified as held-to-maturity.

(f) Property and Equipment

Property and equipment consists primarily of equipment, furnishings, fixtures, computer equipment and leasehold improvements and are recorded at cost. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives of the assets. Expenses for maintenance and repairs are charged to operations as incurred. Property and equipment is also reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, then an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset.

Description	Estimated useful life
Equipment	5 - 7 years
Computer equipment & software	3 years
Office furniture & fixtures	3 - 7 years
Equipment under capitalized lease	Over the life of the lease
Leasehold improvements	Shorter of the estimated useful life or lease term

(g) Foreign Exchange Gains and Losses

The Company has invested in certain certificates of deposit and has maintained cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These amounts are included in cash, cash equivalents, restricted cash and marketable securities on the accompanying consolidated balance sheets. Such positions may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in "foreign exchange gain (loss)" in the accompanying consolidated statements of operations.

(h) Patents

External costs related to the filing of patents, including legal and filing fees, are capitalized if expenses related to the filing of a patent are significant. The Company continually re-assesses the remaining useful lives of its long-lived assets and costs are expensed when it is no longer probable that such technology will be utilized. Patents are also reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the patent may not be recoverable. Two new patents were granted in fiscal year 2018 and no new patents were granted in fiscal year 2017. There was no amortization of patents recorded during the years ended April 30, 2018 and 2017, as the patents are fully amortized.

(i) Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash balances, bank certificates of deposit and trade receivables. The Company invests its excess cash in highly liquid investments (principally, short-term bank deposits, Treasury bills, Treasury notes and money market funds) and does not believe that it is exposed to any significant risks related to its cash accounts, money market funds or certificates of deposit.

The table below shows the percentage of the Company's revenues derived from customers whose revenues accounted for at least 10% of the Company's consolidated revenues for at least one of the periods indicated:

	Twelve months ended April 30,	
	2018	2017

Eni S.p.A.	33 %	0 %
Mitsui Engineering & Shipbuilding	43 %	80 %
Premier Oil UK Limited	10 %	0 %
U.S. Department of Defense Office of Naval Research	14 %	20 %
	100 %	100 %

The loss of, or a significant reduction in revenues from a current customer could significantly impact the Company's financial position or results of operations. The Company does not require its customers to maintain collateral.

(j) Warrant Liabilities

The Company's warrants to purchase shares of its common stock are classified as warrant liabilities and are recorded at fair value. The warrant liabilities are subject to re-measurement at each balance sheet date and the Company recognizes any change in fair value in its consolidated statements of operations within "(Gain due to the change in fair value of warrant liabilities". The Company will continue to adjust the carrying value of the warrants for changes in the estimated fair value until such time as these instruments are exercised or expire. At that time, the liabilities will be reclassified to "Additional paid-in capital", a component of "stockholders' equity" on the consolidated balance sheets.

(k) Net Loss per Common Share

Basic and diluted net loss per share for all periods presented is computed by dividing net loss by the weighted average number of shares of Common Stock outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of outstanding stock options and non-vested performance-based shares, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share, options to purchase shares of common stock, warrants on common stock and non-vested restricted stock issued to employees and non-employee directors, totaling 910,045 and 657,078 for the years ended April 30, 2018 and 2017, respectively, were excluded from each of the computations as the effect would be anti-dilutive due to the Company's losses.

(l) Share-Based Compensation

Costs resulting from all share-based payment transactions are recognized in the consolidated financial statements at their fair values. The aggregate share-based compensation expense recorded in the consolidated statements of operations for the years ended April 30, 2018 and 2017 was approximately $0.3 million and $1.2 million, respectively. The following table summarizes share-based compensation related to the Company's share-based plans by expense category for the years ended April 30, 2018 and 2017:

	Twelve months ended April 30,	
	2018	2017
	(in thousands)	
Product development	$24	$525
Selling, general and administrative	305	707
Total share-based compensation expense	$329	$1,232

Valuation Assumptions for Restricted Stock and Options Granted During the Years Ended April 30, 2018 and 2017

Options

The fair value of each stock option granted, for both service-based and performance-based vesting requirements during the year ended April 30 2018, was estimated at the date of grant using the Black-Scholes option pricing model, assuming no dividends, and using the weighted average valuation assumptions noted in the below table. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the "simplified" method as permitted by the SEC's Staff Accounting Bulletin No. 110, *Share-Based Payment.* Expected volatility was based on the Company's historical volatility during the twelve months ended April 30, 2018.

	Twelve months ended April 30,	
	2018	2017
Risk-free interest rate	2.1 %	1.3 %
Expected dividend yield	0.0 %	0.0 %
Expected life (in years)	5.5	5.5
Expected volatility	128.2%	96.2%

The above assumptions were used to determine the weighted average per share fair value of $1.17 and 2.52 for stock options granted during the years ended April 30, 2018 and 2017, respectively.

Restricted Stock

Compensation expense for non-vested restricted stock is recorded based on its market value on the date of grant and recognized ratably over the associated service and performance period. If the vesting requirement of performance-based grants is tied to the Company's total shareholder return (TSR) relative to the total shareholder return of alternative energy Exchange Traded Funds as measured over a specific performance period then the compensation expense for these awards with market-based vesting is calculated based on the estimated fair value as of the grant date utilizing a Monte Carlo simulation model and is recognized over the service period on a straight-line basis.

(m) Deferred Rent

On March 31, 2017, the Company signed a new 7-year lease for approximately 56,000 square feet in Monroe Township, New Jersey that will be used as warehouse/production space and the Company's principal offices and corporate headquarters. The lease was classified as an operating lease. Rent payments relating to the Monroe premises are subject to annual increases. The minimum monthly payments will vary over the 7-year term of the lease. The Company will record rent expense on a straight-line basis over the 7-year term of the lease. The difference between rent expense and the monthly lease payment will go to a deferred rent/prepaid rent account. The Landlord has provided the Company a tenant improvement allowance in an amount up to, but not exceeding, $137,563 to be applied to the cost of tenant improvement work. The Company collected the full amount of the tenant improvement allowance in May 2018. The Company recorded lease incentive liability to deferred rent. The Company will release the lease incentive liability on a straight-line basis over the 7-year term to rent expense.

(n) Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences and operating loss and tax credit carry forwards are expected to be recovered, settled or utilized. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained upon examination. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change

in judgment occurs. The Company records interest related to unrecognized tax benefits in interest expense and penalties in selling, general, and administrative expenses, to the extent incurred.

