Ocean Power Technologies, Inc.
Form 10-Q
March 07, 2017
**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the Quarterly Period Ended January 31, 2017**

**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.**

*(Exact Name of Registrant as Specified in Its Charter)*

| **Delaware** | **22-2535818** |
|---|---|
| *(State or Other Jurisdiction of Incorporation or Organization)* | *(I.R.S. Employer Identification No.)* |

**1590 REED ROAD, PENNINGTON, NJ 08534**

*(Address of Principal Executive Offices, Including Zip Code)*

**(609) 730-0400**

*(Registrant's Telephone Number, Including Area Code)*

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 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 No

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

(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

As of February 28, 2017 the number of outstanding shares of common stock of the registrant was 6,313,996.

**OCEAN POWER TECHNOLOGIES, INC.**

**INDEX TO FORM 10-Q**


| | Page Number |
|---|---|
| **PART I — FINANCIAL INFORMATION** | |
| Item 1. Financial Statements: | 4 |
| Consolidated Balance Sheets as of January 31, 2017 (unaudited) and April 30, 2016 | 4 |
| Unaudited Consolidated Statements of Operations for the three and nine months ended January 31, 2017 and 2016 | 5 |
| Unaudited Consolidated Statements of Comprehensive Loss for the three and nine months ended January 31, 2017 and 2016 | 6 |
| Unaudited Consolidated Statements of Stockholders' Equity for the nine months ended January 31, 2017 | 7 |
| Unaudited Consolidated Statements of Cash Flows for the nine months ended January 31, 2017 and 2016 | 8 |
| Unaudited Notes to Consolidated Financial Statements | 9 |
| Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations | 22 |
| Item 3. Quantitative and Qualitative Disclosures About Market Risk | 33 |
| Item 4. Controls and Procedures | 33 |
| **PART II — OTHER INFORMATION** | |
| Item 1. Legal Proceedings | 35 |
| Item 1A. Risk Factors | 37 |
| Item 2. Unregistered Sales of Equity Securities and Use of Proceeds | 38 |
| Item 3. Defaults Upon Senior Securities | 38 |
| Item 4. Mine Safety Disclosures | 38 |
| Item 5. Other Information | 38 |
| Item 6. Exhibits | 39 |


PowerBuoy® is a registered trademark of Ocean Power Technologies, Inc. and the Ocean Power Technologies logo is a trademark of Ocean Power Technologies, Inc. All other trademarks appearing in this report are the property of their respective holders.

**Special Note Regarding Forward-Looking Statements**

We have made statements in this Quarterly Report on Form 10-Q that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, pending, threatened, and current litigation, liquidity, budgets, projected costs, plans and objectives of management for future operations. The words "may," "continue," "estimate," "intend," "plan," "will," "believe," "project," "expect," "anticipate", “goal” and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking.

The forward-looking statements contained in or incorporated by reference are largely based on our expectations, which reflect estimates and assumptions made by our management. These estimates and assumptions reflect our best judgment based on currently known market conditions and other factors. Although we believe such estimates and assumptions to be reasonable, they are inherently uncertain and involve a number of risks and uncertainties that are beyond our control, including:

our ability to commercialize our PowerBuoys, and achieve and sustain profitability;

our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;

our ability to obtain additional funding, as and if needed which will be subject to a number of factors, including market conditions, and our operating performance;

our estimates regarding expenses, future revenues and capital requirements;

the adequacy of our cash balances and our need for additional financings;

our ability to develop and manufacture a commercially viable PowerBuoy product;

that we will be successful in our efforts to commercialize our PowerBuoy or the timetable upon which commercialization can be achieved, if at all;

our ability to identify and penetrate markets for our PowerBuoys and our wave energy technology;

our ability to implement our commercialization strategy as planned, or at all;

our ability to maintain the listing of our common stock on the NASDAQ Capital Market;

the reliability of our technology and our PowerBuoys;

our ability to improve the power output, survivability and reliability of our PowerBuoys;

the impact of pending and threatened litigation on our business, financial condition and liquidity;

changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;

our ability to compete effectively in our target markets;

our limited operating history and history of operating losses;

our sales and marketing capabilities and strategy in the United States and internationally; and

our ability to protect our intellectual property portfolio.

Any or all of our forward-looking statements in this report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A "Risk Factors" of our Annual Report on Form 10-K for the year ended April 30, 2016, in our Quarterly Reports on Form 10-Q for the quarters ended July 31, 2016 and October 31, 2016, and elsewhere in this report. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

Many of these factors are beyond our ability to control or predict. These factors are not intended to represent a complete list of the general or specific factors that may affect us. You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise.

3

**PART I — FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**Ocean Power Technologies, Inc. and Subsidiaries**

**Consolidated Balance Sheets**

**(in thousands, except share data)**

| | January 31, 2017 (Unaudited) | April 30, 2016 |
|---|---|---|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | $ 11,110 | $ 6,730 |
| Marketable securities | 25 | 75 |
| Restricted cash | 299 | 300 |
| Unbilled receivables | 324 | 37 |
| Litigation receivable | - | 2,500 |
| Other current assets | 337 | 117 |
| Total current assets | 12,095 | 9,759 |
| Property and equipment, net | 195 | 273 |
| Other noncurrent assets | 131 | 319 |
| Total assets | $ 12,421 | $ 10,351 |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | |
| Current liabilities: | | |
| Accounts payable | $ 189 | $ 373 |
| Accrued expenses | 3,121 | 2,675 |
| Litigation payable | - | 3,000 |
| Unearned revenue | - | 39 |
| Warrant liabilities | 653 | - |
| Current portion of long-term debt and capital lease obligations | 34 | 81 |
| Deferred credits payable current | 600 | - |
| Total current liabilities | 4,597 | 6,168 |
| Long-term debt and capital lease obligations | 32 | 55 |
| Deferred credits payable non-current | - | 600 |
| Total liabilities | 4,629 | 6,823 |
| Commitments and contingencies (note 11) | | |
| Ocean Power Technologies, Inc. stockholders’ equity: | | |
| Preferred stock, $0.001 par value; authorized 5,000,000 shares, none issued or outstanding | - | - |
| | 6 | 2 |

| | | |
|---|---|---|
| Common stock, $0.001 par value; authorized 50,000,000 shares, issued 6,313,996 and 2,352,100 shares, respectively | | |
| Treasury stock, at cost; 46,776 and 6,894 shares, respectively | (260) | (138) |
| Additional paid-in capital | 193,000 | 181,670 |
| Accumulated deficit | (184,794) | (177,884) |
| Accumulated other comprehensive loss | (160) | (122) |
| Total stockholders' equity | 7,792 | 3,528 |
| Total liabilities and stockholders' equity | $ 12,421 | $ 10,351 |

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**

**Unaudited Consolidated Statements of Operations**

**(in thousands, except per share data)**

| | Three months ended January 31, | | Nine months ended January 31, | |
|---|---|---|---|---|
| | **2017** | **2016** | **2017** | **2016** |
| Revenues | $221 | $5 | $593 | $605 |
| Cost of revenues | 363 | 5 | 615 | 605 |
| Gross profit (loss) | (142) | - | (22) | - |
| Operating expenses: | | | | |
| Product development costs | 950 | 1,752 | 3,894 | 5,412 |
| Selling, general and administrative costs | 1,617 | 1,690 | 4,859 | 5,419 |
| Total operating expenses | 2,567 | 3,442 | 8,753 | 10,831 |
| Operating loss | (2,709) | (3,442) | (8,775) | (10,831) |
| (Loss) gain on fair value of warrant liabilities | (104) | - | 1,161 | - |
| Interest income, net | 24 | 1 | 26 | 10 |
| Other (expense) income, net | - | (3) | - | 240 |
| Foreign exchange loss | (26) | (188) | (20) | (194) |
| Loss before income taxes | (2,815) | (3,632) | (7,608) | (10,775) |
| Income tax benefit | 698 | 1,674 | 698 | 1,674 |
| Net loss | (2,117) | (1,958) | (6,910) | (9,101) |
| Less: Net profit attributable to the non-controlling interest in Ocean Power Technologies (Australasia) Pty Ltd. | - | - | - | (45) |
| Net loss attributable to Ocean Power Technologies, Inc. | $(2,117) | $(1,958) | $(6,910) | $(9,146) |
| Basic and diluted net loss per share | $(0.37) | $(1.05) | $(1.84) | $(5.07) |
| Weighted average shares used to compute basic and diluted net loss per share | 5,783,494 | 1,865,464 | 3,763,564 | 1,803,559 |

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**

**Unaudited Consolidated Statements of Comprehensive Loss**

**(in thousands)**

| | **Three months ended January 31,** | | **Nine months ended January 31,** | |
|---|---|---|---|---|
| | **2017** | **2016** | **2017** | **2016** |
| Net loss | $(2,117) | $(1,958) | $(6,910) | $(9,101) |
| Foreign currency translation adjustment | 3 | 151 | (38) | 106 |
| Total comprehensive loss | (2,114) | (1,807) | (6,948) | (8,995) |
| Comprehensive income attributable to the non-controlling interest in Ocean Power Technologies (Australasia) Pty Ltd. | - | - | - | (73) |
| Comprehensive loss attributable to Ocean Power Technologies, Inc. | $(2,114) | $(1,807) | $(6,948) | $(9,068) |

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**

**Unaudited Consolidated Statements of Stockholders' Equity**

**(in thousands, except share data)**

| | Common Shares | | Treasury Shares | | Additional Paid-In | Accumulated | Accumulated Other Comprehensive | |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Capital | Deficit | Loss | Total Equity |
| Balances, April 30, 2016 | 2,352,100 | $ 2 | (6,894) | $ (138) | $ 181,670 | $ (177,884) | $ (122) | $ 3,528 |
| Net loss | - | - | - | - | - | (6,910) | - | (6,910) |
| Stock based compensation | - | - | - | - | 224 | - | - | 224 |
| Issuance of restricted stock, net | 189,896 | - | - | - | 774 | - | - | 774 |
| Sale of stock | 3,772,000 | 4 | - | - | 10,332 | - | - | 10,336 |
| Acquisition of treasury stock | - | - | (39,882) | (122) | - | - | - | (122) |
| Other comprehensive loss | - | - | - | - | - | - | (38) | (38) |
| Balances, January 31, 2017 | 6,313,996 | $ 6 | (46,776) | $ (260) | $ 193,000 | $ (184,794) | $ (160) | $ 7,792 |

