

MICROSOFT CORP
Form POS AM
October 20, 2003
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As filed with the Securities and Exchange Commission on October 20, 2003

Registration No. 333-89793

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 2

to

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

MICROSOFT CORPORATION

(Exact name of registrant as specified in its charter)

Washington
(State or other jurisdiction
of incorporation or organization)

91-1144442
(IRS Employer
Identification No.)

One Microsoft Way

Redmond, Washington 98052-6399

(425) 882-8080

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

John Seethoff

Deputy General Counsel, Finance and Operations

One Microsoft Way

Redmond, Washington 98052-6399

(425) 882-8080

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

Copies of all communications to:

Christopher H. Cunningham

Preston Gates & Ellis LLP

925 Fourth Avenue, Suite 2900

Seattle, Washington 98104-1158

(206) 623-7580

Approximate date of commencement of proposed sale to the public: Not applicable.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, please check the following box. x

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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

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

This post-effective amendment shall become effective in accordance with Section 8(c) of the Securities Act of 1933, on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(c) may determine.

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Explanatory Note

This Post-Effective Amendment Number 2 is being filed by the registrant solely to amend the registrant's Post-Effective Amendment Number 1 filed on January 10, 2003 to reinstate the registration statement with respect to up to 1,711,280 shares of the registrant's common stock previously registered by this registration statement.

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PROSPECTUS

MICROSOFT CORPORATION

1,711,280 shares

Common Stock

This prospectus is part of a registration statement that covers 1,711,280 shares of our common stock. These shares may be offered and sold from time to time by certain of our shareholders (the selling shareholders). We will not receive any of the proceeds from the sale of the common shares. We will bear the costs relating to the registration of the common shares, which we estimate to be \$110,000.

The common shares are traded on the Nasdaq Stock Market under the symbol MSFT. The average of the high and low prices of the common shares as reported on the Nasdaq Stock Market on October 17, 2003 was \$29.05 per share of common stock.

An investment in our common stock involves risks. See the section entitled risk factors beginning on page 5.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is October 20, 2003.

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Special note regarding forward-looking information

This prospectus and the documents incorporated by reference into this prospectus contain forward-looking statements within the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Words such as anticipates, expects, intends, plans, believes, seeks and estimates and similar expressions identify forward-looking statements. Statements in this prospectus that are forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties. Actual results could differ materially because of factors such as:

entry into markets with vigorous competition, market acceptance of new products and services, continued acceptance of existing products and services, changes in licensing programs, product price discounts, delays in product development and related product release schedules, and reliance on sole source suppliers for key components of Xbox that could result in component shortages and delays in product delivery, any of which may cause revenues and income to fall short of anticipated levels;

obsolete inventory or product returns by distributors, resellers and retailers;

warranty and other claims on hardware products such as Xbox;

changes in the rate of PC shipments;

technological shifts;

the support of third party software developers for new or existing platforms;

the availability of competitive products or services such as the Linux operating system at prices below our prices or for no charge;

the ability to have access to MSN service distribution channels that are controlled by third parties;

the risk of unanticipated increased costs for network services;

the continued ability to protect the company's intellectual property rights;

the ability to obtain on acceptable terms the right to incorporate in the company's products and services technology patented by others;

changes in product and service mix;

maturing product life cycles;

product sale terms and conditions;

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our ability to efficiently integrate acquired businesses such as Navision a/s;

implementation of operating cost structures that align with revenue growth;

the financial condition of our customers and vendors;

variations in equity compensation expenses under Financial Accounting Standards Board Statement No. 123, which will fluctuate based on factors such as the actual number of stock awards issued and the market value of the awards on the dates of grant;

unavailability of insurance;

uninsured losses;

adverse results in litigation;

the effects of terrorist activity and armed conflict such as disruptions in general economic activity and changes in our operations and security arrangements;

continued softness in corporate information technology spending or other changes in general economic conditions that affect demand for computer hardware or software;

currency fluctuations;

trade sanctions or changes to U.S. tax law resulting from the World Trade Organization decision with respect to the extraterritorial income provisions of U.S. tax law; and

financial market volatility or other changes affecting the value of our investments that may result in a reduction in carrying value and recognition of losses including impairment charges.