(o) Accumulated Other Comprehensive Loss

The functional currency for the Company's foreign operations is the applicable local currency. The translation from the applicable foreign currencies to U.S. dollars is performed for balance sheet accounts using the exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The unrealized gains or losses resulting from such translation are included in accumulated other comprehensive loss within stockholders' equity.

(p) Recently Issued Accounting Standards

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, "*Revenue from Contracts with Customers (Topic 606).*" ASU 2014-09 outlines a new, single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. This new revenue recognition model provides a five-step analysis in determining when and how revenue is recognized. The new model will require revenue recognition to depict the transfer of promised goods or services to customers in an amount that reflects the consideration a company expects to receive in exchange for those goods or services. The FASB subsequently issued additional clarifying standards to address issues arising from implementation of the new revenue standard, including a one-year deferral of the effective date for the new revenue standard. Public companies should now apply the guidance in ASU 2014-09 to annual reporting periods beginning after December 15, 2017 and interim periods within those annual periods. Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016, including interim periods within that annual period. As such, the Company is required to adopt this standard effective in fiscal 2019, which begins May 1, 2018. The Company will use the modified retrospective approach to adopt ASU 2014-09. The Company is completing its final review and therefore has not determined the final impact on its consolidated financial statements and disclosures. However, the preliminary view is that the impact will not be material to the consolidated financial statements and disclosures. The impact to the Company could be affected by the nature and terms of potential future contracts with customers, as those contracts may have terms that differ from the company's current contracts.

In August 2014, the FASB issued ASU 2014-15, *"Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern",* which describes how an entity should assess its ability to meet obligations and sets rules for how this information should be disclosed in the financial statements. The standard provides accounting guidance that will be used along with existing auditing standards. The new standard applies to all entities for the first annual period ending after December 15, 2016, and interim periods thereafter. Early application is permitted. The Company adopted ASU 2014-15 for the fiscal year 2017. The Company's addition of the standard did not have a material impact on its disclosures. See section (b) "Liquidity/Going Concern" within Note (1) "Background and Liquidity" of these financial statements for further discussion on the Company's ability to continue as a going concern.

In February 2016, the FASB issued ASU No. 2016-02, *"Leases (Topic 842*)." The new standard establishes a right-of-use (ROU) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. ASU 2016-02 is effective for annual periods beginning after December 15, 2018, including interim periods within those annual periods, with early adoption permitted. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. The Company is evaluating the effect ASU 2016-02 will have on its consolidated financial statements and disclosures and has not yet determined the effect of the standard on its ongoing financial reporting at this time.

In March 2016, the FASB issued ASU No. 2016-09, *"Compensation - Stock Compensation (Topic 718)."* The amendments of ASU No. 2016-09 were issued as part of the FASB's Simplification initiative focused on improving areas of GAAP for which cost and complexity may be reduced while maintaining or improving the usefulness of information disclosed within the financial statements. The amendments focused on simplification specifically with regard to share-based payment transactions, including income tax consequences, classification of awards as equity or liabilities and classification on the statement of cash flows. The guidance in ASU No. 2016-09 is effective for fiscal years beginning after December 15, 2016, and interim periods within those annual periods. The Company adopted ASU 2016-09 on May 1, 2017. Certain of the amendments are applied using a modified retrospective transition method by means of a cumulative-effect adjustment to equity as of May 1, 2017, while other amendments are applied retrospectively, prospectively or using either a prospective or a retrospective transition method. Upon adoption, the Company is beginning to account for forfeitures as they occur rather than estimate a forfeiture rate and has recorded a cumulative-effect adjustment in equity of approximately $11,000 on the date of initial adoption. In periods subsequent to adoption, a higher expense will be recognized earlier during the respective vesting periods of stock-based awards that are not forfeited. As a result of the valuation allowance against our deferred tax assets, there was no net adjustment to retained earnings for the change in accounting for unrecognized windfall tax benefits.

In August 2016, the FASB issued ASU 2016-15, *"Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments",* providing additional guidance on eight specific cash flow classification issues. The goal of the ASU is to reduce diversity in practice of classifying certain items. The amendments in the ASU are effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years and early adoption is permitted. The Company is evaluating the effect ASU 2016-13 will have on its consolidated financial statements and disclosures and has determined the standard will have no impact on its ongoing financial reporting at this time.

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In November 2016, the FASB issued ASU 2016-18, *"Statement of Cash Flows (Topic 230): Restricted Cash",* which amends guidance and presentation related to restricted cash in the statement of cash flows, including stating that amounts generally described as restricted cash and restricted cash equivalents should be included within cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown in the statement of cash flows. An entity is required to provide a disclosure indicating the reconciliation of all cash accounts. The amendments in the ASU are effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years and early adoption is permitted. The Company has early adopted ASU 2016-18 effective May 1, 2017. In connection with the adoption of the standard the Company has used a retrospective transition method for each period presented in the statement of cash flows. The Company reclassified $300,000 of restricted cash to cash, cash equivalents and restricted cash, beginning of period for the period April 30, 2017 and $488,000 of restricted cash to cash, cash equivalents and restricted cash, ending of period for the period April 30, 2017 in the statement of cash flows.

(3) Marketable Securities

Marketable securities with initial maturities greater than three months but that mature within one year from the balance sheet date are classified as current assets. For the period ended April 30, 2018 and April 30, 2017 the Company had $25,000 in certificates of deposit.

(4) Property and Equipment

The components of property and equipment as of April 30, 2018 and 2017 consisted of the following:

	April 30, 2018	April 30, 2017
	(in thousands)	
Equipment	$394	$715
Computer Equipment & Software	614	556
Office Furniture & Equipment	338	250
Leasehold improvements	473	182
Equipment under capitalized lease	103	103
	$1,922	$1,806
Less: accumulated depreciation	(1,210)	(1,636)
	$712	$170

Depreciation expense was $0.1 million and $0.1 million for the years ended April 30, 2018 and 2017, respectively.

As of April 30, 2018 and 2017, computer equipment and software under capital leases was $103 thousand and $103 thousand, respectively. The terms of the leases are for 36 months. Future minimum lease payments under capital leases together with the present value of the net minimum lease payments as of April 30, 2018 are as follows:

	April 30, 2018 (in thousands)	
Remaining payments in Fiscal 2019	$	23
Total net future minimum lease payments	$	23
Less: Amount representing interest		-
Present value of net minimum lease payments	$	23

(5) Accrued Expenses

Accrued expenses consist of the following at April 30, 2018 and April 30, 2017.