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**

**Unaudited Consolidated Statements of Cash Flows**

**(in thousands)**

| | Nine months ended January 31, | |
|---|---|---|
| | **2017** | **2016** |
| Cash flows from operating activities: | | |
| Net loss | $(6,910) | $(9,101) |
| Adjustments to reconcile net loss to net cash used in operating activities | | |
| Foreign exchange gain | 20 | 194 |
| Depreciation and amortization | 104 | 84 |
| Compensation expense related to stock option grants & restricted stock | 998 | 298 |
| Gain on fair value of warrant liabilities | (1,161) | - |
| Payment for litigation settlements | (500) | - |
| Changes in operating assets and liabilities: | | |
| Decrease in accounts receivable | - | 89 |
| (Increase) decrease in unbilled receivables | (286) | 44 |
| Increase in other current assets | (222) | (30) |
| Decrease in other noncurrent assets | 169 | 27 |
| (Decrease) increase in accounts payable | (186) | 98 |
| Increase in accrued expenses | 461 | 221 |
| Decrease in unearned revenues | (39) | - |
| Net cash used in operating activities | (7,552) | (8,076) |
| Cash flows from investing activities: | | |
| Purchases of marketable securities | (25) | - |
| Maturities of marketable securities | 75 | 25 |
| Restricted cash | 1 | 111 |
| Purchases of equipment | (22) | (24) |
| Net cash provided by investing activities | 29 | 112 |
| Cash flows from financing activities: | | |
| Proceeds from sale of common stock, net of issuance costs | - | 205 |
| Proceeds from issuance of common stock and related warrants, net of costs | 12,150 | - |
| Repayment of debt | (70) | (75) |
| Acquisition of treasury stock | (122) | (4) |
| Net cash provided by financing activities | 11,958 | 126 |
| Effect of exchange rate changes on cash and cash equivalents | (55) | (85) |
| Net increase (decrease) in cash and cash equivalents | 4,380 | (7,923) |
| Cash and cash equivalents, beginning of period | 6,730 | 17,336 |
| Cash and cash equivalents, end of period | $11,110 | $9,413 |

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**

**Notes to Unaudited Consolidated Financial Statements**

**(1) Background, Basis of Presentation and Liquidity**

***a) Background***

Ocean Power Technologies, Inc. (the "Company") was incorporated 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 products and services.

***b) Basis of Presentation***

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company's financial results can be found in the Company's Annual Report on Form 10-K for the year ended April 30, 2016 filed with the Securities and Exchange Commission ("SEC") and elsewhere in this Form 10-Q.

***c) Liquidity/Going Concern***

The 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 $184.8 million as of January 31, 2017. As of January 31, 2017, the Company had approximately $11.1 million in cash on hand. The Company generated revenues of $0.6 million during each of the nine months ended January 31, 2017 and 2016. Based on the Company's cash and cash equivalents and marketable securities as of January 31, 2017, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending January 31, 2018. 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 2017 and 2016, 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 three equity financing arrangements during the nine months ended January 31, 2017. 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 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 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.

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 placement agent 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. As of January 31, 2017, there were no non-controlling interests.

In September 2015, the Company re-purchased the non-controlling interest (consisting of 11.8%) of OPTA for nominal consideration and now has 100% ownership of OPTA. 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 January 31, 2017, 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 the recoverability of the carrying amount of property and equipment; fair value of warrant liabilities, valuation allowances for receivables and deferred income tax assets; estimated costs to complete projects; and percentage of completion of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates.

***(c) Revenue Recognition***

The Company's contracts are either cost plus or fixed price contracts. 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 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.

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.

A portion of the Company's projects have been under cost-sharing contracts.

***(d) 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 an overnight U.S. government securities repurchase bank account and a money market account. In accordance with the terms of the repurchase agreement, the Company does not take possession of the related securities. The agreement contains provisions to ensure that the market value of the underlying assets remain sufficient to protect the Company in the event of default by the bank by requiring that the underlying securities have a total market value of at least 100% of the bank's total obligations under the agreement.

| | **January 31, 2017** | **April 30, 2016** |
|---|---|---|
| | (in thousands) | |
| Checking and savings accounts | $8,587 | $4,535 |
| Overnight repurchase account | 2,523 | 2,195 |
| | $11,110 | $6,730 |

***(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 January 31, 2017 and April 30, 2016, all of the Company's investments were classified as held-to-maturity.

***(f) Restricted Cash and Credit Facility***

A portion of the Company's cash is restricted under the terms of two 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 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 January 31, 2017, there was €0.3 million ($0.3 million) in letters of credit outstanding under this agreement.

The second agreement was between the Company and the New Jersey Board of Public Utilities ("NJBPU"). The Company received a $0.5 million recoverable grant award from the NJBPU, repayable over a five-year period beginning in November 2011. The agreement also required the Company to annually assign to the NJBPU a certificate of deposit in an amount equal to the outstanding grant balance. As of January 31, 2017, the grant was fully repaid and therefore there was no certificate of deposit. See Note (6) "Debt" for additional information. Restricted cash includes the following:

| | **January 31, 2017** | **April 30, 2016** |
|---|---|---|
| | (in thousands) | |
| NJBPU agreement | $ - | $ 50 |
| Barclay's Bank Agreement | 299 | 250 |
| | $ 299 | $ 300 |

***(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 in the accompanying consolidated statements of operations.

***(h) Property and Equipment***

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives (three to seven years) of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful life of the asset or the remaining lease term. 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.

***(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:

| | Three months ended January 31, | | Nine months ended January 31, | |
|---|---|---|---|---|
| | **2017** | **2016** | **2017** | **2016** |
| Mitsui Engineering & Shipbuilding | 56 % | - | 83 % | - |
| U.S. Department of Defense Office of Naval Research | 44 % | - | 17 % | - |
| US Department of Energy | - | 100 % | - | 33 % |
| European Union (WavePort project) | - | - | - | 67 % |
| | 100 % | 100 % | 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 "(loss) gain on 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 680,429 for the three and nine months ended January 31, 2017 and 154,537 for the three and nine months ended January 31, 2016, were excluded from each of the computations as the effect would be anti-dilutive due to the Company's losses.

***(l) Recently Issued Accounting Standards***

In May 2014, the Financial Accounting Standards Board ("FASB") issued ASU No. 2014-09, "Revenue from Contracts with Customers". This guidance requires an entity to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This guidance also requires an entity to disclose sufficient information to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. Qualitative and quantitative information is required about:

- Contracts with customers—including revenue and impairments recognized, disaggregation of revenue and information about contract balances and performance obligations (including the transaction price allocated to the remaining performance obligations).
- Significant judgments and changes in judgments—determining the timing of satisfaction of performance obligations (over time or at a point in time), and determining the transaction price and amounts allocated to performance obligations.
- Certain assets—assets recognized from the costs to obtain or fulfill a contract.

In August 2015, the FASB issued updated guidance deferring the effective date of the revenue recognition standard. In March and April 2016, the FASB issued additional updated guidance, which clarifies certain aspects of the ASU and the related implementation guidance issued by the FASB-IASB Joint Transition Resource Group for Revenue Recognition. This guidance is effective for the Company for annual reporting periods beginning after December 15, 2017. The Company is currently evaluating the impact that this guidance will have on its results of operations, financial position and cash flows.

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 is evaluating the effect ASU 2014-15 will have on its consolidated financial statements and disclosures and have not yet determined the effect of the standard on its ongoing financial reporting at this time. See Note (1) "Background, Basis of Presentation and Liquidity" for discussion on the Company's ability to continue as a going concern.

13

In January 2016, the FASB issued ASU No. 2016-01, “Recognition and Measurement of Financial Assets and Financial Liabilities”, which makes limited amendments to the guidance in U.S. GAAP on the classification and measurement of financial instruments. The update significantly revises an entity's accounting related to the classification and measurement of investments in equity securities and the presentation of certain fair value changes for financial liabilities measured at fair value. It also amends certain disclosure requirements associated with the fair value of financial instruments. The update will take effect for public companies for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. The Company will evaluate the effect of ASU 2016-01 for future periods as applicable.

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)”, or ASU No. 2016-09. 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. Early adoption is permitted. The Company will evaluate the effect of ASU 2016-09 for future periods as applicable.

In June 2016, the FASB issued ASU 2016-13, “Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments”. The standard provides for a new impairment model which requires measurement and recognition of expected credit losses for most financial assets held. The ASU is effective for public companies for annual periods, and interim periods within those annual periods, beginning after December 15, 2019. The Company is evaluating the effect ASU 2016-13 will have on its consolidated financial statements and disclosures and believes the standard will have no impact on its ongoing financial reporting at this time.

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.

In November 2016, the FASB issued ASU 2016-18, “Statement of Cash Flows (Topic 230): Restricted Cash”, providing additional guidance on specific restricted cash flow classification on the cash flow statement. Cash flow should include restricted cash in total cash, and 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 is evaluating the effect ASU 2016-18 will have on its consolidated financial statements and disclosures and believes the effect of the standard on its ongoing financial reporting will not have a material impact.

**(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 and are summarized as follows:

| | **January 31, 2017** | **April 30, 2016** |
|---|---|---|
| | (in thousands) | |
| Certificate of Deposit | $ 25 | $ 75 |

**(4) Balance Sheet Detail**

| **Accrued expenses** | **January 31, 2017** | **April 30, 2016** |
|---|---|---|
| | (in thousands) | |
| Project costs (a) | $1,239 | $818 |
| Contract loss reserve | 199 | 199 |
| Employee incentive payments | 463 | 688 |
| Accrued salary and benefits | 593 | 456 |
| Legal and accounting fees | 329 | 240 |
| Other | 298 | 274 |
| | $3,121 | $2,675 |

(a) Project costs at January 31, 2017 include accruals of $0.8 million and $0.5 million for the disposition of the legacy Reedsport project anchors and site remediation for the legacy PB40 projects, respectively. The Reedsport project is anticipated to be completed by the end of the first quarter of fiscal 2018. The PB40 project is weather dependant and therefore it is not possible to predict a specific end date.

