

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

**FORM 10-Q**

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

For the quarterly period ended September 30, 2009

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: 001-32750

**SPARK NETWORKS, INC.**

*(Exact name of registrant as specified in its charter)*

**DELAWARE**

*(State or other jurisdiction of Incorporation or organization)*

**8383 Wilshire Boulevard, Suite 800**

**Beverly Hills, California**

*(Address of principal executive offices)*

**20-8901733**

*(I.R.S. Employer Identification No.)*

**90211**

*(Zip Code)*

**(323) 658-3000**

*(Registrant's telephone number, including area code)*

Not Applicable.

*(Former name, former address and former fiscal year, if changed since last report)*

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 definition of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  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

The registrant had 20,581,544 shares of common stock, par value \$0.001 per share, outstanding as of November 12, 2009.

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**SPARK NETWORKS, INC.**

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**SPARK NETWORKS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**(in thousands, except share data)**

	September 30, 2009 (unaudited)	December 31, 2008
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 7,704	\$ 7,417
Restricted cash	648	766
Accounts receivable	899	1,102
Deferred tax asset	42	52
Prepaid expenses and other	860	1,869
Total current assets	10,153	11,206
Property and equipment, net	2,197	1,685
Goodwill, net	18,036	17,964
Intangible assets, net	5,284	5,750
Deferred tax asset	4,473	5,002
Deposits and other assets	2,004	401
Total assets	<u>\$ 42,147</u>	<u>\$ 42,008</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 1,019	\$ 2,260
Accrued liabilities	5,558	4,830
Deferred revenue	4,631	4,093
Notes payable and other short-term debt	3,750	7,750
Total current liabilities	14,958	18,933
Deferred tax liabilities	653	756
Income tax liability	999	906
Total liabilities	16,610	20,595
Commitments and contingencies (Note 8)	—	—
Stockholders' equity:		
Authorized capital stock consists of 100,000,000 shares of common stock, \$0.001 par value; issued and outstanding 20,581,544 and 20,541,744 at September 30, 2009 and December 31, 2008, respectively	21	21
Additional paid-in-capital	46,438	45,545
Accumulated other comprehensive income	618	591
Accumulated deficit	(21,540)	(24,744)
Total stockholders' equity	25,537	21,413
Total liabilities and stockholders' equity	<u>\$ 42,147</u>	<u>\$ 42,008</u>

See accompanying notes.

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**SPARK NETWORKS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**  
**(unaudited, in thousands, except per share data)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net revenues	\$11,058	\$14,041	\$34,332	\$44,050
Direct marketing expenses	3,054	3,409	8,888	11,504
Contribution	8,004	10,632	25,444	32,546
Operating expenses:				
Sales and marketing (including stock-based compensation of \$44, \$157, \$134, and \$546)	906	1,082	2,663	3,263
Customer service (including stock-based compensation of \$2, \$13, \$9, and \$51)	450	599	1,430	1,811
Technical operations (including stock-based compensation of \$39, \$168, \$129, and \$510)	792	1,000	2,510	3,084
Development (including stock-based compensation of \$22, \$138, \$84, and \$456)	952	1,145	3,358	3,476
General and administrative (including stock-based compensation of \$161, \$501, \$506, and \$1,549)	2,778	3,897	8,968	12,052
Amortization of intangible assets	127	107	498	658
Impairment of goodwill and long-lived assets	—	119	880	119
Total operating expenses	6,005	7,949	20,307	24,463
Operating income	1,999	2,683	5,137	8,083
Other (income)/expense and interest, net	(44)	149	(1,437)	(409)
Income before income taxes	2,043	2,534	6,574	8,492
Provision for income taxes	1,036	789	3,370	3,540
Net income	<u>\$ 1,007</u>	<u>\$ 1,745</u>	<u>\$ 3,204</u>	<u>\$ 4,952</u>
Net income per share – basic and diluted	<u>\$ 0.05</u>	<u>\$ 0.08</u>	<u>\$ 0.16</u>	<u>\$ 0.20</u>
Weighted average shares outstanding – basic	20,582	22,751	20,566	24,430
Weighted average shares outstanding – diluted	20,582	22,770	20,574	24,452

See accompanying notes.

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**SPARK NETWORKS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(unaudited, in thousands)**

	Nine Months Ended September 30,	
	2009	2008
<b>Cash flows from operating activities:</b>		
Net income	\$ 3,204	\$ 4,952
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation and amortization	1,135	1,298
Foreign exchange gain on intercompany loan	(49)	(537)
Income from asset received from legal judgment	(1,742)	—
Impairment of goodwill and long-lived assets	880	119
Stock-based compensation	862	3,112
Deferred taxes	436	(90)
Other	142	71
Changes in operating assets and liabilities:		
Accounts receivable	203	198
Restricted cash	118	787
Prepaid expenses and other assets	1,115	(356)
Accounts payable and accrued liabilities	(678)	1,840
Deferred revenue	537	727
Net cash provided by operating activities	<u>6,163</u>	<u>12,121</u>
<b>Cash flows from investing activities:</b>		
Sale of marketable securities	—	200
Purchases of property and equipment	(1,083)	(780)
Purchase of business and intangible assets	(32)	—
Cash paid in acquisition of business, net of cash acquired	(770)	(770)
Net cash (used in) investing activities	<u>(1,885)</u>	<u>(1,350)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock	30	10
Purchase of shares for retirement	—	(15,066)
Payment on deferred financing costs	(21)	(446)
Proceeds from other short term debt	—	5,000
Payment on borrowing on revolving credit facility	(4,000)	(2,500)
Net cash provided by (used in) financing activities	<u>(3,991)</u>	<u>(13,002)</u>
Net increase (decrease) in cash	287	(2,231)
Cash and cash equivalents at beginning of period	7,417	8,796
Cash and cash equivalents at end of period	<u>\$ 7,704</u>	<u>\$ 6,565</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 142	\$ 10
Cash paid for income taxes	\$ 811	\$ 556

See accompanying notes.