	April 30, 2018	April 30, 2017
	(in thousands)	
Project costs	$57	$898
Contract loss reserve	395	238
Employee incentive payments	761	643
Accrued salary and benefits	442	484
Legal and accounting fees	246	478
Accrued taxes payable	179	132
Other	181	186
	$2,261	$3,059

(6) Deferred Credits Payable

During the year ended April 30, 2001, in connection with the sale of Common Stock to an investor, the Company received $0.6 million from the investor in exchange for an option to purchase up to 500,000 metric tons of carbon emissions credits generated by the Company during the years 2008 through 2012, at a 30% discount from the then-prevailing market rate. If the Company received emission credits under applicable laws and failed to sell to the investor the credits up to the full amount of emission credits covered by the option, the investor was entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits). Under the terms of the agreement, if the Company did not become entitled under applicable laws to the full amount of emission credits covered by the option by December 31, 2012, the Company was obligated to return the option fee of $0.6 million, less the aggregate discount on any emission credits sold to the investor prior to such date. In December 2012, the Company and the investor agreed to extend the period for the sale of emission credits until December 31, 2017. As of April 30, 2018, the Company has not generated any emissions credits eligible for purchase under the agreement. The $0.6 million is reflected on the balance sheet within “Deferred credits payable current” as of April 30, 2018 and 2017. The Company is currently in process of making payments to return the $0.6 million option fee and expects to complete the payments by August 30, 2018.

(7) Warrants

On June 2, 2016, the Company entered into a securities purchase agreement, which was amended on June 7, 2016 (as amended, the "June Purchase Agreement") with certain institutional purchasers (the "June Purchasers"). Pursuant to the terms of the June Purchase Agreement, the Company sold an aggregate of 417,000 shares of Common Stock together with warrants to purchase up to an aggregate of 145,952 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.35 of a share of Common Stock at a combined purchase price of $4.60. The warrants have an exercise price of $6.08 per share, became exercisable on December 3, 2016 ("Initial Exercise Date"), and will expire five years following the Initial Exercise Date.

On July 22, 2016, the Company entered into a Second Amendment to the Purchase Agreement (the "Second Amended Purchase Agreement") with certain institutional purchasers (the "July Purchasers"). Pursuant to the terms of the Second Amended Purchase Agreement, the Company sold an aggregate of 595,000 shares of Common Stock together with warrants to purchase up to an aggregate of 178,500 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.30 of a share of Common Stock at a combined purchase price of $6.75. The Warrants were exercisable immediately at an exercise price of $9.36 per share. The Warrants will expire on the fifth (5th) anniversary of the initial date of issuance.

The warrants contain a feature whereby they could require the transfer of assets and therefore are classified as a liability in accordance with ASC 480. As such, the warrants with a value of $0.2 million at April 30, 2018 and $0.3 million at April 30, 2017 are reflected within “Warrant liabilities” in the consolidated balance sheets.

An unrealized gain of $0.1 million and $1.5 million, were included within “Gain due to change in fair value of warrant liabilities” in the consolidated statements of operations for the year ended April 30, 2018 and 2017, respectively. The Company determined the fair value using the Black-Scholes option pricing model with the following assumptions for the period ended April 30, 2018 and April 30, 2017:

	April 30, 2018		April 30, 2017	
Dividend rate	0.0	%	0.0	%
Risk-free rate	2.7% - 2.8	%	1.8	%
Expected life (years)	3.2 - 3.6		4.2 - 4.6	
Expected volatility	132.9% - 142.7	%	131.7% - 141.3	%

(8) Preferred Stock

The Company has authorized 5,000,000 shares of undesignated preferred stock with a par value of $0.001 per share. As of April 30, 2018, and 2017, no shares of preferred stock had been issued.

(9) Common Stock

As of April 30, 2018, the Company has 50,000,000 shares authorized with a par value of $0.001 per share and 18,424,939 shares issued.

On June 2, 2016, the Company entered into a securities purchase agreement, which was amended on June 7, 2016 (as amended, the “Purchase Agreement”) with certain institutional purchasers (the “June Purchasers”). Pursuant to the terms of the Purchase Agreement, the Company sold an aggregate of 417,000 shares of Common Stock together with warrants to purchase up to an aggregate of 145,952 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.35 of a share of Common Stock at a combined purchase price of $4.60. The net proceeds to the Company from the offering were approximately $1.7 million, after deducting placement agent fees and estimated offering expenses payable by the Company, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The warrants have an exercise price of $6.08 per share, became exercisable on December 3, 2016 (“Initial Exercise Date”), and will expire five years following the Initial Exercise Date. The Company

paid the placement agents approximately $0.1 million as placement agent fees in connection with the sale of securities in the offering. The Company also reimbursed the placement agents $35 thousand for their out of pocket and legal expenses in connection with the offering.

On July 22, 2016, the Company entered into the Second Amendment to the Purchase Agreement (the "Second Amended Purchase Agreement") with certain purchasers (the "July Purchasers"). Pursuant to the terms of the Second Amended Purchase Agreement, the Company sold an aggregate of 595,000 shares of Common Stock together with warrants to purchase up to an aggregate of 178,500 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.30 of a share of Common Stock at a combined purchase price of $6.75. The net proceeds to the Company from the offering were approximately $3.6 million, after deducting placement agent fees and estimated offering expenses payable by the Company, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The Warrants were exercisable immediately at an exercise price of $9.36 per share. The Warrants will expire on the fifth (5th) anniversary of the initial date of issuance.

On October 19, 2016, the Company sold 2,760,000 shares of common stock at a price of $2.75 per share, which includes the sale of 360,000 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $6.9 million, after deducting underwriter fees and offering expenses payable by the Company.

On May 2, 2017, the Company sold 6,192,750 shares of common stock at a price of $1.30 per share, which includes the sale of 807,750 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $7.2 million, after deducting underwriter fees and offering expenses payable by the Company.

On October 23, 2017, the Company sold 5,739,437 shares of common stock at a price of $1.42 per share in a best efforts public offering. The net proceeds to the Company from the offering were approximately $7.4 million, after deducting placement fees and offering expenses payable by the Company.

(10) Treasury Shares

During the years ended April 30, 2018 and 2017, 25,947 and 41,171 shares of Common Stock, respectively, were purchased by the Company from employees to pay taxes related to the vesting of restricted stock.