**(5) Related Party Transactions**

In April 2014, the Company entered into an Executive Transition Agreement with George W. Taylor, who was formerly employed by the Company as Executive Vice Chairman and served on the Company's Board of Directors prior to that date. Under this agreement, Dr. Taylor received fifteen months of consulting fees at a monthly rate of $20 thousand (this period terminated on July 18, 2015). During the nine months ended January 31, 2016 the Company recorded $53 thousand in expense relating to this agreement, which was recorded in selling, general and administrative expense in the unaudited consolidated statements of operations. There were no such amounts recorded during the three and nine months ended January 31, 2017.

**(6) Debt**

The Company was awarded a recoverable grant totaling $0.5 million between April 2009 and June 2010 from the NJBPU under the Renewable Energy Business Venture Assistance Program. Under the terms of this agreement, the amount to be repaid is a fixed monthly amount of principal only, repayable over a five-year period beginning in November 2011. The terms also required the Company to annually assign to the NJBPU a certificate of deposit in an amount equal to the outstanding grant balance. As of April 30, 2016 the Company had $50 thousand outstanding and the respective $50 thousand certificate of deposit was recorded within "Other current assets" on the balance sheet. As of January 31, 2017, the grant was fully repaid, and therefore, there is no balance outstanding and no respective

certificate of deposit assigned to restricted cash. See Note 2(f). “Summary of Significant Accounting Policies - Restricted Cash and Credit Facility” for more information regarding the certificate of deposit.

**(7) 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 January 31, 2017, 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” and “Deferred credits payable non-current” as of January 31, 2017 and April 30, 2016, respectively.

**(8) 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 $0.7 million at January 31, 2017 are reflected within “warrant liabilities” in the unaudited consolidated balance sheets. There were no such amounts at April 30, 2016.

An unrealized loss and unrealized gain of $0.1 million and $1.2 million, respectively, were included within “(Loss) gain on fair value of warrant liabilities” in the consolidated statements of operations for the three and nine months ended January 31, 2017, respectively. There were no unrealized gains or losses during the three and nine months ended January 31, 2016. The Company determined the fair value using the Black-Scholes option pricing model with the following assumptions:

| | January 31, 2017 | | |
|---|---|---|---|
| Dividend rate | | 0.0% | |
| Risk-free rate | | 1.9% | |
| Expected life (years) | 4.5 | - | 4.9 |
| Expected volatility | 129.0% | - | 138.2% |

**(9) Stock-Based Compensation**

The aggregate stock-based compensation expense related to all stock-based transactions recorded in the consolidated statements of operations was approximately $1.0 million and $0.3 million during the nine months ended January 31, 2017 and 2016, respectively.

***(a) Stock Options***

**Valuation Assumptions for Options Granted during the nine months ended January 31, 2017 and 2016**

The fair value of each stock option granted, for both service-based and performance-based vesting requirements during the nine months ended January 31, 2017, 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 following table. The risk-free rate is based on the US 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 nine months ended January 31, 2017. The below assumptions were used to determine the weighted average per share fair value of $1.89 and $4.05 for stock options granted during the nine months ended January 31, 2017 and 2016, respectively.

| | **Nine months ended January 31,** | |
|---|---|---|
| | **2017** | **2016** |
| Risk-free interest rate | 1.3 % | 1.6 % |
| Expected dividend yield | 0.0 % | 0.0 % |
| Expected life (in years) | 5.50 | 5.5 |
| Expected volatility | 96.2% | 85.7% |

A summary of stock options under our stock incentive plans is detailed in the following table.

| | Shares Underlying Options | Weighted Average Exercise Price | Weighted Average Remaining Contractual Term (In Years) |
|---|---|---|---|
| Outstanding as of April 30, 2016 | 89,303 | $ 42.90 | 3.6 |
| Forfeited | (987) | $ 46.45 | |
| Exercised | - | $ - | |
| Granted | 171,749 | $ 2.12 | |
| Outstanding as of January 31, 2017 | 260,065 | $ 15.96 | 7.2 |
| Exercisable as of January 31, 2017 | 157,066 | $ 24.44 | 5.6 |

As of January 31, 2017, the total intrinsic value of outstanding and exercisable options was approximately $107 thousand and $95 thousand, respectively. As of January 31, 2017, approximately 101,392 additional options are expected to vest in the future with an intrinsic value of approximately $10 thousand and a weighted average remaining contractual term of 9.6 years. There was approximately $0.2 million and $0.1 million of total recognized compensation cost related to stock options during the nine months ended January 31, 2017 and 2016, respectively. As of January 31, 2017, there was approximately $0.2 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 0.8 years. The Company typically issues newly authorized but unissued shares to satisfy option exercises under these plans.

***(b) Restricted Stock***

Compensation expense for non-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 the nine months ended January 31, 2017, the Company granted 223,662 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.

In January 2016, the Board of Directors authorized a modification to certain outstanding restricted stock grants, which converted certain grants with performance-based grants to service-based grants. The modification of the restricted stock grants did not have a material impact on the Company's statement of operations during the nine months ended January 31, 2017. Restricted stock issued and unvested as of January 31, 2017 included 4,000 shares of unvested restricted stock subjected to performance-based vesting requirements.

A summary of non-vested restricted stock under our stock incentive plans is as follows:

| | **Number of Shares** | **Weighted Average Price per Share** |
|---|---|---|
| Issued and unvested at April 30, 2016 | 40,008 | $ 6.70 |
| Granted | 223,662 | $ 3.94 |
| Forfeited | (28,266 ) | $ 3.98 |
| Vested | (139,492) | $ 4.70 |
| Issued and unvested at January 31, 2017 | 95,912 | $ 3.99 |

There was approximately $0.8 million and $0.2 million of total recognized compensation cost related to restricted stock for the nine months ended January 31, 2017 and 2016, respectively. As of January 31, 2017, there was approximately $0.2 million of total unrecognized compensation cost related to unvested restricted stock granted under our plans. This cost is expected to be recognized over a weighted average period of 0.4 years.

***(c)Treasury Stock***

During the nine months ended January 31, 2017 and 2016, 39,882 and 1,839 shares, respectively, of common stock were purchased by the Company from employees to pay taxes related to the vesting of restricted stock.

**(10) 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 three and nine months ended January 31, 2017 and 2016.

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 8) 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 January 31, 2017.

| | **Total Carrying Value in Consolidated Balance Sheet** | **Quoted prices in active markets for identical assts or liabilities (Level 1)** | **Significant other observable inputs (Level 2)** | **Significant unobservable inputs (Level 3)** |
|---|---|---|---|---|
| **As of January 31, 2017:** | (in thousands) | | | |
| Warrant liabilities | $653 | $ - | $ - | $ 653 |

18

The changes in the value of the warrant liabilities during the nine months ended January 31, 2017 were as follows.

| | |
|---|---|
| Fair value – April 30, 2016 | $- |
| Issuance | 1,814 |
| Transfers | - |
| Change in fair value | (1,161) |
| Fair value – January 31, 2017 | $653 |

There were no re-measured assets or liabilities at fair value on a non-recurring basis during the nine months ended January 31, 2017 and 2016, respectively.

**(11) Commitments and Contingencies**

***(a) Litigation***

**Shareholder Litigation and Demands**

The Company and its former Chief Executive Officer Charles Dunleavy were named as defendants in consolidated securities class action lawsuits that were pending in the United States District Court for the District of New Jersey captioned In Re: Ocean Power Technologies, Inc. Securities Litigation, Civil Action No. 14-3799 (FLW) (LHG).

On May 5, 2016, the parties entered into a Stipulation and Agreement of Class Settlement (“Stipulation”) in which they agreed to a settlement of the consolidated securities class action lawsuits, subject to Court approval. The Stipulation provides, among other things, for a settlement payment by or on behalf of the Company of $3.0 million in cash, of which the Company would pay $0.5 million and the Company’s insurer would pay $2.5 million, and the issuance by the Company of 380,000 shares (valued at $0.6 million on the date the Stipulation was signed by the parties) of its Common Stock to the class members. In connection with the settlement, the parties have agreed to execute mutually agreeable releases. The amounts agreed in the Stipulation, including the amount to be contributed by our insurance carrier, were reflected in the Company’s Consolidated Financial Statements as of April 30, 2016. In July 2016, the Company paid the $0.5 million portion of the settlement and the remaining balance of $2.5 million was paid by the Company’s insurer in August 2016. On November 14, 2016, the Court held its previously scheduled Settlement Hearing to consider whether to grant final approval of the settlement, and on November 15, 2016, the Court issued its Final Judgment approving the settlement and dismissing the proceeding with prejudice. The 380,000 shares of common stock were issued on November 22, 2016. The time to file an appeal from the Final Judgment has expired without any appeal being filed.

The Company and certain of its current and former directors and officers are 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 alleges 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 seeks 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 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 seeks unspecified monetary damages and other relief.

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 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 settlement hearing scheduled for November 14, 2016 in the securities class action and further order of the Court. Defendants have not responded to the consolidated derivative actions because the actions remain stayed pending further order from the Court.