SPARK NETWORKS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

**1. The Company and Summary of Significant Accounting Policies**

***The Company***

The common stock of Spark Networks, Inc., a Delaware corporation (the “Company”), is traded on the NYSE Amex. The Company and its consolidated subsidiaries provide online personals services in the United States and internationally, whereby adults are able to post information about themselves (“profiles”) on the Company’s Web sites and search and contact other individuals who have posted profiles.

Membership to the Company’s online services, which includes the posting of a personal profile and photos, and access to its database of profiles, is free. The Company typically charges a subscription fee for varying subscription lengths (typically, one, three, six and twelve months) to members, allowing them to initiate communication with other members and subscribers utilizing the Company’s onsite communication tools, including anonymous email, instant messenger, chat rooms and message boards. For most of the Company’s services, two-way communications through the Company’s email platform can only take place between paying subscribers.

***Basis of Presentation***

The consolidated financial statements include the accounts of the Company and all of its majority owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

The accompanying unaudited consolidated interim financial statements reflect all adjustments, consisting of only normal recurring items, which, in the opinion of management, are necessary for a fair statement of the results of operations for the periods shown. The results of operations for such periods are not necessarily indicative of the results expected for the full year or for any future periods.

The preparation of consolidated financial statements in conformity with generally accepted accounting principles in the United States (“GAAP”) requires management to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. On an on-going basis, the Company evaluates its estimates, including those related to uncollectible receivables, the useful lives of long-lived assets including property and equipment, investment fair values, goodwill and other intangible assets, investments in equity interests, income taxes, and contingencies. In addition, the Company uses assumptions when employing the Black-Scholes option valuation model to calculate the fair value of granted stock-based awards. The Company bases its estimates of the carrying value of certain assets and liabilities on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, when these carrying values are not readily available from other sources. Actual results may differ from these estimates.

The consolidated financial statements should be read in conjunction with the consolidated financial statements and related notes included in the Company’s Annual Report on Form 10-K and 10-K/A for the year ended December 31, 2008. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. The consolidated balance sheet as of December 31, 2008 was derived from the Company’s audited financial statements for the year ended December 31, 2008.

***Fair Value Measurement***

Effective January 1, 2008, we adopted the methods of fair value as described in the Fair Value Measurements and disclosures guidance. It clarifies that fair value is an exit price, representing the amount that would be received in a sale of an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that

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should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering such assumptions, the guidance establishes a three-tier value hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

- Level 1—Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2—Other inputs that are directly or indirectly observable in the marketplace.
- Level 3—Unobservable inputs which are supported by little or no market activity.

The fair value hierarchy requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

As of September 30, 2009, the Company has financial assets that consist of cash and cash equivalents, which are measured at fair value using quoted prices for identical assets in an active market (Level 1 fair value hierarchy).

### ***Recently Adopted Accounting Pronouncements***

In December 2007, the Financial Accounting Standards Board (“FASB”) issued new guidance for “Business Combinations” and for “Non-controlling Interests in Consolidated Financial Statements”. The new treatment requires an acquirer to measure the identifiable assets acquired, the liabilities assumed and any non-controlling interest in the acquiree at their fair values on the acquisition date, with goodwill being the excess value over the net identifiable assets acquired. The Non-controlling Interests in Consolidated Financial Statements guidance clarifies that a non-controlling interest in a subsidiary should be reported as equity in the consolidated financial statements. The calculation of earnings per share will continue to be based on income amounts attributable to the parent. The effective date is for financial statements issued for fiscal years beginning after December 15, 2008. The Company adopted both guidance as of January 1, 2009 and such adoption did not have a material effect on the Company’s consolidated financial position or results of operations.

In April 2008, the FASB issued the “Determination of the Useful Life of Intangible Assets” guidance. It amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under the “Goodwill and Other Intangible Assets” guidance. The intent of the amended guidance is to improve the consistency between the useful life of a recognized intangible asset under the prior one and the period of expected cash flows used to measure the fair value of the assets under the new guidance and other guidance under GAAP. The guidance is effective for financial statements issued for fiscal years beginning after December 15, 2008. The Company adoption date was January 1, 2009 and it did not have a material effect on the Company’s consolidated financial position or results of operations.

In April 2009, the FASB issued the “*Interim Disclosures about Fair Value of Financial Instruments*” guidance. It requires disclosures about the fair value of financial instruments in interim and annual financial statements. The effective date starts for periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. The Company adopted the guidance in the quarter ended June 30, 2009. Because the new guidance amend only the disclosure requirements related to the fair value of financial instruments, the adoption did not affect the Company’s consolidated financial condition and results of operations.

In May 2009, the FASB issued the “Subsequent Events” guidance, which provides guidance to establish general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It also requires entities to disclose the date through which subsequent events were evaluated as well as the rationale for why that date was selected. This disclosure should alert all users of financial statements that an entity has not evaluated subsequent events after that date in the set of financial statements being presented. The Company adopted the guidance in the quarter ended June 30, 2009.