(11) Share-Based Compensation Plans

2006 Stock Incentive Plan

In 2007, the Company's 2006 Stock Incentive Plan became effective. A total of 80,321 shares were authorized for issuance under the 2006 Stock Incentive Plan. In 2009, an amendment to the 2006 Stock Incentive Plan was approved by the Company's stockholders, increasing the aggregate number of shares authorized for issuance by 85,000 shares to 165,321. On October 2, 2013, a further amendment to the 2006 Stock Incentive Plan was approved by the Company's stockholders, increasing the aggregate number of shares authorized for issuance by an additional 80,000 shares to 245,321. The Company's employees, officers, directors, consultants and advisors were eligible to receive awards under the 2006 Stock Incentive Plan; however, incentive stock options may only be granted to employees. The maximum number of shares of Common Stock with respect to which awards may be granted to any participant under the 2006 Stock Incentive Plan was 20,000 per calendar year. Vesting provisions of stock options are determined by the board of directors. The contractual term of these stock options is up to ten years. The 2006 Stock Incentive Plan was administered by the Company's board of directors, who were authorized to delegate authority to one or more committees or subcommittees of the board of directors or to the Company's officers. The 2006 Stock Incentive Plan was terminated in December 2015 and unused shares in that Plan were transferred to the 2015 Omnibus Incentive Plan.

2015 Omnibus Incentive Plan

In 2015, upon approval by the Company's stockholders, the Company's 2015 Omnibus Incentive Plan (the "2015 Plan") became effective. A total of 240,703 shares were authorized for issuance under the 2015 Omnibus Incentive Plan, including shares available for awards under the 2006 Stock Incentive Plan remaining at the time that plan terminated, or that were subject to awards under the 2006 Stock Incentive Plan that thereafter terminated by reason of expiration, forfeiture, cancellation or otherwise. On October 21, 2016 upon approval by the Company's stockholders the Company increased the number of shares authorized for issuance to 640,703. If any award under the 2006 Stock Incentive Plan or 2015 Plan expires, is cancelled, terminates unexercised or is forfeited, those shares become again available for grant under the 2015 Plan. As of April 30, 2018, the Company has 89,531 shares available for future issuance under the 2015 plan.

The 2015 Plan provides for the grant of stock options, SARs, restricted stock awards, stock unit awards and unrestricted stock awards, dividend equivalent rights, performance share awards or other performance-based awards, other equity-based awards or cash to eligible employees, officers and non-employee directors of the Company or any affiliate of the Company, or any consultant or adviser to the Company. The maximum number of shares of stock subject to Awards that can be granted under the 2015 Plan in any one calendar year to any person, other than a non-employee director, is 75,000. However, incentive stock options may only be granted to employees. The limitation on the amount of shares of stock issuable under the 2015 Plan is subject to adjustment in the event of certain changes in the Company's capital stock, such as recapitalizations, reclassifications, stock splits, reverse stock splits, spin-offs, combinations of our stock, exchanges of the Company's stock and other increases or decreases in the Company's stock without receipt of consideration.

The 2015 Plan will terminate ten years after its effective date, in October 2025, but is subject to earlier termination as provided in the 2015 Plan.

A dividend equivalent right is an award entitling the recipient to receive credits based on cash distributions that would have been paid to the recipient on the shares of Common Stock specified in the dividend equivalent right if such shares had been issued to and held by the recipient of the dividend equivalent right as of the record date. A dividend equivalent right may be granted to any grantee under the 2015 Plan, but may not be granted in connection with or related to an award of options or SARs under the 2015 Plan. The terms and conditions of any dividend equivalent right shall be as set forth in the award agreement relating to such right. Unless the committee administering the 2015 Plan otherwise provides in an award agreement, a grantee's rights in all dividend equivalent rights will automatically terminate upon the grantee's termination of service with the Company.

Performance-based awards may be granted by the committee administering the 2015 Plan in such amounts and upon such terms as the committee administering the 2015 Plan determines. Generally, performance-based awards will have an actual or target number of shares of Common Stock or initial value that is set by the committee at the time of grant. The committee administering the 2015 Plan has the discretion to set performance goals which, depending on the extent to which they are achieved, will determine the value and/or the number of shares of Common stock subject to a performance-based award that will be paid out to the grantee. The right of a grantee to exercise or receive a grant or settlement of any performance-based award, and the timing thereof, will be subject to the performance conditions specified by the committee, and will entitle the grantee to receive cash or shares of our Common Stock upon the attainment of the specified performance goals over a specified performance period.

Except in connection with a corporate transaction in which the Company is involved, without obtaining stockholder approval, the 2015 Plan may not be amended to reduce the exercise price of such outstanding options or SARs, cancel outstanding options or SARs in exchange for or in substitution of options or SARs with an exercise price that is less than the exercise price of the original options or SARs, or cancel outstanding options or SARs with an exercise price above the current stock price in exchange for cash or other securities.

2018 Employment Inducement Incentive Award Plan

On January 18, 2018, the Company's Board of Directors adopted the Company's Employment Inducement Incentive Award Plan (the "2018 Inducement Plan") pursuant to which the Company reserved 500,000 shares of common stock for issuance under the Inducement Plan. In accordance with Rule 5635(c)(4) and Rule 5635(c)(3) of the Nasdaq Listing Rules, awards under the Inducement Plan may only be made to individuals not previously employees of the Company (or following such individuals' bona fide period of non-employment with the Company), as an inducement material to the individuals' entry into employment with the Company. An award is any right to receive the Company's common stock pursuant to the 2018 Inducement Plan, consisting of a performance share award, restricted stock award, a restricted stock unit award or a stock payment award. As of April 30, 2018, there were 97,297 shares outstanding

and 402,703 shares available for grant under the 2018 Inducement Plan.

(a) Stock Options

A summary of stock options under the plans described above is as follows:

	Shares Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding as of April 30, 2017	237,214	$ 14.64	7.6
Granted	170,664	$ 1.34	
Exercised	-	$ -	
Cancelled/forfeited	(19,349)	$ 67.71	
Outstanding as of April 30, 2018	388,529	$ 6.15	7.4
Exercisable as of April 30, 2018	217,205	$ 9.90	5.9

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As of April 30, 2018, the total intrinsic value of outstanding and exercisable options was approximately $1,745 and $1,745, respectively. As of April 30, 2018, approximately 145,627 additional options were unvested, which options had no intrinsic value and a weighted-average remaining contractual term of 9.5 years. There was approximately $0.2 million and $0.3 million of total recognized compensation cost related to employees for stock options during the years ended April 30, 2018 and 2017, respectively. As of April 30, 2018, there was approximately $0.1 million of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a weighted-average period of 0.5 years. The Company typically issues newly authorized but unissued shares to satisfy option exercises under these plans.