The Company and certain of its current directors are defendants in a lawsuit filed by an alleged shareholder in the Superior Court of New Jersey, Mercer County Chancery Division on January 25, 2016, captioned Stern v. Ocean Power Technologies, Inc., et al., Civil Action No. C-5-16. The complaint alleges that certain provisions of the Company's Certificate of Incorporation and By-laws providing that the Company's directors may be removed only for cause and only by an affirmative vote of at least 75% of the votes which all the stockholders would be entitled to cast in any annual election of directors are invalid under Section 141(k) of the Delaware General Corporation Law. The Complaint asserts a breach of fiduciary claim against the director defendants and a declaratory judgment claim against all defendants seeking, among other things, to invalidate the current provisions and declare that the Company's directors may be removed and replaced without cause and by a simple majority vote. The Complaint seeks declaratory and injunctive relief as well as unspecified costs and attorneys' fees. By Unanimous Written Consent dated June 17, 2016, the Company's Board of Directors amended the Company's By-laws to delete the "only for cause" requirement, thereby allowing for removal of directors with or without cause by the Company's stockholders. In addition, the Board proposed, subject to approval by the Company's stockholders at the next annual general meeting of stockholders, a similar amendment to the director removal provision in the Company's Certificate of Incorporation. On June 22, 2016, the parties to the lawsuit submitted a Stipulation and Proposed Order Staying Proceedings that (1) stays the case pending the stockholder vote on the proposed amendment to the Company's Certificate of Incorporation; (2) provides for dismissal of the action with prejudice if the stockholders approve the amendment, subject to plaintiff's right to make a fee application to the court and defendants' right to oppose any such application; and (3) provides for the stay to be lifted and the action to resume, without waiver of any parties' rights, if the stockholders do not approve the amendment. The Court approved the Stipulation on June 30, 2016. On September 2, 2016, the Company filed a definitive proxy statement with the SEC which includes this proposal. At the annual shareholder meeting on October 21, 2016, the proposal was not approved because an insufficient number of votes were cast to satisfy the requirement that the proposal be approved by the holders of at least 75% of the outstanding shares of common stock entitled to vote at the meeting. However, stockholders approved an amendment to the Company's Certificate of Incorporation to add a provision which requires that any provision of the Certificate of Incorporation that is contrary to a requirement of the Delaware General Corporate Law shall be read in conformity with the applicable requirement of the Delaware General Corporate Law. The parties have agreed that the case shall remain stayed until further steps, if any, can be agreed to and taken as needed.

**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. The Company and Mr. Dunleavy have agreed to suspend his alleged employment claims pending resolution of the shareholder litigation, and have since agreed to continue to the suspension pending resolution of the derivatives litigation.

Except for the Stipulation 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 February 4, 2015, the Company received a subpoena from the SEC requesting information related to the VWP Project. The Company has provided information to the SEC in response to that subpoena. As part of the same investigation, on July 12, 2016, the SEC issued a second subpoena requesting information related to the Company's April 4, 2014 public offering. The Company has provided information to the SEC in response to that subpoena. The SEC investigation is ongoing and the Company continues to cooperate with the SEC in its investigation. We are unable to predict what action, if any, might be taken by the SEC or its staff as a result of this investigation or what impact, if any, the cost of responding to the SEC's investigation or its ultimate outcome might have on our financial position, results of operations or liquidity. We have not established any provision for losses relating to this matter.

***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 believes that the inquiry will find that the tax credit was properly claimed and, therefore, no liability has been recorded. The Company issued two letters of credit totaling €0.3 million ($0.3 million) at the request of the Spanish tax authorities. Separately, as of January 31, 2017 the Company has 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. We have not established any provision for losses related to this matter.

**(12) Income Taxes**

During the three and nine months ended January 31, 2017, the Company recorded an income tax benefit of $0.7 million, representing the proceeds from the sale of $7.8 million of New Jersey net operating loss carryforwards and research and development tax credits. During the three and nine months ended January 31, 2016, the Company recorded an income tax benefit of $1.7 million representing the proceeds from the sale of $19.7 million of New Jersey net operating loss carryforwards and research and development tax credits.

Other than as a result of the sale of New Jersey net operating loss carryforwards, the Company did not recognize any consolidated income tax benefit (expense) during the three and nine month periods ended January 31, 2017 and 2016.

During the three and nine months ended January 31, 2017, the Company had no material changes in uncertain tax positions.

**(13) 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. During the three and nine months ended January 31, 2017 and 2016, the Company’s primary business operations were in North America.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this management's discussion and analysis or set forth elsewhere in this Form 10-Q, including information with respect to our plans and strategy for our business, pending and threatened litigation and our liquidity includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of our Annual Report on Form 10-K for the year ended April 30, 2016, in our Quarterly Reports on Form 10-Q for the quarters ended July 31, 2016 and October 31, 2016, and elsewhere in this report, for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. References to a fiscal year in this Form 10-Q refer to the year ended April 30 of that year (e.g., fiscal 2016 refers to the year ended April 30, 2016).

**Overview**

Nearly 70% of the earth's surface is covered by water, with over 40% of the world's population living within approximately 150 miles of a coast. Thousands of information gathering and/or power systems are deployed in the oceans today to increase understanding of weather, climate change, biological processes, and marine mammal patterns and to support exploration and operations for industries such as oil and gas. Most of these systems are powered by battery, solar, wind, fuel cell, or fossil fuel generators that are unreliable and expensive to operate while also limited in their electric power delivery. These incumbent systems often require significant tradeoffs in sensor accuracy, data processing and communications bandwidth and frequency in order to operate with limited available power. More persistent power systems requiring less maintenance, like our systems, may have the ability to save costs over current operating systems. Just as importantly, increases in available power may allow for better sensors and faster data sampling and higher frequency communication intervals up to real-time which could as a result improve scientific and economic returns.

Incorporated in 1984 and headquartered in Pennington, New Jersey, we believe we are the leader in ocean wave power conversion technology. We are developing and commercializing our proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. Our PowerBuoys use proprietary technologies that convert the mechanical energy created by the heaving motion of ocean waves into electricity. We currently have designed and continue to develop our PowerBuoy product line which is based on modular, ocean-going buoys, which we have been periodically ocean testing since 1997.

We have designed our autonomous PowerBuoy to generate power for use in remote locations, independent of an existing conventional power grid. Our current PowerBuoy product, the PB3, incorporates a unique power take-off ("PTO") and onboard system for energy storage and management, and is significantly smaller than our previous iteration utility-scale PowerBuoy. We are continuing to develop and test our PowerBuoys, which we believe could be utilized

in a variety of applications.

Our PB3 PowerBuoy design leverages portions of earlier features that we do not believe require further validation prior to implementation in our current products. Currently, our product development and engineering efforts are focusing primarily on developing technologies that will increase the energy output and reliability of our product through design scalability to maintain quality and speed time to our targeted markets. Our marketing and development efforts are targeting applications that require reliable, persistent, and sustainable power sources operating independently of the utility grid, either by supplying electric power to payloads that are integrated directly in our PowerBuoy or located in its vicinity including on the seabed and in the water column.

Based on our market research and available public data, management believes that there is the potential for us to pursue business opportunities in multiple markets that would have a direct need for our PowerBuoys including oil and gas, ocean observing, defense and security, communications, and offshore wind. Depending on power needs, sensor types and other considerations, we believe our PowerBuoy could have the ability to satisfy several application requirements within these markets. We believe that the PB3 generates sufficient persistent power to meet the application needs of many of the potential customers within our target markets. We are continuing our development efforts to increase the energy output of the PowerBuoy to generate more power required for other applications within these markets.

Since fiscal 2002, government agencies have accounted for a significant portion of our revenues. These revenues were largely for the support of our development efforts relating to our technology and development of our PowerBuoys. Our goal is that an increased portion of our revenues be from the sale or lease of our products and sales of services, as compared to revenue from grants to support our business operations. As we continue to develop and commercialize our products, we expect to have a net loss of cash from operating activities unless and until we achieve positive cash flow from the commercialization of our products and services. During fiscal 2016 and 2017, we continued work on projects with the U.S. Department of Defense (“DOD”), and Mitsui Engineering and Shipbuilding Co., Ltd. (“MES”), with whom we signed our first commercial leasing agreement in May 2016, and we continued our efforts to increase the reliability and power output of our PowerBuoys.

**Product Development**

The development of our technology has been funded by capital raised and by development engineering contracts received starting in fiscal 1995, including projects with the U.S. Department of Energy ("DOE"), the U.S. Navy, the Department of Homeland Security and MES. Through these historic projects, the Company also continued development of our current and our next generation PowerBuoy technology.

During fiscal 2017, we continue to focus on the commercialization of our PowerBuoy technology in autonomous application markets. We completed our work under our DOE contract that focused on further optimization of our modular PTO technology and delivered the project final report to the DOE in February 2016. In January 2016, we successfully completed the final stage and associated review with the DOE of the contract deliverables during which the DOE reviewed advancements related to PTO design aspects such as reliability, cost take out, manufacturability and scalability. As we continued to focus on the development and validation of our PB3 PowerBuoy commercial product, our activities concentrated mainly on implementing all of our lessons learned during our efforts in the prior fiscal year from our ocean deployments and accelerated life testing ("ALT"). The resulting improved PB3 PowerBuoy was deployed off the coast of New Jersey in July of 2016 and was retrieved early December 2016 upon completing all intended testing and validation. Inspection and refurbishment of the PB3 PowerBuoy were completed and this PB3 was shipped for delivery to MES in Japan to fulfill the requirements of our lease with MES, including a deployment off of Kozu-Island in the Pacific Ocean. ALT of the PB3 commercial PTO is ongoing with no failures to date. In addition to the deployment of the PB3 PowerBuoy, the prior generation pre-commercial PB3 ("PB3-A1"), was fitted with a sensor that collects tagged marine mammal migration information as well as with a Self-Contained Ocean Observing Payload ("SCOOP"). The marine mammal migration detection sensor was attached to the PB3-A1 PowerBuoy as part of an agreed scope of work with the Wildlife Conservation Society ("WCS") through a memorandum of agreement between WCS and OPT. The SCOOP payload was integrated into PB3-A1 to complete the Phase 1 work scope of a Cooperative Research and Development Agreement ("CRADA") between the National Data Buoy Center ("NDBC") and OPT. The PB3-A1, deployed off the coast of New Jersey in May 2016, was retrieved in October 2016**.** From July 2016 through October 2016, both PB3-A1 and PB3 were concurrently deployed generating valuable performance validation data. Both the NDBC SCOOP as well as the WCS tagged mammal migration detection sensor met all of their performance requirements. This pre-commercial PowerBuoy is now undergoing a full upgrade to achieve full commercial status by retrofitting it with the final commercial PTO including our modular energy storage system, and to make it available to support our on-going commercialization efforts. In addition to the PB3 commercial product validation activities, a concerted effort has been underway which focuses on proactively implementing additional features driven by extensive and direct discussions with potential users and customers in our target markets. Such features include:

The design, development and implementation of a versatile mooring interface that allows the PB3 to accommodate various types of mooring configurations depending on the specifics and the needs of the customer, eliminating the need for a redesign to the device.