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The company

Microsoft Corporation was founded as a partnership in 1975 and incorporated in 1981. Our mission is to enable people and businesses throughout the world to realize their full potential, and our vision is empowering people through great software any time, any place, and on any device. We develop, manufacture, license, and support a wide range of software products for a multitude of computing devices. Our software products include scalable operating systems for servers, personal computers (PCs), and intelligent devices; server applications for client/server environments; information worker productivity applications; business solutions applications; and software development tools. We provide consulting services and product support services and we train and certify system integrators and developers. We sell the Xbox video game console, along with games and peripherals. Our online businesses include MSN subscriptions and the MSN network of Internet products and services.

Microsoft also researches and develops advanced technologies for future software products. A significant portion of our focus is on our .NET architecture. Using common industry standards based on Extensible Markup Language (XML), a universal language for describing and exchanging data, our goal is to enable seamless sharing of information across many platforms and programming languages, and over the Internet, with XML Web services. In addition, we have embarked on a long-term initiative called Trustworthy Computing that aims to bring an enhanced level of security, privacy, reliability, and business integrity to computer systems.

Microsoft is organized as a Washington corporation with its principal executive offices located at One Microsoft Way, Redmond, Washington 98052-6399. Our telephone number is (425) 882-8080 and our email address is msft@microsoft.com.

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Risk factors

An investment in our common stock involves a high degree of risk. You should consider the following factors carefully before deciding to purchase shares of our common stock. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations.

*You should also review our disclosure under the heading **Special note regarding forward looking information** for additional risks and uncertainties that could cause our actual results to differ materially from those anticipated.*

Challenges to our business model may adversely affect our business.

As a result of challenges to our business model, sales of our products may decline, we may have to reduce the prices we charge for our products, and our revenues and operating margins may consequently decline. Since our inception, our business model has been based upon customers agreeing to pay a fee to license software developed and distributed by us. Under this commercial software model, software developers bear the costs of converting original ideas into software products through investments in research and development, offsetting these costs with the revenues received from the distribution of their products. We believe the commercial software model has had substantial benefits for users of software, allowing them to rely on our expertise and the expertise of other software developers that have powerful incentives to develop innovative software that is useful, reliable, and compatible with other software and hardware. In recent years, there has been a growing challenge to the commercial software model, often referred to as the Open Source model. Under the Open Source model, software is produced by loosely associated groups of unpaid programmers, and the resulting software and the intellectual property contained therein is licensed to end users at substantially no cost. The most notable example of Open Source software is the Linux operating system. While we believe that our products provide customers with significant advantages in security and productivity, and generally have a lower total cost of ownership than Open Source software, the popularization of the Open Source model continues to pose a significant challenge to our business model, including recent efforts by proponents of the Open Source model to convince governments worldwide to mandate the use of Open Source software in their purchase and deployment of software products. To the extent the Open Source model gains increasing market acceptance, sales of our products may decline, we may have to reduce the prices we charge for our products, and revenues and operating margins may consequently decline.

Lack of compliance by others with existing legal protections or reductions in the legal protection for intellectual property rights of software developers could adversely affect our revenue.

We defend our intellectual property rights, but unlicensed copying and use of software and intellectual property rights represents a loss of revenue to us. While this adversely affects U.S. revenue, the impact on revenue from outside the United States is more significant, particularly in countries where laws are less protective of intellectual property rights. Throughout the world, we actively educate consumers about the benefits of licensing genuine products and educate lawmakers about the advantages of a business climate where intellectual property rights are protected. However, continued educational and enforcement efforts may not affect revenue positively and further deterioration in compliance with existing legal protections or reductions in the legal protection for intellectual property rights of software developers could adversely affect revenue.

Claims from others that we infringe their intellectual property rights may adversely affect our operations.