(b) Restricted Stock

Compensation expense for non- vested restricted stock is generally recorded based on its market value on the date of grant and recognized ratably over the associated service and performance period. During fiscal 2018, the Company granted 211,881 shares subject to service-based vesting requirements and no shares subject to performance-based vesting requirements. The achievement or vesting requirement of the performance-based grants is tied to the Company's total shareholder return (TSR) relative to the total shareholder return of three alternative energy Exchange Traded Funds as measured over a specific performance period. No vesting of the relevant shares will occur in instances where the Company's TSR for the relevant period is below 80% of the peer group. However, additional opportunities to vest some or all of a portion of the shares in a subsequent period may occur. Compensation expense for these awards with market-based vesting is calculated based on the estimated fair value as of the grant date utilizing a Monte Carlo simulation model and is recognized over the service period on a straight-line basis.

Restricted stock issued and unvested at April 30, 2018 does not include any shares of unvested restricted stock subjected to performance-based vesting requirements.

A summary of unvested restricted stock under the plans described above is as follows:

	Number of Shares	Weighted Average Price per Share
Issued and unvested at April 30, 2017	103,412	$ 3.99
Granted	211,881	$ 1.27
Vested	(85,104)	$ 4.67
Cancelled/forfeited	(33,125)	$ 2.00
Issued and unvested at April 30, 2018	197,064	$ 1.35

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There was approximately $0.1 million and $0.9 million of total recognized compensation cost relating to restricted stock granted to employees during the years ended April 30, 2018 and 2017, respectively. As of April 30, 2018, there was $0.2 million of total unrecognized compensation cost related to unvested restricted stock granted under the plans. This cost is expected to be recognized over a weighted-average period of 2.0 years.

(12) Fair Value Measurements

The Company measures and reports certain financial and non-financial assets and liabilities on a fair value basis. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). GAAP specifies a three-level hierarchy that is used when measuring and disclosing fair value. The fair value hierarchy gives the highest priority to quoted prices available in active markets (i.e., observable inputs) and the lowest priority to data lacking transparency (i.e., unobservable inputs). An instrument's categorization within the fair value hierarchy is based on the lowest level of significant input to its valuation. The following is a description of the three hierarchy levels.

Level 1	Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities. Active markets are considered to be those in which transactions for the assets or liabilities occur in sufficient frequency and volume to provide pricing information on an ongoing basis.
Level 2	Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability. This category includes quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in inactive markets.
Level 3	Unobservable inputs are not corroborated by market data. This category is comprised of financial and non-financial assets and liabilities whose fair value is estimated based on internally developed models or methodologies using significant inputs that are generally less readily observable from objective sources.

Transfers into or out of any hierarchy level are recognized at the end of the reporting period in which the transfers occurred. There were no transfers between any levels during the year ended April 30, 2018 and 2017.

The following information is provided to help readers gain an understanding of the relationship between amounts reported in the accompanying consolidated financial statements and the related market or fair value. The disclosures include financial instruments and derivative financial instruments, other than investment in affiliates.

Following are descriptions of the valuation methodologies used to measure material assets and liabilities at fair value and details of the valuation models, key inputs to those models and significant assumptions utilized.

Warrant Liabilities

The fair value of the Company's warrant liabilities (refer to Note 7) recorded in the Company's financial statements is determined using the Black-Scholes option pricing model and the quoted price of the Company's common stock in an active market, volatility and expected life, is a Level 3 measurement. Volatility is based on the actual market activity of the Company's stock. The expected life is based on the remaining contractual term of the warrants and the risk-free interest rate is based on the implied yield available on U.S. Treasury Securities with a maturity equivalent to the warrants' expected life.

The following table presents financial assets and liabilities measured at fair value on a recurring basis as of April 30, 2018:

	Total Carrying Value in Consolidated Balance Sheet		Quoted prices in active markets for identical assets or liabilities (Level 1)		Significant other observable inputs (Level 2)		Significant unobservable inputs (Level 3)	
	(in thousands)							
Warrant liabilities	$	201	$	-	$	-	$	201

The following table presents financial assets and liabilities measured at fair value on a recurring basis as of April 30, 2017:

	Total Carrying Value in Consolidated Balance Sheet		Quoted prices in active markets for identical assets or liabilities (Level 1)		Significant other observable inputs (Level 2)		Significant unobservable inputs (Level 3)	
	(in thousands)							
Warrant liabilities	$	323	$	-	$	-	$	323

The following table provides a summary of changes in the fair value of the warrant liabilities during the year ended April 30, 2018;

Fair Value Measurement Using Significant Unobservable Inputs (Level 3)	
	Total Warrant

	Liability (in thousands)
Fair value – April 30, 2016	$ -
Issuance	1,814
Transfers	-
Change in fair value	(1,491)
Fair value – April 30, 2017	$ 323
Change in fair value	(122)
Fair value – April 30, 2018	$ 201

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(13) Income Taxes

Loss before income taxes for the years ended April 30, 2018 and 2017 consisted of the following components:

	April 30, 2018	April 30, 2017
	(in thousands)	
Domestic	$(11,004)	$(9,805)
Foreign	(272)	(379)
Total loss before income taxes	$(11,276)	$(10,184)

The income tax benefit for the years ended April 30, 2018 and 2017 consist of state income tax benefits of $1.1 million and $0.7 million, respectively, from the sale of New Jersey net operating losses and research and development credits.

Tax Rate Reconciliation

The effective income tax rate differed from the percentages computed by applying the US federal income tax for the periods ended April 30, 2018 and 2017 to loss before income taxes as a result of the following:

	April 30, 2018	April 30, 2017
Computed expected tax benefit	-29.7 %	-34.0%
Increase(reduction) in income taxes resulting from:		
State income taxes, net of federal benefit	3.0 %	2.3 %
Federal research and development tax credits	-1.5 %	-1.7 %
Foreign rate differential	0.3 %	0.3 %
Other non-deductible expenses	0.4 %	0.1 %
Proceeds of sale of New Jersey tax benefits	-9.9 %	-6.9 %
U.S. tax reform effects	162.2 %	0.0 %
Other	5.1 %	11.7 %
Increase in valuation allowance	-139.4%	25.9 %
Income tax benefit	-9.5 %	-2.3 %

Significant Components of Deferred Taxes

The tax effects of temporary differences and carry forwards that give rise to the Company's deferred tax assets and deferred tax liabilities are presented below.