The design, development and implementation of a flexible power transmission system intended to support delivery of power and communication capabilities to customer payloads which are external to the PowerBuoy, and which may reside in the water column or on the seabed.

Additionally, and building upon our initial success in implementing an auto-ballast system in our commercial PB3, we are further enhancing this feature in order to achieve faster and more cost effective PB3 deployments and retrievals.

Further, the development of our PB15, the next scale-up of our autonomous PowerBuoy which is in accordance with our product roadmap, is underway. Our intent is to complete the preliminary design of our PB15 in fiscal 2017. We believe the PB15 PowerBuoy would have a peak rating of 15kW and an average continuous power output that depends on the deployment site's metocean conditions. While this scale-up leverages every aspect of the product development and validation of the PB3, it also strategically positions the product to allow OPT to respond to higher power needs as expressed by potential end-users and customers in our target markets.

As previously stated, the PB3 has achieved commercial status through a series of design iterations which focused on improving its reliability and survivability in the ocean environment. Though the PB3 will continue to undergo further enhancements through customary product life cycle management, we believe the PB3 has achieved a maturity level for immediate commercial use. We believe that the PB3 will generate and store sufficient power to address various application requirements in our target markets. Our product development and engineering efforts are focused, in part, on increasing the energy output and efficiency of our PowerBuoys and, if we are able to do so, we believe the PowerBuoy would be useful for additional applications where cost savings and additional power are required by our potential customers. We continue to explore opportunities in these target markets, and we have not yet finalized any product offerings in these potential markets. We believe that by increasing the energy output of our PowerBuoys we may be able to address larger segments of our target markets. By improving our design and manufacturing, we also seek to reduce the cost of our PowerBuoys through further design iterations and manufacturing ramp-up. In so doing, we seek to improve customer value, displace additional incumbent solutions, and become a viable power source for new applications in our target markets.

**Commercial Activities**

We are seeking to build strategic alliances with other companies that have developed or are developing in-ocean applications requiring a persistent source of power that is also capable of real time data collection, processing and communication, to address potential customer needs. As announced in October 2015, we signed a memorandum of understanding ("MOU") with Gardline Environmental, Ltd. to jointly investigate innovative metocean monitoring and maritime security systems for prospective customers using both companies' technologies. The MOU can be terminated by either party, and each party will bear its own respective work scope costs associated with the MOU.

In May 2016, we entered into a contract with MES totaling $1.0 million, a portion of which was performed in fiscal 2016 as agreed under a letter of intent signed in March 2016. The contract with MES included certain engineering and other services, and a six-month lease of our PB3 PowerBuoy, commencing in February 2017, and extending through July 2017.

In September 2016, we entered into a contract with the Department of Defense Office of Naval Research ("ONR") totaling approximately $0.2 million to carry out the first phase of a project which focuses on the initial concept design and development of a mass-on-spring PTO-based PowerBuoy leveraging a number of OPT patents covering such a technology. If successful, this device is expected to be able to respond to the unique set of requirements expected in various military marine applications.

In November 2016, we entered into a joint marketing agreement with Sonalysts, Inc. The purpose of this agreement is for OPT and Sonalysts to collaboratively identify and pursue opportunities leveraging our individual products and capabilities. Sonalysts has primary capabilities in operations and analysis; modeling and simulation; systems engineering and integration; program support; and undersea wireless communications technologies.

In February 2017, we entered into a joint application engineering and marketing agreement with HAI Technologies ("HAI"). The purpose is for OPT and HAI to jointly and collaboratively identify, pursue and develop opportunities and applications in the oil and gas industry while leveraging our respective products and capabilities. HAI Technologies has unique capabilities in a variety of subsea applications, including new and advanced chemical injection solutions for subsea oil production fields for which OPT's PowerBuoy technology in general and the PB3 PowerBuoy in particular may enable the implementation of such solutions in a cost effective manner.

During the nine months ended January 31, 2017, we deployed the PB3-A1 PowerBuoy and deployed the commercial PB3 PowerBuoy. The PB3-A1 included a payload from the NDBC, under a CRADA to conduct ocean demonstrations of its innovative SCOOP monitoring system as well as a WCS tagged marine mammal migration pattern monitoring sensor. The WCS sensor was used in a first step to assess whether the PB3 could ultimately provide power to WCS'

sensors, transmit data, and provide real-time data communication for acoustic monitoring of the movements of marine wildlife in certain waters. In June 2016, we deployed the PB3-A1 off the coast of New Jersey. The SCOOP was powered by the PB3-A1, where it provided metocean data to OPT and to NDBC without issue throughout the duration of the deployment. The data collected by the WCS sensor was processed by WCS and indicated no issues in terms of compatibility of the sensor with the PowerBuoy, which prompted discussions between OPT and WCS regarding potentially integrating such sensors into the PB3 to provide power and real time communications to it, which may result in a future commercial solution. The PB3-A1was retrieved in October 2016 and is undergoing a full system update by incorporating the full commercial PTO to be brought up to full commercial status similar to the PB3.

During the nine months ended January 31, 2017, we progressed discussions with our Technical Advisory Panel members, made up of company representatives from the oil and gas industry as well as experts from academia, and conducted extensive business development meetings and other activities with potential customers and business partners. We also continued our accelerated life testing to further validate the reliability and durability of our PowerBuoys.

**Capital Raises**

On June 2, 2016, we 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 June Purchase Agreement, we 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.

On July 22, 2016, we 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, we 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 will be 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, we 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 placement agent fees and offering expenses payable by the Company.

The sale of additional equity or convertible securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities or preferred stock, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. We do not have any committed sources of debt or equity financing and we cannot assure you that financing will be available in amounts or on terms acceptable to us when needed, or at all. If we are unable to obtain required financing when needed, we may be required to reduce the scope of our operations, including our planned product development and marketing efforts, which could materially and adversely affect our financial condition and operating results. If we are unable to secure additional financing, we may be forced to cease our operations.

**Backlog**

As of January 31, 2017 our backlog was approximately $0.5 million and on April 30, 2016, our backlog was negligible.

Our backlog can include both funded amounts, which are unfilled firm orders for our products and services for which funding has been both authorized and appropriated by the customer (U.S. Congress, in the case of U.S. Government agencies), and unfunded amounts, which are unfilled firm orders for which funding has not been appropriated. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract. Our backlog was fully funded at January 31, 2017.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to, or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A substantial portion of our revenue has been for the support of our product development efforts. These revenues are recognized using the percentage-of-completion method, and changes in estimates from time to time may have a significant effect on revenue and backlog. Our backlog is also typically subject to large variations from time to time due to the timing of new awards.

**Business Strategy**

As part of our strategic pivot in operations initiated in fiscal 2015, we are currently focused on developing and commercializing our PowerBuoy products and services for use in autonomous power applications. Generally, these applications are independent of the power grid and are located in remote offshore locations. We have incorporated our prior knowledge and best practices into our product design and validation processes, some of which were gained during the development of utility scale buoys. Based on market research and available public data, we believe considerable business opportunities may exist in markets which require autonomous offshore power. Based on our market research and available public data, management believes that there is the potential for us to pursue business opportunities in multiple markets that would have a direct need for our PowerBuoys including oil and gas, ocean observing, defense and security, communications, and offshore wind.

Our business strategy is to commercialize our autonomous PowerBuoy products. In order to achieve this goal, we are pursuing the following business objectives:

*Sell and/or Lease PowerBuoys.* We believe our autonomous PowerBuoy is well suited for many remote offshore applications. Within our selected markets we intend to sell or lease PowerBuoys, and provide services associated with product sales or leases such as maintenance, application engineering, planning, training, and logistics support required for the PowerBuoy life-cycle.

*Concentrate sales and marketing efforts in specific geographic markets*. We are currently focusing our sales and marketing efforts in North America, Europe, Australia, and parts of Asia, including Japan. We believe that each of these areas has appropriate wave conditions, political and economic stability, sizeable end market opportunities, and high levels of industrialization and economic development.

*Expand our relationships in key market areas.* We believe that an important element of our business strategy is to collaborate with other organizations to leverage our combined expertise, market presence and access, and core competences across key markets. We have formed such a relationship with several well-known organizations, including MES in Japan, the NDBC, the WCS, Gardline Environmental (an international and multi-disciplinary marine service company at the forefront of marine management with offices on five continents), Sonalysts, Inc. (Sonalysts has primary capabilities in operations and analysis; modeling and simulation; systems engineering and integration; program support; and undersea wireless communications technologies) and HAI. We continue to seek other opportunities to collaborate with application experts from within our selected markets.

*Outsource most of the equipment fabrication and deployment.* We outsource all fabrication, anchoring, mooring, cabling supply, and in most cases deployment of our PowerBuoy in order to minimize our capital requirements as we scale our business. However, our PTO is a proprietary subsystem and is assembled and tested at our facility. We believe this distributed manufacturing and assembly approach enables us to focus on our value-adding core competencies while also enabling the cost effectiveness of our PowerBuoy through leveraging a larger more qualified supply base.

*Continue to increase PowerBuoy output.* Our product development and engineering efforts are focused on increasing the energy output, reliability, and expected operating life of our PowerBuoys, as well as optimizing manufacturability of our designs with a focus on cost competitiveness. We believe that by increasing the energy output we will be able to address larger segments of our target markets.

**Going Concern**

The consolidated financial statements included in this Quarterly Report on Form 10-Q have been prepared assuming the Company will continue as a going concern. The Company experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of $184.8 million as of January 31, 2017. As of January 31, 2017, the Company had approximately $11.1 million in cash on hand. The Company generated revenues of $0.6 million for each of the nine months ended January 31, 2017 and 2016. Based on the Company’s cash and cash equivalents and marketable securities balances as of January 31, 2017, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending January 31, 2018.