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From time to time we receive notices from others claiming we infringe their intellectual property rights. The number of these claims may grow. Responding to these claims may require us to enter into royalty and licensing agreements on unfavorable terms, require us to stop selling or to redesign affected products, or require us to pay damages or to satisfy indemnification commitments with our customers.

We have made and expect to continue making significant expenditures to acquire the use of technology and intellectual property rights, including via cross-licenses of broad patent portfolios.

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Our new products, services and technologies may never be profitable.

We have made significant investments in research, development and marketing for new products, services and technologies, including Microsoft .NET, Xbox, business applications, MSN, mobile and wireless technologies, and television. Significant revenue from new product and service investments may not be achieved for a number of years, if at all. Moreover, these products and services may never be profitable, and even if they are profitable, operating margins for these businesses are not expected to be as high as the margins we have historically experienced.

We are subject to a variety of claims and lawsuits and it is possible that one or more of these matters could be resolved in a manner that ultimately would have a material adverse impact on our business, and could negatively impact our revenues, operating margins, and net income.

We are subject to a variety of claims and lawsuits, as described in Note 20 Contingencies of the Notes to Financial Statements included in our Form 10-K for the year ended June 30, 2003 and in other filings we make with the SEC. Adverse outcomes in some or all of the pending cases may result in significant monetary damages or injunctive relief against us. We are also subject to a variety of other claims and suits that arise from time to time in the ordinary course of our business. While management currently believes that resolving all of these matters, individually or in aggregate, will not have a material adverse impact on our financial position or our results of operations, the litigation and other claims noted above are subject to inherent uncertainties and management's view of these matters may change in the future. If an unfavorable final outcome occurs, there exists the possibility of a material adverse impact on our financial position and the results of operations for the period in which the effect becomes reasonably estimable.

Actual or perceived security vulnerabilities in our products could adversely affect our revenues.

Maintaining the security of computers and computer networks is an issue of critical importance for Microsoft and our customers. There are individuals and groups who develop and deploy viruses, worms and other malicious software programs that attack our products. While this is an industry-wide phenomenon that affects computers across all platforms, Microsoft's customers have been victims of such attacks and will likely continue to be so. Microsoft is devoting significant resources to addressing these critical issues. We are focusing our efforts on engineering more secure products, optimizing security and reliability options and settings when we deliver products, and providing guidance to help our customers make the best use of our products and services to protect against computer viruses and other attacks on their computing environment. In addition, we are working to improve the deployment of software patches to address security vulnerabilities discovered after our products are released. We are also investing in mitigation technologies that secure customers from attacks even when such software patches are not deployed. We are also advising customers on how to help protect themselves from security threats through the use of our online automated security tools, our published security guidance and the deployment of security software such as firewalls, antivirus and other security software. Despite these efforts, actual or perceived security vulnerabilities in our products could lead some customers to seek to return products, to reduce or delay future purchases or to purchase competitive products. Customers may also increase their expenditures on protecting their computer systems from attack, which could delay adoption of new technologies. Any of these actions by customers could adversely affect our revenues.

Our revenue will be adversely affected by declines in demand for software.

If overall market demand for PCs, servers and other computing devices declines significantly, or consumer or corporate spending for such products declines, our revenue will be adversely affected. Additionally, our revenues would be unfavorably impacted if customers reduce their purchases of new software products or upgrades to existing products because new product offerings are not perceived as adding significant new functionality or other value to prospective purchasers. A significant number of customers purchased license agreements providing upgrade rights

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to specific licensed products prior to the transition to Licensing 6.0 in July 2002. These agreements will expire in 2004 and 2005 and the rate at which such customers renew these contracts could adversely affect future revenues. We are also committing significant investments in the next release of the Windows operating system, codenamed Longhorn. If this system is not perceived as offering significant new functionality or value to prospective purchasers, our revenues and operating margins could be adversely affected.

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Significant delays in new product releases or significant problems in creating new products could adversely affect our revenues.

The development of software products is a complex and time-consuming process. New products and enhancements to existing products can require long development and testing periods. Significant delays in new product releases or significant problems in creating new products, particularly any delays in the Longhorn operating system, could adversely affect our revenues.