	April 30, 2018	April 30, 2017
	(in thousands)	
Deferred tax assets:		
Federal net operating loss carryforwards	$29,329	$44,355
Foreign net operating loss carryforwards	3,852	3,761
State operating loss carryforwards	1,460	1,281
Federal and New Jersey research and development tax credits	3,143	2,996
Stock compensation	645	1,096
Unrealized foreign exchange loss	12	17
Accrued expenses	487	576
Other	330	627
Net deferred tax assets before valuation allowance	39,258	54,709
Valuation allowance	(39,258)	(54,709)
Net deferred tax assets	$-	$-

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences and carry forwards become deductible or are utilized. As of April 30, 2018 and 2017, based upon the level of historical taxable losses, valuation allowances of $39.3 million and $54.7 million, respectively, were recorded to fully offset deferred tax assets. The valuation allowance decreased $15.4 million during the year ended April 30, 2018 and increased $2.1 during the year ended 2017. respectively.

As of April 30, 2018, the Company had net operating loss carry forwards for federal income tax purposes of approximately $139.7 million, which begin to expire in fiscal 2019. The Company also had federal research and development tax credit carry forwards of approximately $3.0 million as of April 30, 2018, which begins to expire in 2019. The Tax Reform Act of 1986 contains provisions that limit the utilization of net operating loss and tax credit carry forwards if there has been an ownership change, as defined. The Company has determined that such an ownership change, as described in Section 382 of the Internal Revenue Code, occurred in conjunction with the Company’s U.S. initial public offering in April 2007. The Company’s annual Section 382 limitation is approximately $3.3 million. The Section 382 limitation is cumulative from year to year, and thus, to the extent net operating loss or other credit carry forwards are not utilized up to the amount of the available annual limitation, the limitation is carried forward and added to the following year’s available limitation. Such limitation only applies to net operating losses incurred in periods prior to the ownership change. The Company has not performed additional analysis on ownership changes that may have occurred subsequently to further limit the ability to utilize net tax attributes. As of April 30, 2018, the Company had state net operating loss carry forwards of approximately $20.5 million which begin to expire in 2019, which also may be limited to utilization limitations. As of April 30, 2018, the Company had foreign net operating loss carry forwards of approximately $17.9 million. The ability to utilize these carry forwards may also be limited in the event of a significant change to ownership.

New Jersey Net Operating Loss

During the years ended April 30, 2018 and 2017, the Company sold New Jersey State net operating losses and research and development credits in the amount of $11.5 million and $7.8 million, respectively, resulting in the recognition of income tax benefits of $1.1 million and $0.7 million, respectively, recorded in the Company’s Statement of Operations.

Recent Tax Legislation

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (the “TCJA”) was signed into law making significant changes to the Internal Revenue Code. Changes include, but are not limited to, a corporate tax rate decrease for the Company from 34% to 21% effective for tax years beginning after December 31, 2017, the transition of U.S international taxation from a worldwide tax system to a territorial system, and a one-time transition tax on the

mandatory deemed repatriation of cumulative foreign earnings as of December 31, 2017.

The TCJA reduced the U.S. federal statutory tax rate for the Company from 34% to 21% effective January 1, 2018. For fiscal year 2018, our blended U.S. federal statutory tax rate is 29.7%. This is the result of using the tax rate of 34% for the number of days from the start of the fiscal year until the date of rate change and the tax rate of 21% for the number of days from the date of rate change until the end of the fiscal year. The Company completed the accounting for the income tax effects of certain elements of the TCJA and determined the impact to its deferred tax assets to be a reduction of $17.6 million, primarily resulting from the corporate rate reduction from 34% to 21%. Since the Company's has historical losses, the Company continues to have a full valuation allowance against all deferred tax assets and there is no impact to its consolidated financial statements.

We remeasured our deferred taxes to reflect the reduced rate that will apply when these deferred taxes are settled or realized in future periods. To calculate the remeasurement of deferred taxes, we estimated when the existing deferred taxes will be settled or realized and which deferred taxes will be settled within the current year at the 34% tax rate and those that will reverse after year end at the 21% tax rate. As of April 30, 2018, we have completed our accounting for the tax effects of the TCJA, however there is no effect on the deferred tax provision since the company has a full valuation allowance.

Uncertain Tax Positions

The Company applies the guidance issued by the FASB for the accounting and reporting of uncertain tax positions. The guidance requires the Company to recognize in its consolidated financial statements the impact of a tax position if that position is more likely than not to be sustained upon examination, based on the technical merits of the position. We are currently undergoing an income tax audit in Spain for the period from 2008 to 2014, when our Spanish branch was closed. The branch reported net operating losses for each of the years reported that the Spanish tax inspector claims should have been capitalized on the balance sheet instead of charged as an expense in the Statement of Operations. As of April 30, 2017, we had recorded a penalty of $132,000 to Selling, general and administrative costs in the Statement of Operations. The Spanish tax inspector has recently closed its discussion relating to the capitalization of expenses and as of April 30, 2018 the Company reversed the penalty. However, the Spanish tax inspector has now raised questions with respect to the Company's recognition of funds received in 2011 to 2014 from a governmental grant from the European Commission in connection with the Waveport project. It is anticipated that we will be assessed a penalty relating to these tax years. We have estimated this penalty to be $177,000 for the period ended April 30, 2018. We have recorded the penalty to Selling, general and administrative costs in the Statement of Operations. At April 30, 2018 and 2017, the Company had no other unrecognized tax positions. The Company does not expect any material increase or decrease in its income tax expense in the next twelve months, related to examinations or uncertain tax positions. U.S. federal and state income tax returns were audited through fiscal 2014 and fiscal 2010 respectively. Net operating loss and credit carry forwards since inception remain open to examination by taxing authorities, and will continue to remain open for a period of time after utilization.

The Company does not have any interest or penalties accrued related to uncertain tax positions as it does not have any unrecognized tax benefits.