The report of our independent registered public accounting firm on our consolidated financial statements filed with our Annual Report on Form 10-K for fiscal 2016, contains an explanatory paragraph regarding our ability to continue as a going concern, based on, among other factors, that our ability to continue as a going concern is dependent upon our ability to raise additional external capital and increase revenues. These factors, among others, raise substantial doubt about our ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. The Company cannot provide assurances that it will be successful in its efforts to generate revenues, become profitable, raise additional outside capital or to continue as a going concern. If the Company is not successful in efforts to raise additional capital sufficient to support operations, the Company would be forced to cease operations, in which event investors would lose their entire investment in the Company.

**Financial Operations Overview**

The following describes certain line items in our statement of operations and some of the factors that affect our operating results.

*Revenues*

The Company's contracts are either cost plus or fixed price contracts. 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 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.

A portion of the revenue during the three and nine months ended January 31, 2016 was from cost-sharing contracts.

The following table provides information regarding the breakdown of our revenues by customer for the three and nine months ended January 31, 2017 and 2016.

| | **Three months ended January 31,** | | **Nine months ended January 31,** | |
|---|---|---|---|---|
| | **2017** | **2016** | **2017** | **2016** |
| | ($ millions) | | | |
| Mitsui Engineering & Shipbuilding | $0.1 | $ - | $0.5 | $ - |
| U.S. Department of Defense Office of Naval Research | 0.1 | - | 0.1 | - |
| US Department of Energy | - | - | - | 0.2 |
| European Union (WavePort project) | - | - | - | 0.4 |
| | $0.2 | $ - | $0.6 | $0.6 |

We currently focus our sales and marketing efforts on North America, Europe, Australia and Japan. The following table shows the percentage of our revenues by geographical location of our customers for the nine months ended January 31, 2017 and 2016.

| | **Nine months ended January 31,** | |
|---|---|---|
| **Customer Location** | **2017** | **2016** |
| Asia and Australia | 83 % | - |
| United States | 17 % | 33 % |
| Europe | - | 67 % |

100% 100%

*Cost of revenues*

Our cost of revenues consists primarily of incurred material, labor and manufacturing overhead expenses, such as engineering expense, equipment depreciation and maintenance and facility related expenses, and includes the cost of PowerBuoy parts and services supplied by third-party suppliers. Cost of revenues also includes PowerBuoy system delivery and deployment expenses and may include anticipated losses at completion on certain contracts.

Our ability to generate a gross profit will depend on the nature of future contracts, our success at generating revenues through sales or leases of our PowerBuoy systems, the nature of our contracts generating revenues to fund our product development efforts, and our ability to manage costs incurred on fixed price commercial contracts.

*Product development costs*

Our product development costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product development and unfunded research activities. Our product development costs relate primarily to our efforts to increase the power output and reliability of our PowerBuoy system, and to the development of new products, product applications and complementary technologies. We expense all of our product development costs as incurred. Over the next several years, it is our goal to fund the majority of our product development efforts with sources from commercial relationships, including cost-sharing agreements. If we are unable to obtain commercial relationships or cost-sharing arrangements, we may be forced to curtail our development expenses and scope to reduce our overall expenses. We recently narrowed our development focus to the PB3 to drive toward commercialization of that product and to reduce our overall expenses. In the future, we also may continue to develop the PB15 (formerly known as PB10) if we determine that future relationships warrant incurring the costs associated with such product development.

*Selling, general and administrative costs*

Our selling, general and administrative costs consist primarily of professional fees, salaries and other personnel-related costs for employees and consultants engaged in sales and marketing and support of our PowerBuoy systems and costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

*Fair Value of Financial Instruments*

The fair value of our financial instruments reflects the amounts that would be paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). The fair value of our warrant liabilities are subject to remeasurement each financial statement reporting period, as such, changes in this fair value are reflected in the Statement of Operations.

Our financial instruments not required to be adjusted to fair value on a recurring basis consist principally of cash and restricted cash, accounts receivable, accounts payable, and accrued expenses. We believe the carrying amount of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate fair value due to their relatively short maturities.

*Interest income, net*

Interest income, net consists of interest received on cash and cash equivalents, investments in commercial bank-issued certificates of deposit and US Treasury bills and notes and interest expense paid on certain obligations to third parties. Total cash, cash equivalents, restricted cash, and marketable securities were $11.4 million as of January 31, 2017, compared to $9.8 million as of January 31, 2016.

*Foreign exchange gain (loss)*

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Foreign exchange gains and losses arise in the translation of foreign-denominated assets and liabilities, which may result in realized and unrealized gains or losses from exchange rate fluctuations. Since we conduct our business in US dollars and our functional currency is the US dollar, our main foreign exchange exposure, if any, results from changes

in the exchange rate between the US dollar and the British pound sterling, the Euro and the Australian dollar. Due to the macroeconomic pressures in certain European countries, foreign exchange rates may become more volatile in the future.

We may invest our foreign cash reserves in certificates of deposit and we maintain cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These foreign-denominated certificates of deposit and cash accounts had a balance of $1.3 million as of January 31, 2017, compared to our total cash, cash equivalents, restricted cash, and marketable securities balances of $11.4 million as of January 31, 2017. These foreign currency balances are translated at each month end to our functional currency, the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business.

We currently do not hedge our exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash, cash equivalents and marketable securities denominated in foreign currencies sufficient to satisfy these anticipated requirements. We also assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

**Results of Operations**

***Three months ended January 31, 2017 compared to the three months ended January 31, 2016***

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended January 31, 2017 and 2016.

| | **Three months ended January 31,** | | **% change 2017 period to 2016 period** | |
|---|---|---|---|---|
| | **2017** | **2016** | | |
| Revenues | $221 | $5 | 4320 | % |
| Cost of revenues | 363 | 5 | 7160 | % |
| Gross profit (loss) | (142 ) | - | | |
| Operating expenses: | | | | |
| Product development costs | 950 | 1,752 | -46 | % |
| Selling, general and administrative costs | 1,617 | 1,690 | -4 | % |
| Total operating expenses | 2,567 | 3,442 | | |
| Operating loss | (2,709) | (3,442) | | |
| Loss on fair value of warrant liabilities | (104 ) | - | 100 | % |
| Interest income, net | 24 | 1 | 2300 | % |
| Other expense | - | (3 ) | -100 | % |
| Foreign exchange loss | (26 ) | (188 ) | -86 | % |
| Loss before income taxes | (2,815) | (3,632) | | |
| Income tax benefit | 698 | 1,674 | -58 | % |
| Net loss | $(2,117) | $(1,958) | 8 | % |

*Revenues*

Revenues during the three months ended January 31, 2017 were 0.2 million, an increase of $0.2 million, as compared to the three months ended January 31, 2016. The increase in revenue is attributable to the MES and ONR agreements.

*Cost of revenues*

Cost of revenues during the three months ended January 31, 2017 were 0.4 million, an increase of $0.4 million, as compared to the three months ended January 31, 2016. The cost of revenues incurred during the three months ended January 31, 2017, were related to the MES and ONR projects. During the three months ended January 31, 2017, we incurred increased costs in connection with the MES project, which resulted in a gross loss for the three and nine months ended January 31, 2017.

*Product development costs*

Product development costs during the three months ended January 31, 2017 were 1.0 million, a decrease of $0.8 million, or 46%, as compared to the three months ended January 31, 2016. During the three months ended January 31, 2017, product development costs primarily related to the deployment of the commercial design PB3 PowerBuoy. During the three months ended January 31, 2016, product development costs reflected costs related to deployment of the legacy PB40 utility scale PowerBuoy.

*Selling, general and administrative costs*

Selling, general and administrative costs during the three months ended January 31, 2017 were 1.6 million, a decrease of $0.1 million, or 4%, as compared to the three months ended January 31, 2016. The decrease is primarily attributable to decreased legal costs, partially offset by an increase in equity compensation.

*Loss on fair value of warrant liabilities*

The loss on fair value of warrant liabilities during the three months ended January 31, 2017 was 0.1 million, attributable to the net fair market value at January 31, 2017. There were no such amounts during the three months ended January 31, 2016 as there were no warrant liabilities.

*Interest income, net*

Interest income, net during the three months ended January 31, 2017 was $24 thousand an increase of $23 thousand as compared to the three months ended January 31, 2016.

*Foreign exchange loss*

Foreign exchange loss during the three months ended January 31, 2017 was $26 thousand, a decrease of $0.2 million, or 86%, as compared to a loss of $0.2 million during the three months ended January 31, 2016. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro and Australian dollar compared to the US dollar during the two periods.

*Income tax benefit*

During the three months ended January 31, 2017 and 2016, the Company sold New Jersey net operating loss carryforwards and research and development credits resulting in income tax benefits of $0.7 million and $1.7 million, respectively.

***Nine months ended January 31, 2017 compared to the nine months ended January 31, 2016***

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the nine months ended January 31, 2017 and 2016.

| | **Nine months ended January 31,** | | **% change 2017 period to 2016 period** |
|---|---|---|---|
| | **2017** | **2016** | |
| Revenues | $593 | $605 | -2 % |

| | | | | |
|---|---|---|---|---|
| Cost of revenues | 615 | 605 | 2 | % |
| Gross profit (loss) | (22 ) | - | | |
| Operating expenses: | | | | |
| Product development costs | 3,894 | 5,412 | -28 | % |
| Selling, general and administrative costs | 4,859 | 5,419 | -10 | % |
| Total operating expenses | 8,753 | 10,831 | | |
| Operating loss | (8,775) | (10,831) | | |
| Gain on fair value of warrant liabilities | 1,161 | - | 100 | % |
| Interest income, net | 26 | 10 | 160 | % |
| Other income | - | 240 | -100 | % |
| Foreign exchange loss | (20 ) | (194 ) | -90 | % |
| Loss before income taxes | (7,608) | (10,775) | | |
| Income tax benefit | 698 | 1,674 | -58 | % |
| Net loss | (6,910) | (9,101 ) | -24 | % |
| Less: Net profit attributable to the non-controlling interest in Ocean Power Technologies (Australasia) Pty Ltd | - | (45 ) | -100 | % |
| Net loss attributable to Ocean Power Technologies, Inc | $(6,910) | $(9,146 ) | -24 | % |

*Revenues*

Revenues during each of the nine months ended January 31, 2017 and 2016 were 0.6 million. During the nine months ended January 31, 2017, $0.5 million of revenue was attributable to the MES agreement, announced in June 2016, coupled with the $0.1 million attributable to the ONR contract, compared to revenue from our WavePort contract with the EU for our project in Spain and the billable work under our prior contracts with the DOE during the nine months ended January 31, 2016.