Economic conditions in our markets may result in reduced product sales and lower revenue growth.

Continued softness in corporate information technology spending or other changes in general economic conditions that affect demand for computer hardware or software could adversely affect our revenues. Terrorist activity and armed conflict pose the additional risk of general economic disruption and could require changes in our international operations and security arrangements, thus increasing our operating costs. These conditions lend additional uncertainty to the timing and budget for technology investment decisions by our customers.

Because of increasing competition in the PC industry, we may experience reduced product sales and lower revenue growth.

We continue to experience intense competition across all markets for our products and services. These competitive pressures may result in decreased sales volumes, price reductions, and/or increased operating costs, such as for marketing and sales incentives, resulting in lower revenues, gross margins and operating income.

The loss of certain tax benefits or assessment of additional taxes could have a significant negative impact on us.

In August 2001, a World Trade Organization (WTO) dispute panel determined that the tax provisions of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (ETI) constitute an export subsidy prohibited by the WTO Agreement on Subsidies and Countervailing Measures. The U.S. government appealed the panel's decision and lost its appeal. If the ETI provisions are repealed and financially comparable replacement tax legislation is not enacted, the loss of the ETI tax benefit to us could be significant.

We are subject to income taxes in both the United States and numerous foreign jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain. We are regularly under audit by tax authorities. Although we believe our tax estimates are reasonable, the final determination of tax audits and any related litigation could be materially different than that which is reflected in historical income tax provisions and accruals. Should additional taxes be assessed as a result of an audit or litigation, a material effect on our income tax provision and net income in the period or periods for which that determination is made could result.

Our third party and captive insurance arrangements have limits, and the potential liabilities with certain risks we face could exceed our insurance coverage.

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In addition to conventional third party insurance arrangements, we have entered into captive insurance arrangements for the purpose of protecting against possible catastrophic impact and other risks not covered by traditional insurance markets. As of June 30, 2003, potential coverage available under captive insurance arrangements was \$1.0 billion, subject to deductibles, exclusions, and other restrictions. While we believe these arrangements are an effective way to insure against such risks, the potential liabilities associated with certain risks discussed in this section could exceed the coverage provided by such arrangements.

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Other issues and uncertainties may affect our business.

Other issues and uncertainties that could have a negative effect on our business and results of operations include:

warranty and other claims for hardware products such as Xbox;
the effects of the Consent Decree in U.S. v. Microsoft and Final Judgment in State of New York v. Microsoft on the Windows operating system and server business, including those associated with protocol and other disclosures required by the Decree and Final Judgment and the ability of PC manufacturers to hide end user access to certain new Windows features;
the continued availability of third party distribution channels for MSN service and other online services;
factors associated with our international operations; and
financial market volatility or other changes affecting the value of our investments, such as the Comcast Corporation securities held by us, that may result in a reduction in carrying value and recognition of losses including impairment charges.

Use of proceeds

All net proceeds from the sale of the common shares covered by this prospectus will go to the selling shareholders who offer and sell their shares. We will not receive any proceeds from the sale of the common shares by the selling shareholders.

Selling shareholders and plan of distribution

All of the common shares registered for sale under this prospectus will be owned by the holders (the selling shareholders) of exchangeable shares (the Exchangeable Shares) of SI Holding LLC, a Nova Scotia limited liability company (SI Holding). The Exchangeable Shares were issued in connection with our acquisition of Softimage, Inc. in 1994. At that time, the former shareholders of Softimage received Exchangeable Shares in consideration for the delivery of their Softimage shares to Microsoft. The terms of the Exchangeable Shares currently entitle the holder to receive eight shares of Microsoft common stock (subject to adjustments for stock splits, stock dividends and certain similar transactions) for each Exchangeable Share submitted for redemption or otherwise acquired by SI Holding pursuant to certain call rights or upon liquidation of SI Holding. This prospectus covers the re-sale by the selling shareholders of the shares of Microsoft Common Stock that the selling shareholders receive upon exchange of the Exchangeable Shares.