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### Comprehensive Income

Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. For the Company, comprehensive income consists of its reported net income and the net unrealized gains or losses on marketable securities and foreign currency translation adjustments. Comprehensive income for each of the periods presented is comprised as follows:

<i>(in thousands)</i>	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
Net income	\$ 1,007	\$ 1,745	\$ 3,204	\$ 4,952
Changes in unrealized gains/losses in available for sale securities, net of taxes	—	—	—	(3)
Foreign currency translation adjustment, net of taxes	89	(59)	27	265
Total comprehensive income, net of taxes	<u>\$ 1,096</u>	<u>\$ 1,686</u>	<u>\$ 3,231</u>	<u>\$ 5,214</u>

### 2. Net Income per Share

The Company calculates and presents the net income per share of both basic and diluted net income per share. Basic net income per share is computed by dividing net income available to common stockholders by the weighted average number of shares of common stock outstanding. Diluted net income per share includes the effect of potential shares of stock outstanding, including dilutive stock options and warrants, using the treasury stock method as prescribed in the guidance.

<i>(in thousands except per share data)</i>	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
<b>Income per Share of Common Stock – Basic</b>				
Net income applicable to common stock	\$ 1,007	\$ 1,745	\$ 3,204	\$ 4,952
Weighted average shares outstanding – basic	<u>20,582</u>	<u>22,751</u>	<u>20,566</u>	<u>24,430</u>
<b>Basic Earnings per Share</b>	<b>\$ 0.05</b>	<b>\$ 0.08</b>	<b>\$ 0.16</b>	<b>\$ 0.20</b>
<b>Income per Share of Common Stock – Diluted</b>				
Net income applicable to common stock	\$ 1,007	\$ 1,745	\$ 3,204	\$ 4,952
Weighted average shares outstanding – basic	20,582	22,751	20,566	24,430
Dilutive options using the treasury stock method	—	19	8	22
Weighted average shares outstanding – diluted	<u>20,582</u>	<u>22,770</u>	<u>20,574</u>	<u>24,452</u>
<b>Diluted Earnings per share</b>	<b>\$ 0.05</b>	<b>\$ 0.08</b>	<b>\$ 0.16</b>	<b>\$ 0.20</b>

Options to purchase 3.5 million shares for the three and nine month periods ending September 30, 2009 and 3.1 million shares for the three and nine month periods ending September 30, 2008 respectively, were not included in the computation of diluted net income per share because the exercise price of such options was above the average stock price for the period and, therefore, the options were considered anti-dilutive.



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### **3. Acquisitions of Businesses and Intangibles**

#### ***HurryDate Asset Acquisition***

On February 1, 2007, the Company purchased the assets of HurryDate, a leading online personals and singles events company, for total consideration of \$2.3 million in cash. In addition, subject to certain conditions in the purchase agreement, the Company would also pay additional consideration based on an earn-out tied to the operating income of the HurryDate business for the period covering April 1, 2007 to March 31, 2008. On October 17, 2007, the Company entered into a letter agreement with the sellers and agreed the first and second earn-out payments would each be \$770,000 and the third earn-out payment would be \$660,000. These amounts when and if paid (the first installment was paid in 2008 and the second installment was paid in the first quarter of 2009) would be an increase to the goodwill recorded for this acquisition. These amounts assume the sellers are entitled to a full earn-out payment pursuant to the purchase agreement. Of the \$3.7 million of acquired intangible assets, \$490,000 was assigned to member databases and is being amortized over three years, \$50,000 was assigned to subscriber databases and was amortized over five months, \$800,000 was assigned to developed software which is being amortized over five years, \$360,000 was assigned to domain names which are not subject to amortization, and \$2.0 million was assigned to goodwill. In the fourth quarter of 2008, the Company performed its annual valuation and determined the fair value of the HurryDate reporting unit and compared it to the carrying amount of the reporting unit. The analysis concluded that a sustained decline in HurryDate's speed dating business had reduced projected cash flows below the carrying amount of the reporting unit and as such, the Company impaired the entire goodwill amount. HurryDate has not shown improvement since the impairment analysis was completed, as such, management concluded that the additional earn-out payment made in the first quarter of 2009 should be impaired. The goodwill is deductible for tax purposes.

### **4. Revolving Credit Facility**

In February 2008, the Company and its wholly-owned subsidiary, Spark Networks Limited, as borrower, entered into an agreement ("the Initial Agreement") with Bank of America for a \$30.0 million revolving credit facility, which was amended to \$25.0 million on September 29, 2009 (the "Amended Agreement").

The Amended Agreement, among other things, increases the per annum interest rate under the Agreement, which is based upon a financial leverage ratio of less than 1.00, 1.00 to 1.49 and 1.50 and greater. The corresponding interest rates on LIBOR based borrowings are increased to LIBOR plus 1.75%, 2.00% and 2.50%, respectively. In the event the Company elects to borrow under a base rate loan, the corresponding interest rates are increased to the prime rate plus, 0.75%, 1.00% and 1.50%, respectively. Under the Amended Agreement, the Company pays a 0.250% to 0.375% per annum commitment fee on all funds not utilized under the facility, measured on a daily basis.