*Cost of revenues*

Cost of revenues during each of the nine months ended January 31, 2017 and 2016 were $0.6 million. During the three months ended January 31, 2017 we incurred increased costs in connection with the MES project, which resulted in a gross loss for the three and nine months ended January 31, 2017.

*Product development costs*

Product development costs during the nine months ended January 31, 2017 were 3.9 million, a decrease of $1.5 million, or 28%, as compared to the nine months ended January 31, 2016. During the nine months ended January 31, 2017 product development costs were primarily attributable to the redeployment of the pre-commercial PB3, the deployment of the commercial design PB3 PowerBuoy and estimated costs related to the retrieval of the PB40 mooring system. During the nine months ended January 31, 2016 product development costs related to the deployment of the legacy PB40 utility scale PowerBuoy as well as costs related to the redesigned commercial PB3.

*Selling, general and administrative costs*

Selling, general and administrative costs during the nine months ended January 31, 2017 were $4.9 million, a decrease of $0.6 million, or 10%, as compared to the nine months ended January 31, 2016. The decrease is primarily attributable to increased overhead costs absorbed into revenue producing projects and product development, and lower legal expense, partially offset by increased equity compensation expense.

*Gain on fair value of warrant liabilities*

The gain on fair value of warrant liabilities during the nine months ended January 31, 2017 was $1.2 million attributable to the net fair market value at January 31, 2017. There were no such amounts during the nine months ended January 31, 2016 as there were no warrant liabilities.

*Interest income, net*

Interest income, net during the nine months ended January 31, 2017 was $26 thousand, an increase of $16 thousand as compared to the nine months ended January 31, 2016.

*Other income*

During the nine months ended January 31, 2016, the Company received a refund of $0.2 million related to research and development expenditures in Australia. There were no such amounts during the nine months ended January 31, 2017.

*Foreign exchange loss*

Foreign exchange loss during the nine months ended January 31, 2017 was $20 thousand, a decrease of $0.2 million compared to the nine months ended January 31, 2016. The difference was primarily attributable to the relative change in value of the British pound sterling, Euro and Australian dollar compared to the US dollar during the two periods.

*Income tax benefit*

During the nine months ended January 31, 2017 and 2016, the Company sold New Jersey net operating loss carryforwards and research and development credits resulting in income tax benefits of $0.7 million and $1.7 million, respectively.

**Liquidity and Capital Resources**

Since our inception, the cash flows from customer revenues have not been sufficient to fund our operations and provide the capital resources for the planned growth of our business. For the two years ended April 30, 2016, our aggregate revenues were $4.8 million, our aggregate net losses were $26.3 million and our aggregate net cash used in operating activities was $28.1 million. Refer to “Liquidity Outlook” below for additional information.

**Net cash used in operating activities**

Net cash flows used in operating activities during the nine months ended January 31, 2017 were $7.6 million, a decrease of $0.5 million compared to $8.1 million during the nine months ended January 31, 2016. The decrease was primarily related to decreased cash out flows for product development costs of $1.7 million, selling, general and administrative costs of $0.4 million, and stock compensation expense of $0.2 million coupled with the proceeds received from the Spanish Tax authorities as a result of the conclusion of the tax inquiry of $0.2 million. These items were partially offset by $1.0 million of decreased proceeds related to the NOL sales, decreased revenue receipts of $0.5 million, litigation settlement payment totaling $0.5 million and a refund received related to research and development expenditures in Australia of $0.2 million during the nine months ended January 31, 2016.

**Net cash provided by investing activities**

Net cash provided by investing activities during the nine months ended January 31, 2017 of $29 thousand, primarily related to maturities of marketable securities of $75 thousand, partially offset by purchase of marketable securities of $25 thousand and purchases of fixed asset equipment of $22 thousand.

Net cash provided by investing activities during the nine months ended January 31, 2016 of $0.1 million, primarily related to an increase in restricted cash balances of $0.1 million and maturities of marketable securities of $25 thousand, partially offset by purchases of fixed asset equipment of $24 thousand.

**Net cash provided by financing activities**

Net cash provided by financing activities during the nine months ended January 31, 2017 of $12.0 million, primarily related to proceeds from the sale of common stock, net of issuance costs, totaling $12.2 million, partially offset by the acquisition of treasury stock related to the payment of employee taxes of $0.1 million and debt payments of $0.1 million.

Net cash provided by financing activities during the nine months ended January 31, 2016 of $0.1 million, primarily related to proceeds from the sale of common stock, net of issuance costs, totaling $0.2 million, partially offset by debt payments of $0.1 million.

**Effect of exchange rates on cash and cash equivalents**

The effect of exchange rates on cash and cash equivalents was a decrease of $55 thousand and $85 thousand in the nine months ended January 31, 2017 and 2016, respectively. The effect of exchange rates on cash and cash equivalents results primarily from gains or losses on consolidation of foreign subsidiaries and foreign denominated cash and cash equivalents.

**Liquidity Outlook**

Our financial statements have been prepared assuming we will continue as a going concern. We have experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of $184.8 million at January 31, 2017. As of January 31, 2017, we had approximately $11.1 million in cash on hand. In addition, as of January 31, 2017, our restricted cash balance was approximately $0.3 million. The Company generated revenues of $0.6 million during each of the nine months ended January 31, 2017 and 2016. Based on the Company's cash and cash equivalents and marketable securities balances as of January 31, 2017, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending January 31, 2018. These conditions raise substantial doubt about our ability to continue as a going concern.

We expect to devote substantial resources to continue our development efforts for our PowerBuoys and to expand our sales, marketing and manufacturing programs associated with the planned commercialization of the PowerBuoys. Our future capital requirements will depend on a number of factors, including but not limited to:

our ability to commercialize our PowerBuoys, and achieve and sustain profitability;

our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;

our ability to obtain additional funding, as and if needed which will be subject to a number of factors, including market conditions, and our operating performance;

our estimates regarding expenses, future revenues and capital requirements;

the adequacy of our cash balances and our need for additional financings;

our ability to develop and manufacture a commercially viable PowerBuoy product;

that we will be successful in our efforts to commercialize our PowerBuoy or the timetable upon which commercialization can be achieved, if at all;

our ability to identify and penetrate markets for our PowerBuoys and our wave energy technology;

- our ability to implement our commercialization strategy as planned, or at all;
- our ability to maintain the listing of our common stock on the NASDAQ Capital Market;
- the reliability of our technology and our PowerBuoys;
- our ability to improve the power output, survivability and reliability of our PowerBuoys;
- the impact of pending and threatened litigation on our business, financial condition and liquidity;
- changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;
- our ability to compete effectively in our target markets;
- our limited operating history and history of operating losses;
- our sales and marketing capabilities and strategy in the United States and internationally; and
- our ability to protect our intellectual property portfolio.

Our business is capital intensive and, to date, we have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. This is largely a result of the high product development costs associated with our product development. We may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during the remainder of fiscal year 2017, if we are not successful in our efforts to raise additional capital. We cannot assure you that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure you that we will be able to secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to raise additional capital when needed or generate positive cash flow, it is unlikely that we will be able to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Off-Balance Sheet Arrangements**

Since inception, we have not engaged in any off-balance sheet financing activities.

**Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not applicable.

**Item 4. CONTROLS AND PROCEDURES**

*Evaluation of Disclosure Controls and Procedures*

Management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of January 31, 2017 pursuant to Rules 13a-15(b) or 15d-15(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) are controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s (“SEC”) rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file under the Exchange Act is accumulated and communicated to our management, as appropriate, to allow timely decisions regarding required disclosure. Based on such evaluation, management concluded that our disclosure controls and procedures were effective as of January 31, 2017 to ensure that non-financial statement and related disclosure information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms.

*Changes in Internal Control over Financial Reporting*

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended January 31, 2017 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II — OTHER INFORMATION**

**Item 1.***LEGAL PROCEEDINGS*

**Shareholder Litigation and Demands**

The Company and its former Chief Executive Officer Charles Dunleavy were named as defendants in consolidated securities class action lawsuits that were pending in the United States District Court for the District of New Jersey captioned In Re: Ocean Power Technologies, Inc. Securities Litigation, Civil Action No. 14-3799 (FLW) (LHG).

On May 5, 2016, the parties entered into a Stipulation and Agreement of Class Settlement ("Stipulation") in which they agreed to a settlement of the consolidated securities class action lawsuits, subject to Court approval. The Stipulation provides, among other things, for a settlement payment by or on behalf of the Company of $3.0 million in cash, of which the Company would pay $0.5 million and the Company's insurer will pay $2.5 million, and the issuance by the Company of 380,000 shares (valued at $0.6 million on the date the Stipulation was signed by the parties) of its Common Stock to the class members. In connection with the settlement, the parties have agreed to execute mutually agreeable releases. The amounts agreed in the Stipulation, including the amount to be contributed by our insurance carrier, were reflected in the Company's Consolidated Financial Statements as of April 30, 2016. In July 2016, the Company paid the $0.5 million portion of the settlement and the remaining balance of $2.5 million was paid by the Company's insurer in August 2016. On November 14, 2016, the Court held its previously scheduled Settlement Hearing to consider whether to grant final approval of the settlement, and on November 15, 2016, the Court issued its Final Judgment approving the settlement and dismissing the proceeding with prejudice. The 380,000 shares of common stock were issued on November 22, 2016. The time to file an appeal from the Final Judgment has expired without any appeal being filed.

The Company and certain of its current and former directors and officers are 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 alleges 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 seeks 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 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 seeks unspecified monetary damages and other relief.

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 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 settlement hearing scheduled for November 14, 2016 in the securities class action and further order of the Court. Defendants have not responded to the consolidated derivative actions because the actions remain stayed pending further order from the Court.