Microsoft is registering the common shares covered by this prospectus for the selling shareholders. No selling shareholder holds in excess of one percent (1%) of Microsoft's outstanding common stock. As used in this prospectus, selling shareholders includes the pledgees, donees, transferees or others who may later hold the selling shareholders' interests. Microsoft will pay the costs and fees of registering the common shares, but the selling shareholders will pay any brokerage commissions, discounts or other expenses relating to the sale of the common shares.

The selling shareholders may sell the common shares in the over-the-counter market or otherwise, at market prices prevailing at the time of sale, at prices related to the prevailing market prices, or at negotiated prices. In addition, the selling shareholders may sell some or all of their common shares through:

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a block trade in which a broker-dealer may resell a portion of the block, as principal, in order to facilitate the transaction;

purchases by a broker-dealer, as principal, and resale by the broker-dealer for its account; or

ordinary brokerage transactions and transactions in which a broker solicits purchasers.

When selling the common shares, the selling shareholders may enter into hedging transactions. For example, the selling shareholders may:

enter into transactions involving short sales of the common shares by broker-dealers;

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sell common shares short themselves and redeliver such shares to close out their short positions;

enter into option or other types of transactions that require the selling shareholder to deliver common shares to a broker-dealer, who will then resell or transfer the common shares under this prospectus; or

loan or pledge the common shares to a broker-dealer, who may sell the loaned shares or, in the event of default, sell the pledged shares.

The selling shareholders may negotiate and pay broker-dealers commissions, discounts or concessions for their services. Broker-dealers engaged by the selling shareholders may allow other broker-dealers to participate in resales. However, the selling shareholders and any broker-dealers involved in the sale or resale of the common shares may qualify as underwriters within the meaning of the Section 2(a)(11) of the Securities Act of 1933 (the 1933 Act). In addition, the broker-dealers commissions, discounts or concession may qualify as underwriters compensation under the 1933 Act. If the selling shareholders qualify as underwriters, they will be subject to the prospectus delivery requirements of Section 5(b)(2) of the 1933 Act.

In addition to selling their common shares under this prospectus, the selling shareholders may:

agree to indemnify any broker-dealer or agent against certain liabilities related to the selling of the common shares, including liabilities arising under the 1933 Act;

transfer their common shares in other ways not involving market makers or established trading markets, including directly by gift, distribution, or other transfer; or

sell their common shares under Rule 144 of the 1933 Act rather than under this prospectus, if the transaction meets the requirements of Rule 144.

Legal matters

For purposes of this offering, Preston Gates & Ellis LLP, Seattle, Washington, is giving its opinion on the validity of the common shares. As of the date of this prospectus, attorneys in Preston Gates & Ellis LLP who have worked on substantive matters for Microsoft own shares of our common stock.

Experts

The consolidated financial statements of Microsoft incorporated in this prospectus by reference from Microsoft's Annual Report on Form 10-K for the fiscal year ended June 30, 2003, have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities, and Statement of Financial Accounting Standards No. 142, Goodwill and Other Intangible Assets), which is incorporated herein by reference, and have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

Where you can find more information

Government Filings. We file annual, quarterly and special reports and other information with the SEC. You may read and copy any document that we file at the SEC's Public Reference Room in Washington, D.C. located at 450 Fifth Street, N.W., Washington D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. Our SEC filings are also available to you free of charge at the SEC's web site at www.sec.gov. Most of our SEC filings are also available to you free of charge at our web site at www.microsoft.com/msft.

Stock Market. The common shares are traded as National Market Securities on the Nasdaq National Market. Material filed by Microsoft can be inspected at the offices of the National Association of Securities Dealers, Inc., Reports Section, 1735 K Street, N.W., Washington, D.C. 20006.

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Information Incorporated by Reference. The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede previously filed information, including information contained in this document.

We incorporate by reference the documents listed below and any future filings we will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the offering of shares pursuant to this prospectus has been completed:

Microsoft's Annual Report on Form 10-K for the fiscal year ended June 30, 2003, filed with the SEC on September 5, 2003, which contains audited consolidated financial statements for the fiscal year ended June 30, 2003.