(14) Commitments and Contingencies

(a) Operating Lease Commitments

The Company leases office, laboratory, manufacturing and other space in Monroe Township, New Jersey under an operating lease that expires on October 31, 2024. The lease commencement date is November 1, 2017, with lease payments beginning the same month. The lease expiration date is seven years from the rent commencement date. The Company provided a cash security deposit of approximately $154,000. The Lease contains a tenant improvement allowance of up to $138,000 and annual escalations, as such, the Company accounts for rent expense on a straight-line basis. Rent expense under operating leases was approximately $0.4 million and $0.3 million for the years ended April 30, 2018 and 2017, respectively.

Future minimum lease payments under operating leases as of April 30, 2018 are as follows:

	April 30, 2018 (in thousands)
2019	312
2020	322
2021	331
2022	341
2023	352
Thereafter	546
	$2,204

Shareholder Litigation and Demands

The Company and certain of its current and former directors and officers were defendants in a derivative lawsuit filed on March 18, 2015 in the United States District Court for the District of New Jersey captioned *Labare v. Dunleavy, et. al.,* Case No. 3:15-cv-01980-FLW-LHG. The derivative complaint alleged claims for breach of fiduciary duty, abuse of control, gross mismanagement and unjust enrichment relating to the now terminated agreement between Victorian Wave Partners Pty. Ltd. (VWP) and the Australian Renewable Energy Agency (ARENA) for the development of a wave power station. The derivative complaint sought unspecified monetary damages and other relief.

On July 10, 2015, a second derivative lawsuit, captioned *Rywolt v. Dunleavy, et al.,* Case No. 3:15-cv-05469, was filed by another shareholder against the same defendants in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty, gross mismanagement, abuse of control, and unjust enrichment relating to the now terminated agreement between VWP and ARENA. The Rywolt complaint also seeks unspecified monetary damages and other relief. On February 8, 2016, the Court issued an order consolidating the *Labare* and *Rywolt* actions, appointing co-lead plaintiffs and lead counsel, and ordering a consolidated amended complaint to be filed within 30 days of the order. On March 9, 2016, the co-lead plaintiffs filed an amended complaint consolidating their claims and sought unspecified monetary damages and other relief.

On April 21, 2016, a third derivative lawsuit, captioned *LaCalamito v. Dunleavy, et al.*, Case No. 3:16-cv-02249, was filed by another shareholder against certain current and former directors and officers of the Company in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty relating to the now terminated agreement between VWP and ARENA. The *LaCalamito* complaint sought unspecified monetary damages and other relief. The Company was not been formally served and did not yet responded to the complaint.

On June 9, 2016, a fourth derivative lawsuit, captioned *Pucillo v. Dunleavy, et al.*, was filed by another shareholder against certain current and former directors and officers of the Company in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty, unjust enrichment, and abuse of control relating to the now terminated agreement between VWP and ARENA. The *Pucillo* complaint seeks unspecified monetary damages and other relief. On August 2, 2016, the parties in the *Pucillo* lawsuit filed a Stipulation and Proposed Order pursuant to which: (i) the defendants agreed to accept service of the *Pucillo* complaint; (ii) the parties agreed to stay the *Pucillo* action pending the filing and resolution of a motion to consolidate the *Pucillo* action with the *Labar*e and *Rywolt* actions; and (iii) the parties agreed that the defendants shall not be required to respond to the *Pucillo* complaint during the pendency of the stay. The Court approved the Stipulation on August 3, 2016.

On October 25, 2016, the Court approved and entered a Stipulation and Order that, among other things, (i) consolidated the four derivative actions; (ii) identified plaintiff Pucillo as the lead plaintiff in the consolidated actions; and (iii) stayed the consolidated actions pending the November 14, 2016 settlement hearing in the now-settled securities class action and further order of the Court.

On October 23, 2017, the parties entered into a Stipulation and Agreement of Settlement to resolve the four consolidated derivative lawsuits. The settlement provided for, among other things, the Company to implement certain corporate governance changes, a $350,000 payment to the plaintiffs' attorneys for attorneys' fees and costs that will be made by the Company's insurance carrier, dismissal of the derivative lawsuits, and certain releases. On November 21, 2017, the plaintiffs filed an unopposed motion seeking preliminary approval of the settlement, which the Court granted on March 9, 2018. On May14, 2018, the Court held a final settlement approval hearing at which the Court stated that it was approving the settlement. On June 13, 2018, the Court issued a Final Order and Judgement, approving the Stipulation and Agreement of Settlement. The Company has accrued $350,000 related to this matter as a probable and reasonably estimable loss contingency during the twelve months ended April 30, 2018. The Company also recorded a receivable of $350,000 from its insurance carrier with the offset to the statement of operations.

On May 26, 2017, an attorney claiming to represent two stockholders sent the Company's Board of Directors a Stockholder Litigation Demand letter ("Stockholder Demand"). The Stockholder Demand alleges that the voting of shares for the 1-for-10 reverse stock split at the 2015 annual meeting of stockholders held on October 22, 2015 was not properly counted, and further alleges that, although the Company reported the reverse stock split as having been passed, if the vote was properly counted the reverse stock split would not have been approved. The Stockholder Demand requests the Board of Directors either to deem the reverse stock split as ineffective and disclose the same or to seek a proper and effective stockholder ratification of the reverse stock split. In addition, the Stockholder Demand requests the Board of Directors to adopt and implement adequate internal controls and systems to prevent the alleged improper voting from recurring. On June 23, 2017, the Company responded to the Stockholder Demand, explained the procedures that were followed for the 2015 annual meeting of stockholders and provided the Oath of the Inspector of Elections and the Certificate of the Inspector of Elections that certified as accurate the results of the voting at the meeting including voting on the reverse stock split proposal. On June 26, 2017, the attorney representing the alleged stockholders replied to the Company's response, further alleged that the proxy statement underlying the 2015 annual meeting provided voting instructions that misled the stockholders regarding whether their brokers could vote on the reverse stock split proposal and renewed their requests of the Board. On July 24, 2017, the Company provided an additional response to the Stockholder Demand, denied the allegations, and declined to take any of the actions requested.

Employment Litigation

On June 10, 2014, the Company announced that it had terminated Charles Dunleavy as its Chief Executive Officer and as an employee of the Company for cause, effective June 9, 2014, and that Mr. Dunleavy had also been removed from his position as Chairman of the Board of Directors. On June 17, 2014, Mr. Dunleavy wrote to the Company stating that he had retained counsel to represent him in connection with an alleged wrongful termination of his

employment. On July 28, 2014, Mr. Dunleavy resigned from the Board and the boards of directors of the Company's subsidiaries. In 2014, the Company and Mr. Dunleavy have agreed to suspend his alleged employment claims pending resolution of a class action shareholder litigation (resolved in May 2017) and then agreed to continue to the suspension pending resolution of the derivatives litigation (resolved in June 2018). As of the filing of this report, the claims are still suspended.