The Amended Agreement requires the Company to maintain a consolidated leverage ratio at any time during any period of four fiscal quarters of no greater than 2.00 to 1.00 for quarters through December 31, 2009 and 1.50 to 1.00 for quarters on and after March 31, 2010, and a consolidated adjusted EBITDA of \$9 million for the quarters ending September 30, 2009 through December 31, 2009 and \$8 million for the quarters ending on and after March 31, 2010. In addition, the Amended Agreement requires the Company to maintain a fixed charge coverage ratio for each period of four consecutive fiscal quarters of no less than 1.25 to 1.00 through the quarter ending September 30, 2009 and 1.50 to 1.00 for the quarters ending on or after December 31, 2009.

The Company was compliant with the Amended Agreement's customary affirmative and negative covenants, as of September 30, 2009.

At September 30, 2009, there was \$3.5 million outstanding under the Amended Agreement bearing an interest rate of 1.7% with \$21.5 million of borrowing capacity remaining under this revolving credit facility. Due to the short term nature of this instrument, the carrying value approximates the fair value of the loan balance outstanding. In connection with the amendment in September 2009, the Company paid deferred financing costs of approximately \$21,000. In connection with the Initial Agreement, the Company paid deferred financing costs of approximately \$446,000. Costs associated with both the Initial and the Amended Agreements were included in other current assets and deposits and other assets. In the third quarter of 2009, the Company wrote off \$36,000 of the remaining deferred financing costs associated with the Initial Agreement, reflecting a \$5.0 million reduction in the revolving credit facility. The remaining deferred financing costs are amortized to interest expense in the Consolidated Statements of Income over the full term of the Amended Agreement. Amortization expense for the deferred financing costs for the nine months ended September 30, 2009 and September 30, 2008 were \$113,000 and \$99,000, respectively.

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### 5. Stockholders' Equity

#### *Re-Pricing of Employees Options*

On January 5, 2009, the Company re-priced options for certain key employees. The exchange of options was treated as a synthetic re-pricing, which includes a cancellation and replacement of equity instruments. The estimated incremental expense is approximately \$1 million and will be recognized over the four year vesting term of the newly issued options. The incremental expense for the three and nine months ended September 30, 2009 were \$57,000 and \$229,000, respectively.

#### *Employee Stock Option Plans*

As of July 9, 2007, pursuant to the completion of the Scheme of Arrangement, the Company adopted the Spark Networks, Inc. 2007 Omnibus Incentive Plan (the "2007 Plan") initially authorizing and reserving 2.5 million shares, which may increase on January 1 of each year. Prior to the Company's incorporation and Scheme of Arrangement, Spark Networks plc had two Option Plans, the MatchNet plc 2000 Executive Share Option Plan (the "2000 Plan") and Spark Networks plc 2004 Share Option Plan (the "2004 Plan"). No further options are granted under the 2000 Plan or the 2004 Plan; however, all outstanding options previously granted under those plans continue in full force and effect.

Awards under the 2007 Plan may include incentive stock options, nonqualified stock options, stock appreciation rights ("SARs"), restricted shares of common stock, restricted stock units, performance stock or unit awards, other stock-based awards and cash-based incentive awards.

The Compensation Committee may grant to a participant an award. The terms and conditions of the award, including the quantity, price, vesting periods and other conditions on exercise will be determined by the Compensation Committee.

The exercise price for stock options will be determined by the Compensation Committee in its discretion, but may not be less than 100% of the closing sale price of one share of the Company's common stock on the NYSE Amex (or any other applicable exchange on which the stock is listed) on the date when the stock option is granted. Additionally, in the case of incentive stock options granted to a holder of more than 10% of the total combined voting power of all classes of stock of the Company on the date of grant, the exercise price may not be less than 110% of the closing sale price of one share of common stock on the date the stock option is granted.

As of September 30, 2009, total unrecognized compensation cost related to unvested stock options was \$3.5 million. This cost is expected to be recognized over a weighted-average period of four years. The following table describes option activity for the three months ended September 30, 2009:

	Number of Shares (in thousands)	Weighted Average Price Per Share
Outstanding at December 31, 2008	3,643	\$ 5.62
Granted	3,083	3.00
Exercised	(10)	0.71
Cancelled	(22)	3.77
Expired	(3,098)	5.64
Outstanding at March 31, 2009	3,596	\$ 3.33
Granted	17	2.30
Exercised	(30)	0.83
Cancelled	(4)	3.00
Expired	(38)	7.14
Outstanding at June 30, 2009	3,541	\$ 3.32
Granted	18	2.41
Exercised	—	—
Cancelled	(11)	4.16
Expired	(11)	6.48
Outstanding at September 30, 2009	3,537	\$ 3.32

Options issued prior to February 2006 are priced in foreign currency. Weighted average price per share calculations are impacted by foreign exchange fluctuations for these options.

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### Stockholder Rights Plan

The Company has a stockholder rights plan. The rights accompany each share of common stock of the Company and are evidenced by ownership of common stock. The rights are not exercisable except upon the occurrence of certain takeover-related events. Once triggered, the rights would entitle the stockholders, other than a person qualifying as an "Acquiring Person" pursuant to the rights plan, to purchase additional common stock at a 50% discount to their fair market value. The rights issued under the Rights Plan may be redeemed by the board of directors at a nominal redemption price of \$0.001 per right, and the board of directors may amend the rights in any respect until the rights are triggered.