The description of our common stock, which is contained in our registration statement on Form S-3, as amended, dated October 17, 2003, SEC File number 333-108843.

You may request free copies of these filings by writing or telephoning us at the following address:

Investor Relations

Microsoft Corporation

One Microsoft Way

Redmond, Washington 98052-6399

Toll Free: (800) 285-7772

From outside the United States (425) 706-4400

Email: msft@microsoft.com

You may also review and/or download free copies of these filings at our website at www.microsoft.com/msft. We are not incorporating the contents of our website into this prospectus.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The expenses relating to the registration of Shares will be borne by the registrant. Such expenses are estimated to be as follows:

Registration Fee Securities and Exchange Commission	\$ 93,053.00
Accountants Fees	\$ 5,000.00
Legal Fees	\$ 10,000.00
Miscellaneous	\$ 1,947.00
	<hr/>
Total	\$ 110,000

Item 15. Indemnification of Directors and Officers.

Section 23B.08.510 of the Washington Business Corporation Act (WBCA) authorizes Washington corporations to indemnify their officers and directors under certain circumstances against expenses and liabilities incurred in legal proceedings involving such persons because of their being or having been an officer or director. Section 23B.08.560 of the WBCA authorizes a corporation by provision in its articles of incorporation to agree to indemnify a director and obligate itself to advance or reimburse expenses without regard to the provisions of Sections 23B.08.510 through .550; provided however that no such indemnity shall be made for or on account of any (a) acts or omissions of a director that involve intentional misconduct or a knowing violation of law, (b) conduct in violation of Section 23B.08.310 of the WBCA (which section relates to unlawful distributions) or (c) any transaction from which a director personally received a benefit in money, property or services to which the director was not legally entitled. Microsoft s Amended and Restated Articles of Incorporation and Bylaws require indemnification of Microsoft s officers and directors and advancement of expenses to the fullest extent not prohibited by applicable law. Microsoft s Amended and Restated Articles of Incorporation provide for procedures for those seeking indemnification and/or advancement of expenses.

Microsoft also maintains certain captive insurance programs, in which it is the named insured, which may provide certain indirect coverage for directors and officers claims. In addition, Microsoft has had an indemnification trust in place since 1988, which trust was amended in 1993 (1993 Trust) and which secures Microsoft s indemnification obligations to past and present officers and directors arising from their activities as such. \$7.0 million have been deposited in the 1993 Trust. In the year ended June 30, 2003, Microsoft established an additional indemnification trust (2003 Trust) to secure Microsoft s obligations to indemnify and/or advance expenses to directors arising from their activities as such in the event Microsoft does not or is financially unable to provide the indemnification and/or advancement. \$13 million have been deposited in the 2003 Trust. Microsoft has also entered into separate indemnification agreements with certain of its directors and executive officers.

Microsoft s Amended and Restated Articles of Incorporation contain a provision eliminating the personal liability of directors to Microsoft or its shareholders for monetary damages arising out of a breach of fiduciary duty. Under Washington law, this provision eliminates the liability of a director for breach of fiduciary duty but does not eliminate the personal liability of any director for (i) acts or omissions of a director that involve intentional misconduct or a knowing violation of law, (ii) conduct in violation of Section 23B.08.310 of the WBCA or (iii) any transaction from which a director personally received a benefit in money, property or services to which the director was not legally entitled.

Item 16. **List of Exhibits.**

The Exhibits to this registration statement are listed in the Index to Exhibits on page II-4.

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Item 17. Undertakings.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the 1933 Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by Microsoft pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the 1933 Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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(5) That the undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(6) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by a controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by a final adjudication of such issue.

(7) That, for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

*

Senior Vice President, Finance

John G. Connors

and Administration, Chief

Financial Officer

*By: /s/ Keith R. Dolliver

Keith R. Dolliver

Attorney-in-Fact

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INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
5	Opinion of Counsel re: legality *
23.1	Consent of Deloitte & Touche LLP, as Independent Auditors
23.2	Consent of Preston Gates & Ellis LLP *
24	Power of Attorney(*)

* Previously filed.