The Company and certain of its current directors are defendants in a lawsuit filed by an alleged shareholder in the Superior Court of New Jersey, Mercer County Chancery Division on January 25, 2016, captioned Stern v. Ocean Power Technologies, Inc., et al., Civil Action No. C-5-16. The complaint alleges that certain provisions of the Company’s Certificate of Incorporation and By-laws providing that the Company’s directors may be removed only for cause and only by an affirmative vote of at least 75% of the votes which all the stockholders would be entitled to cast in any annual election of directors are invalid under Section 141(k) of the Delaware General Corporation Law. The Complaint asserts a breach of fiduciary claim against the director defendants and a declaratory judgment claim against all defendants seeking, among other things, to invalidate the current provisions and declare that the Company’s directors may be removed and replaced without cause and by a simple majority vote. The Complaint seeks declaratory and injunctive relief as well as unspecified costs and attorneys’ fees. By Unanimous Written Consent dated June 17, 2016, the Company’s Board of Directors amended the Company’s By-laws to delete the “only for cause” requirement, thereby allowing for removal of directors with or without cause by the Company’s stockholders. In addition, the Board proposed, subject to approval by the Company’s stockholders at the next annual general meeting of stockholders, a similar amendment to the director removal provision in the Company’s Certificate of Incorporation. On June 22, 2016, the parties to the lawsuit submitted a Stipulation and Proposed Order Staying Proceedings that (1) stays the case pending the stockholder vote on the proposed amendment to the Company’s Certificate of Incorporation; (2) provides for dismissal of the action with prejudice if the stockholders approve the amendment, subject to plaintiff’s right to make a fee application to the court and defendants’ right to oppose any such application; and (3) provides for the stay to be lifted and the action to resume, without waiver of any parties’ rights, if the stockholders do not approve the amendment. The Court approved the Stipulation on June 30, 2016. On September 2, 2016, the Company filed a definitive proxy statement with the SEC which includes this proposal. At the annual shareholder meeting on October 21, 2016, the proposal was not approved because an insufficient number of votes were cast to satisfy the requirement that the proposal be approved by the holders of at least 75% of the outstanding shares of common stock entitled to vote at the meeting. However, stockholders approved an amendment to the Company’s Certificate of Incorporation to add a provision which requires that any provision of the Certificate of Incorporation that is contrary to a requirement

of the Delaware General Corporate Law shall be read in conformity with the applicable requirement of the Delaware General Corporate Law. The parties have agreed that the case shall remain stayed until further steps, if any, can be agreed to and taken as needed.

**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. The Company and Mr. Dunleavy have agreed to suspend his alleged employment claims pending resolution of the shareholder litigation, and have since agreed to continue the suspension pending resolution of the derivatives litigation.

Except for the Stipulation 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 February 4, 2015, the Company received a subpoena from the SEC requesting information related to the VWP Project. The Company has provided information to the SEC in response to that subpoena. As part of the same investigation, on July 12, 2016, the SEC issued a second subpoena requesting information related to the Company’s April 4, 2014 public offering. The Company has provided information to the SEC in response to that subpoena. The SEC investigation is ongoing and the Company continues to cooperate with the SEC in its investigation. We are unable to predict what action, if any, might be taken by the SEC or its staff as a result of this investigation or what impact, if any, the cost of responding to the SEC’s investigation or its ultimate outcome might have on our financial position, results of operations or liquidity. We have not established any provision for losses relating to this matter.

***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 believes that the inquiry will find that the tax credit was properly claimed and, therefore, no liability

has been recorded. The Company issued two letters of credit in the amount of €0.3 million ($0.3 million) at the request of the Spanish tax authorities. As of January 31, 2017 the Company has received $0.2 million from the Spanish Tax authorities as a result of the conclusion of the inquiry.

***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. We have not established any provision for losses related to this matter.

**Item 1A.** ***RISK FACTORS***

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2016 and set forth below in this Quarterly Report on Form 10-Q. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on July 15, 2016 and our Form 10-Q for the quarter ended October 31, 2016, except as discussed below.

***Our auditors have raised substantial doubts as to our ability to continue as a going concern.***

Our financial statements have been prepared assuming we will continue as a going concern. Due to the significant product development costs associated with our business and operations, we have experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of $184.8 million as of January 31, 2017. As of January 31, 2017, the Company had approximately $11.1 million in cash on hand. The Company generated revenues of $0.6 million during each of the nine months ended January 31, 2017 and 2016. We generated revenues of only $0.7 million in fiscal 2016, and $4.1 million in fiscal 2015. Based on the Company's cash and cash equivalents and marketable securities balances as of January 31, 2017, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending January 31, 2018. We continue to experience operating losses and currently have only two revenue producing contracts.

During the nine months ended January 31, 2017, our net burn rate (cash used in operations less cash generated by operations) including product development spending was approximately $0.9 million per month, excluding $0.5 million cash paid in relation to the litigation settlement and $0.7 million cash received from the sale of the New Jersey net operating loss carryforwards.

Our business is capital intensive and, to date, we have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. This is a largely a result of the high product development costs associated with our product development. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. We anticipate that our operating expenses will be approximately $12.0 million in fiscal 2017. Through the nine months ended January 31, 2017, the Company has already incurred approximately $8.8 million in such operating costs. We may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during fiscal year 2017, if we are not successful in our efforts to raise additional capital. We cannot assure you that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure you that we will be able to

secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to meet our obligations, we would be forced to cease operations, in which event investors would lose their entire investment in our company.

***We have a history of operating losses and may not achieve or maintain profitability and positive cash flow.***

We have incurred net losses since we began operations in 1994, including net losses attributable to Ocean Power Technologies, Inc. of $6.9 million during the nine months ended January 31, 2017 and $13.1 million in fiscal 2016. As of January 31, 2017, we had an accumulated deficit of $184.8 million. To date, our activities have consisted primarily of activities related to the development and testing of our technologies and our PowerBuoy. Thus, our losses to date have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. As we continue to develop our proprietary technologies, we expect to continue to have a net use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services.

We do not know whether we will be able to successfully commercialize our PowerBuoys, or whether we can achieve profitability. There is significant uncertainty about our ability to successfully commercialize our PowerBuoys in our targeted markets. Even if we do achieve commercialization of our PowerBuoy and become profitable, we may not be able to achieve or, if achieved, sustain profitability on a quarterly or annual basis.

***We may not be able to raise sufficient capital to continue to operate our business.***

Historically, we have funded our business operations through sales of equity securities. We do not know whether we will be able to secure additional equity funding or, if secured, whether the terms will be favorable to us or our investors. Our ability to obtain additional funding will be subject to a number of factors, including market conditions, our operating performance, pending litigation and investor sentiment. These factors may make additional funding unavailable, or the timing, amount, terms and conditions of additional funding unattractive. If we issue additional equity securities to raise capital, our existing stockholders would experience dilution or may be subordinated to any rights, preferences or privileges granted to the new equity holders.

We have filed a shelf registration statement on Form S-3 with the SEC registering the sale of up to $15,000,000 of debt, equity and other securities (the "Shelf Registration Statement"), which was declared effective on April 26, 2016. In June 2016, we completed an offering off of the Shelf Registration Statement of 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. In July 2016, we completed a best efforts public offering off of the Shelf Registration Statement of 595,000 units, with each unit consisting of one share of common stock and 0.3 of a warrant to purchase one share of our common stock, for a total of 178,500 warrants.

On October 19, 2016, we 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 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. We are using the net proceeds from this offering for general corporate purposes, which may include additional development, testing and demonstrations of our PowerBuoy system with the goal of furthering and accelerating its commercialization efforts and expanding its sales and marketing functions.

Future sales under the Shelf Registration Statement or other sales of equity or convertible securities could be dilutive to our stockholders. We cannot assure you that we will be able to issue any such securities or, if issued, what the terms of those securities would be. In particular, any new securities issued could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, our business, operating results, financial condition and prospects could be materially and adversely affected and we may be unable to continue our operations.

**Item 2.** ***UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS***

The following table details the Company's share repurchases during the quarter:

| Period | Total Number of Shares Purchased (1) | Average Price Paid per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans | Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plan |
|---|---|---|---|---|
| November 1-30, 2016 | 24,113 | $ 2.32 | - | $ - |
| December 1-31, 2016 | - | $ - | - | $ - |

| January 1-31, 2017 | 9,409 | $ 3.05 | - | $ - |
|---|---|---|---|---|

(1) Represents shares delivered back to the Company by employees to pay taxes related to the vesting of restricted shares.

**Item 3.*DEFAULTS UPON SENIOR SECURITIES***

None.

**Item 4.*MINE SAFETY DISCLOSURES***

Not applicable.

**Item 5.*OTHER INFORMATION***

None.

**Item 6.** ***EXHIBITS***

| | | |
|---|---|---|
| 31.1 | | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 31.2 | | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 32.1 | * | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 32.2 | * | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 101 | | The following materials formatted in eXtensible Business Reporting Language (XBRL) from Ocean Power Technologies, Inc Quarterly Report on Form 10-Q for the quarter ended January 31, 2017, filed March 7, 2017: (i) Consolidated Balance Sheets – January 31, 2017 (unaudited) and April 30, 2016, (ii) Consolidated Statements of Operations (unaudited) – Three and Nine months ended January 31, 2017 and 2016, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – Three and Nine months ended January 31, 2017 and 2016, (iv) Consolidated Statements of Cash Flows (unaudited) –Nine months ended January 31, 2017 and 2016, (v) Consolidated Statements of Stockholders' Equity (unaudited) – Nine months ended January 31, 2017 and 2016 (vi) Notes to Consolidated Financial Statements.** |

* 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.

** As provided in Rule 406T of Regulation S-T, this exhibit shall not be deemed "filed" or a 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 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.**
*(Registrant)*

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| Date: March 7, 2017 | | /s/ George H. Kirby III |
| | By: | George H. Kirby III |
| | | *Chief Executive Officer* |

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|---|---|---|
| Date: March 7, 2017 | | /s/ Matthew T. Shafer |
| | By: | Matthew T. Shafer |
| | | *Chief Financial Officer* |

40