### 6. Segment Information

The Company has four operating segments: Jewish Networks, which consists of JDate.com, JDate.co.il, JDate.co.uk, JDate.fr, Cupid.co.il and their respective co-branded and private label Web sites; Other Affinity Networks, which consists of the Company's Provo, Utah-based properties which are primarily made up of sites targeted towards various religious, ethnic, geographic and special interest groups including BlackSingles.com and ChristianMingle.com; General Market Networks, which consists of AmericanSingles.com, Date.co.uk, Date.ca and their respective co-branded and private label Web sites; and Offline & Other Businesses, which consists of revenue generated from offline activities, HurryDate events and subscriptions to HurryDate.com, and other Web sites and businesses.

<i>(in thousands)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
<b>Net Revenues</b>				
Jewish Networks	\$ 7,074	\$ 8,444	\$ 21,721	\$ 25,754
Other Affinity Networks	3,195	3,498	9,798	10,256
General Market Networks	574	1,721	2,215	6,471
Offline & Other Businesses	215	378	598	1,569
<b>Total</b>	<b>\$ 11,058</b>	<b>\$ 14,041</b>	<b>\$ 34,332</b>	<b>\$ 44,050</b>
<b>Direct Marketing</b>				
Jewish Networks	\$ 628	\$ 564	\$ 1,787	\$ 1,893
Other Affinity Networks	2,188	2,010	6,345	5,820
General Market Networks	138	670	559	2,968
Offline & Other Businesses	100	165	197	823
<b>Total</b>	<b>\$ 3,054</b>	<b>\$ 3,409</b>	<b>\$ 8,888</b>	<b>\$ 11,504</b>
<b>Contribution</b>				
Jewish Networks	\$ 6,446	\$ 7,880	\$ 19,934	\$ 23,861
Other Affinity Networks	1,007	1,488	3,453	4,436
General Market Networks	436	1,051	1,656	3,503
Offline & Other Businesses	115	213	401	746
<b>Total</b>	<b>\$ 8,004</b>	<b>\$ 10,632</b>	<b>\$ 25,444</b>	<b>\$ 32,546</b>
Unallocated operating expenses	6,005	7,949	20,307	24,463
<b>Operating income</b>	<b>\$ 1,999</b>	<b>\$ 2,683</b>	<b>\$ 5,137</b>	<b>\$ 8,083</b>

Due to the Company's integrated business structure, operating expenses, other than direct marketing expenses, are not allocated to the individual reporting segments. As such, the Company does not measure operating profit or loss by segment for internal reporting purposes. Assets and liabilities are not allocated to the different business segments for internal reporting purposes. Depreciation and amortization are included in unallocated operating expenses.

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### **7. Income on Possession of Assets**

In the second quarter of 2009, the Company became the record title owner of real property purchased in a sheriff's sale to partially satisfy the Company's outstanding judgment against Will Knedlik. The Company recorded other income of \$1.7 million in the *Other (income)/expense and interest, net* line item on the Consolidated Statements of Income and recorded the asset as *Deposits and Other Assets* on the Consolidated Balance Sheets.

### **8. Commitments and Contingencies**

#### ***Legal Proceedings***

Please refer to our Annual Report on Form 10-K/A for the year ended December 31, 2008 ("2008 Annual Report") for a description of litigation and claims.

#### ***ISYSTEMS v. Spark Networks, Inc. et al.***

On July 11, 2008, ISYSTEMS initiated a lawsuit against Spark Networks, Inc., Spark Networks Limited and other parties in the United States District Court, Northern District of Texas, Dallas Division. The lawsuit was filed in response to an arbitration award ordering the transfer of the domain name, JDATE.NET, to Spark Networks Limited from ISYSTEMS. Spark Networks was apprised of the lawsuit after ISYSTEMS unsuccessfully attempted to utilize the filing of the lawsuit to prevent the domain transfer to Spark Networks Limited. On December 1, 2008, Spark Networks filed a Motion to Dismiss the Complaint, or, alternatively, for Summary Judgment. On June 10, 2009, the Court granted our motion and dismissed the case with prejudice. On June 22, 2009, ISYSTEMS filed a motion to vacate the order dismissing the action and requesting leave to amend its complaint. On October 26, 2009, the Court granted ISYSTEMS' motion. ISYSTEMS is required to file its amended complaint by November 25, 2009.

The Company strongly disputes the merits of the claims asserted against it in each of the lawsuits disclosed here and in our 2008 Annual Report and intends to vigorously defend against them.

The Company has additional existing legal claims and may encounter future legal claims in the normal course of business. In the Company's opinion, the resolutions of the existing legal claims are not expected to have a material impact on its financial position or results of operations. The Company believes it has accrued appropriate amounts where necessary in connection with such litigation.

### **9. Impairment of Goodwill and Long-lived Assets**

In the first quarter of 2009, the Company paid \$770,000 to the former owners of HurryDate pursuant to the earn-out arrangement (see Note 3). The payment was recorded as an increase of goodwill. In the fourth quarter of 2008, the Company performed its annual valuation, determined the fair value of the HurryDate reporting unit and compared it to the carrying amount of the reporting unit.

The analysis concluded that a sustained decline in HurryDate's speed dating business has reduced projected cash flows below the carrying amount of the reporting unit and as such, the Company impaired the goodwill amount. HurryDate has not shown improvement since the impairment analysis was completed, as such, management concluded that the \$770,000 earn-out payment should be impaired.