Except for the Stipulation agreement noted previously, we have not established any provision for losses relating to these claims and pending litigation. Due to the stages of these proceedings, and considering the inherent uncertainty of these claims and litigation, at this time we are not able to predict or reasonably estimate whether we have any possible loss exposure or the ultimate outcome of these claims.

(b) Regulatory Matters

SEC Investigation

On April 30, 2018, the Company received a letter from the SEC staff in the Philadelphia regional office announcing that the SEC had concluded its investigation of the Company. The investigation began on February 4, 2015, when the Company received a subpoena from the SEC requesting information related to the discontinued VWP Project in Australia. On July 12, 2016, the SEC issued second subpoena requesting information related to the Company's April 4, 2014 public offering. The Company provided information to the SEC in response to both subpoenas and cooperated with the SEC throughout its investigation. In its letter of April 30, 2018, the SEC stated that it does not intend to recommend an enforcement action by the SEC against the Company.

Spain IVA (sales tax)

In June 2012, the Company received notice that the Spanish tax authorities are inquiring into its 2010 IVA (value-added tax) filing for which the Company benefitted from the offset of approximately $0.3 million of input tax. The Company believed that the tax credit was properly claimed and, therefore, no liability was recorded. The Company issued two letters of credit totaling €0.3 million ($0.3 million) at the request of the Spanish tax authorities. On January 31, 2017 the Company received $0.2 million from the Spanish tax authorities as a result of the conclusion of the inquiry. In addition, during February 2017, the Spanish tax authorities approved of the release of the two outstanding letters of credit.

Spain Income Tax Audit

We are currently undergoing an income tax audit in Spain for the period from 2008 to 2014, when our Spanish branch was closed. The branch reported net operating losses for each of the years reported that the Spanish tax inspector claims should have been capitalized on the balance sheet instead of charged as an expense in the Statement of Operations. As of April 30, 2017, we had recorded a penalty of $132,000 to Selling, general and administrative costs in the Statement of Operations. The Spanish tax inspector has recently closed its discussion relating to the capitalization of expenses and as of April 30, 2018 the Company reversed the penalty. However, the Spanish tax inspector has now raised questions with respect to the Company's recognition of funds received in 2011 to 2014 from a governmental grant from the European Commission in connection with the Waveport project. It is anticipated that we will be assessed a penalty relating to these tax year. We have estimated this penalty to be $177,000 for the period ended April 30, 2018. We have recorded the penalty to Selling, general and administrative costs in the Statement of Operations.

(15) Operating Segments and Geographic Information

The Company's business consists of one segment as this represents management's view of the Company's operations. The Company operates on a worldwide basis with one operating company in the US and operating subsidiaries in the UK and in Australia. Revenues and expenses are generally attributed to the operating unit that bills the customers. Geographic information is as follows:

Year Ended April 30, 2018			
North America	Europe	Asia and Australia	Total
(in thousands)			

Revenues from external customers	$511	$ -	$ -	$511
Operating loss	(11,282)	(243)	(35)	(11,560)
Long-lived assets	712	-	-	712
Total assets	13,762	22	337	14,121

	Year Ended April 30, 2017			
	North America	Europe	Asia and Australia	Total
	(in thousands)			
Revenues from external customers	$843	$ -	$ -	$843
Operating loss	(11,270)	(389)	(28)	(11,687)
Long-lived assets	170	-	-	170
Total assets	9,498	209	366	10,073

(16) Subsequent Events

On June 13, 2018, Tiderunner Marine, Inc. filed a lawsuit in the United States District Court for the District of New Jersey captioned *Tiderunner Marine, Inc. v. Ocean Power Technologies, Inc.*, Case No. 1:18-cv-10496. The complaint names Ocean Power Technologies, Inc. as defendant and alleges claims for breach of contract, unjust enrichment, conversion, and fraud, negligent and/or reckless misrepresentation all as associated with the removal of an OPT mooring system off the coast of New Jersey that was completed in May 2017. The complaint seeks damages in the amount of $2,825,130 together with interest, costs, attorney's fees, punitive damages and such other relief as may be appropriate under the circumstances. OPT has retained counsel, is investigating the claims, and has not yet responded to the lawsuit. As of April 30, 2018. The Company has not accrued any provision related to this matter since it cannot reasonably estimate the loss contingency.

On June 27, 2018, Ocean Power Technologies, Inc. (the "Company") entered into a contract with Premier Oil UK Limited ("PMO") for the lease of a PB3 PowerBuoy™ (the "PMO Agreement") to be deployed in one of PMO's offshore fields in the North Sea. Under the agreement, the PowerBuoy™ will provide communications and remote monitoring services for PMO assets and will demonstrate its ability to monitor and alert vessels in the area after the Floating Production, Storage and Offloading vessel is removed. The initial trial phase shall last for three months, and if successful, PMO may elect to extend for a second six-month trial phase and a third three-month trial phase. The Company will be paid a flat fee specified in the contract for each phase of the lease. At the end of the twelve months, PMO will have the option to extend the lease on a month-to-month basis as well as to purchase the PowerBuoy™. If PMO elects to purchase the unit, the parties will negotiate mutually agreeable terms. The Company has agreed to assist PMO in deployment and commissioning of the unit, as well as related data collection and assessment of performance. PMO is responsible for all costs associated with deployment and installation.

PART IV

ITEM 15. ***EXHIBITS AND FINANCIAL STATEMENT SCHEDULES***

(a) (1) Financial Statements: See Index to Consolidated Financial Statements on page F-1.

(3) Exhibits: The exhibits filed as part of this Annual Report on Form 10-K are set forth on the Exhibit Index immediately following our financial statements. The Exhibit Index is incorporated herein by reference.

Exhibits Index

Exhibit Number	**Description**
23.1	Consent of KPMG LLP
31.1	Certification of Chief Executive Officer
31.2	Certification of Chief Financial Officer
32.1	Certification of Chief Executive Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002**
32.2	Certification of Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002**

** As provided in Item 601(b)(32)(ii) of Regulation S-K, this exhibit shall not be deemed to be “filed” or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liability under those sections.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

OCEAN POWER TECHNOLOGIES, INC.

Date: March 11, 2019

/s/ George H. Kirby III
By: George H. Kirby III
President and Chief Executive Officer