Additionally, in the first quarter of 2009, the Company recorded approximately \$110,000 of impairment expense related to development costs for a discontinued web-based product.

### **10. Subsequent Events**

The Company has completed an evaluation of all subsequent events through November 12, 2009, which is the issuance date of these consolidated financial statements and concluded no subsequent events occurred that required recognition or disclosure.

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

*The following discussion of our financial condition and results of operations should be read in conjunction with our unaudited consolidated financial statements and the related notes that are included in this Quarterly Report and the audited consolidated financial statements and related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in our Annual Report on Form 10-K/A for the year ended December 31, 2008 (the "2008 Annual Report").*

*Some of the statements contained in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this Quarterly Report are forward-looking statements that involve substantial risks and uncertainties. All statements other than historical facts contained in this report, including statements regarding our future financial position, business strategy and plans and objectives of management for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "believes," "expects," "anticipates," "intends," "estimates," "may," "will," "continue," "should," "plan," "predict," "potential" and other similar expressions. We have based these forward-looking statements 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. Our actual results could differ materially from those anticipated in these forward-looking statements, which are subject to a number of risks, uncertainties and assumptions including, but not limited to our ability to: attract members; convert members into paying subscribers and retain our paying subscribers; develop or acquire new product offerings and successfully implement and expand those offerings; keep pace with rapid technological changes; maintain the strength of our existing brands and maintain and enhance those brands and our dependence upon the telecommunications infrastructure and our networking hardware and software infrastructure; identify and consummate strategic acquisitions and integrate acquired companies or assets; and successfully implement our current long-term growth strategy, and other factors described in the "Risk Factors" section of our 2008 Annual Report.*

#### **General**

The common stock of Spark Networks, Inc. (the "Company") is traded on the NYSE Amex. We are a leading provider of online personals services in the United States and internationally. Our Web sites enable adults to meet online, participate in a community and form relationships.

#### **Segment Reporting**

For segment information, please refer to Note 6 of the Notes to the Consolidated Financial Statements the ("Notes") elsewhere in this report.

#### **Key Metric - Average Paying Subscribers**

We regularly review average paying subscribers as a key metric to evaluate the effectiveness of our operating strategies and monitor the financial performance of our business. Subscribers are defined as individuals for whom we collect a monthly fee for access to communication and Web site features beyond those provided to our non-paying members. Average paying subscribers for each month are calculated as the sum of the paying subscribers at the beginning and end of the month, divided by two. Average paying subscribers for periods longer than one month are calculated as the sum of the average paying subscribers for each month, divided by the number of months in such period.

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Unaudited selected statistical information regarding average paying subscribers for our operating segments is shown in the table below. Prior period amounts have been reclassified to conform to current period presentation.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Average Paying Subscribers				
Jewish Networks	86,051	91,703	84,488	92,007
Other Affinity Networks	66,786	66,600	65,529	63,347
General Market Networks	11,452	27,814	14,428	32,941
Offline & Other Businesses	917	1,565	1,030	1,968
Total	<u>165,206</u>	<u>187,682</u>	<u>165,475</u>	<u>190,263</u>

Average paying subscribers for the Jewish Networks segment decreased 6% and 8% to 86,051 and 84,488 for the three and nine months ended September 30, 2009 compared to 91,703 and 92,007 in the same periods last year. Average paying subscribers for the Other Affinity Networks segment was flat and increased 3% to 66,786 and 65,529 for the three and nine months ended September 30, 2009 compared to 66,600 and 63,347 in the same periods last year. Average paying subscribers for the General Market Networks segment decreased 59% and 56% to 11,452 and 14,428 for the three and nine months ended September 30, 2009 compared to 27,814 and 32,941 in the same periods last year.

## Results of Operations

The following table presents our operating results as a percentage of net revenues:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net revenues	100.0%	100.0%	100.0%	100.0%
Direct marketing	27.6	24.3	25.9	26.1
Contribution margin	72.4	75.7	74.1	73.9
Operating expenses:				
Sales and marketing	8.2	7.7	7.8	7.4
Customer service	4.1	4.3	4.2	4.1
Technical operations	7.2	7.1	7.3	7.0
Development	8.6	8.2	9.8	7.9
General and administrative	25.1	27.7	26.1	27.3
Amortization	1.1	0.8	1.5	1.5
Impairment of goodwill and other long-lived assets	—	0.8	2.6	0.3
Total operating expenses	54.3	56.6	59.3	55.5
Operating income	18.1	19.1	14.8	18.4
Other (income)/expense and interest, net	(0.4)	1.1	(4.2)	(0.9)
Income before income taxes	18.5	18.0	19.0	19.3
Provision for income taxes	9.4	5.6	9.8	8.0
Net income	9.1%	12.4%	9.2%	11.3%

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### *Three Months Ended September 30, 2009 Compared to Three Months Ended September 30, 2008*

#### *Net Revenues*

Substantially all of our net revenues are derived from subscription fees. Approximately 4% and 6% of our net revenues for the three months ended September 30, 2009 and 2008, respectively, are generated through offline social and travel events, and advertising revenue. Revenues are presented net of credits and credit card chargebacks. Our subscriptions are offered in durations of varying length (typically, one, three, six and twelve months). Plans with durations longer than one month are available at discounted monthly rates. Following their initial terms, most subscriptions renew automatically for subsequent one-month periods until subscribers terminate them.

Net revenues decreased 21% to \$11.1 million in the third quarter of 2009 compared to \$14.0 million in the third quarter of 2008. The majority of this decrease can be attributed to the managed decline in the Company's General Market Networks segment and lower net revenues for the Jewish Networks segment. Net revenues for the Jewish Networks segment decreased 16% to \$7.1 million in the third quarter of 2009 compared to \$8.4 million in the third quarter of 2008. The decrease in net revenues is primarily driven by a lower average paying subscriber base and lower ARPU (average revenue per unit). The lower average paying subscriber base reflects a downturn in the economy while the lower ARPU represents a shift in the plans purchased by our subscribers at various price points. Net revenues for our Other Affinity Networks segment decreased 9% to \$3.2 million in the third quarter of 2009 compared to \$3.5 million in the third quarter of 2008. The lower net revenues can be attributed to a 9% decline in ARPU, reflecting a shift in the growth of certain properties, their pricing and the longer term plans purchased. Net revenues for the General Market Networks segment decreased 67% to \$574,000 in the third quarter of 2009, compared to \$1.7 million in the third quarter of 2008. The decrease in General Market Networks net revenues is due to a decrease in average paying subscribers and lower ARPU. The lower average paying subscribers reflects management's decision to eliminate inefficient online marketing expenses while the lower ARPU reflects different pricing and promotions. Net revenues of our Offline & Other Businesses segment decreased 43% to \$215,000 in the third quarter of 2009 compared to \$378,000 in the third quarter of 2008. The decrease reflects fewer and smaller travel and event offerings in the third quarter of 2009 as compared to the third quarter of 2008.

#### *Direct Marketing Expenses*

Direct marketing expenses decreased 10% to \$3.1 million in the third quarter of 2009 compared to \$3.4 million in the third quarter of 2008. The majority of this decline can be attributed to a reduction in inefficient online marketing programs associated with the General Market Networks segment. Direct marketing expenses for the Jewish Networks segment increased 11% to \$628,000 in the third quarter of 2009 compared to \$564,000 in the third quarter of 2008, reflecting an increase in offline spending. Direct marketing expenses for the Other Affinity Networks segment increased 9% to \$2.2 million for the third quarter of 2009 compared to \$2.0 million in the third quarter of 2008, reflecting growth initiatives for certain properties within this segment. Direct marketing expenses for the General Market Networks segment decreased 79% to \$138,000 in the third quarter of 2009 compared to \$670,000 in the third quarter of 2008. The decrease reflects management's decision to pursue cost effective online subscriber acquisition marketing campaigns. Direct marketing expenses for the Offline & Other Businesses segment decreased 39% to \$100,000 for the third quarter of 2009 compared to \$165,000 for the third quarter of 2008, primarily reflecting fewer and smaller event and travel offerings in 2009.

#### *Operating Expenses*

Operating expenses consist primarily of sales and marketing, customer service, technical operations, development and general and administrative expenses. Operating expenses for the third quarter of 2009 were \$6.0 million, a decrease of 25% compared to \$7.9 million for the third quarter of 2008. The decrease over the third quarter of 2009 is primarily attributable to a \$726,000 decrease in sales and marketing, customer service, technical operations and development expense, and a \$1.1 million decrease in general and administrative expense.

*Sales and Marketing.* Sales and marketing expenses consist primarily of salaries for our sales and marketing personnel. Sales and marketing expenses decreased 16% to \$906,000 in the third quarter of 2009 compared to \$1.1 million in the third quarter of 2008. The decrease can be primarily attributed to lower stock-based compensation expense and employee cash compensation and benefits.

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*Customer Service.* Customer service expenses consist primarily of costs associated with our customer service centers. Customer service expenses decreased 25% to \$450,000 in the third quarter of 2009 compared to \$599,000 in the third quarter of 2008. The expense decrease is primarily due to a reduction in employee cash compensation and benefits and temporary labor, reflecting greater operating efficiencies at the Company's Beverly Hills, CA and Provo, UT locations.

*Technical Operations.* Technical operations expenses consist primarily of the personnel and systems necessary to support our network, internet connectivity and other data and communication requirements. Technical operations expenses decreased 21% to \$792,000 in the third quarter of 2009 compared to \$1.0 million in the third quarter of 2008. The decrease is primarily due to lower employee cash compensation and benefits, depreciation and stock-based compensation expense.

*Development.* Development expenses consist primarily of costs incurred in the development, enhancement and maintenance of our Web sites and services. Development expenses decreased 17% to 952,000 in the third quarter of 2009 compared to \$1.1 million in the third quarter of 2008. The decrease is primarily due to lower stock-based compensation expense, consulting fees and employee cash compensation and benefits.

*General and Administrative.* General and administrative expenses consist primarily of corporate personnel-related costs, professional fees, credit card processing fees, and occupancy and other overhead costs. General and administrative expenses decreased 29% to \$2.8 million in the third quarter of 2009 compared to \$3.9 million in the third quarter of 2008. The decrease is primarily attributable to lower stock-based compensation expense, lower professional service fees and lower credit card fees and fines in the third quarter of 2009.

*Amortization of Intangible Assets.* Amortization expenses consist primarily of amortization of intangible assets related to previous acquisitions. Amortization expenses increased 19% to \$127,000 in the third quarter of 2009 compared to \$107,000 in the third quarter of 2008, reflecting the addition of assets acquired in December 2008.

*Impairment of Other Long-lived Assets.* Impairment of other long-lived assets expenses primarily represent the write-down of goodwill and other intangible assets. Impairment of other long-lived assets was \$0 for the three months ended September 30, 2009 as compared to \$119,000 for the same period in 2008.

*Other (Income)/Expense and Interest, Net.* Other (income)/expense and interest consists primarily of interest income associated with temporary investments in interest bearing accounts and foreign exchange gains and losses related to the intercompany loan with our wholly-owned Israeli subsidiary. Other (income)/expense and interest reflects income of \$44,000 for the third quarter of 2009 compared to expense of \$149,000 for the same period in 2008. The increase is primarily due to a foreign currency translation gain associated with the intercompany loan, offset by interest expense associated with the outstanding balance on the revolving credit facility.

*Net Income and Earnings Per Share.* Net income for the third quarter of 2009 was \$1.0 million, or \$0.05 per share, compared to \$1.7 million, or \$0.08 per share for the third quarter of 2008. The decrease to net income reflects lower contribution in the third quarter of 2009. Third quarter 2009 earnings per share benefited from an approximate 2.2 million share reduction in fully diluted weighted average shares outstanding compared to the third quarter of 2008, reflecting the impact of our stock repurchase activities throughout 2008.



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### *Nine Months Ended September 30, 2009 Compared to Nine Months Ended September 30, 2008*

#### ***Net Revenues***

Substantially all of our net revenues are derived from subscription fees. Approximately 4% and 6% of our net revenues for the nine months ended September 30, 2009 and 2008, respectively, are generated through offline social and travel events, and advertising revenue. Revenues are presented net of credits and credit card chargebacks. Our subscriptions are offered in durations of varying length (typically, one, three, six and twelve months). Plans with durations longer than one month are available at discounted monthly rates. Following their initial terms, most subscriptions renew automatically for subsequent one-month periods until subscribers terminate them.

Net revenues decreased 22% to \$34.3 million in the first nine months of 2009 compared to \$44.1 million in the first nine months of 2008. The majority of this decrease can be attributed to the managed decline in the Company's General Market Networks segment and lower net revenues for the Jewish Networks segment. Net revenues for the Jewish Networks segment decreased 16% to \$21.7 million in the first nine months of 2009 compared to \$25.8 million in the first nine months of 2008. The decrease in net revenues is primarily driven by a lower average paying subscriber base and lower ARPU. The lower average paying subscriber base reflects a downturn in the economy while the lower ARPU represents a shift in the plans purchased by our subscribers at various price points. Net revenues for our Other Affinity Networks segment decreased 5% to \$9.8 million in the first nine months of 2009 compared to \$10.3 million in the first nine months of 2008. The lower net revenues can be attributed to an 8% decline in ARPU, reflecting a shift in the growth of certain properties, their pricing and the longer term plans purchased. Net revenues for the General Market Networks segment decreased 66% to \$2.2 million in the first nine months of 2009, compared to \$6.5 million in the first nine months of 2008. The decrease in General Market Networks net revenues is due to a decrease in average paying subscribers and lower ARPU. The lower average paying subscribers reflects management's decision to eliminate inefficient online marketing expenses while the lower ARPU reflects different pricing and promotions. Net revenues for our Offline & Other Businesses segment decreased 62% to \$598,000 in the first nine months of 2009 compared to \$1.6 million in the first nine months of 2008. The decrease reflects fewer and smaller travel and event offerings in the first nine months of 2009 as compared to the first nine months of 2008.

#### ***Direct Marketing Expenses***

Direct marketing expenses decreased 23% to \$8.9 million for the first nine months of 2009 compared to \$11.5 million for the first nine months of 2008. The majority of this decline can be attributed to a reduction in inefficient online marketing programs associated with the General Market Networks segment and the absence of one major travel event in 2009. Direct marketing expenses for the Jewish Networks segment decreased 6% to \$1.8 million for the first nine months of 2009 compared to \$1.9 million for the first nine months of 2008. For the first nine months of 2008, the Company had invested additional marketing dollars to promote the launch of its French online property. Direct marketing expenses for the Other Affinity Networks segment increased 9% to \$6.3 million for the first nine months of 2009 compared to \$5.8 million for the first nine months of 2008, reflecting growth initiatives for certain properties within this segment. Direct marketing expenses for the General Market Networks segment decreased 81% to \$559,000 for the first nine months of 2009 compared to \$3.0 million for the first nine months of 2008. The decrease reflects management's decision to pursue cost effective online subscriber acquisition marketing campaigns. Direct marketing expenses for the Offline & Other Businesses segment decreased 76% to \$197,000 for the first nine months of 2009 compared to \$823,000 for the first nine months of 2008 reflecting fewer and smaller travel and event offerings in the first nine months of 2009 as compared to the first nine months of 2008.

#### ***Operating Expenses***

Operating expenses consist primarily of sales and marketing, customer service, technical operations, development and general and administrative expenses. Operating expenses for the first nine months of 2009 were \$20.3 million, a decrease of 17% compared to \$24.5 million for the first nine months of 2008. The decrease over the first nine months of 2008 is attributable to lower operating expenses in every category with the exception of impairment of goodwill and long-lived assets.

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*Sales and Marketing.* Sales and marketing expenses consist primarily of salaries for our sales and marketing personnel. Sales and marketing expenses decreased 18% to \$2.7 million for the first nine months of 2009 compared to \$3.3 million for the first nine months of 2008. The decrease can be primarily attributed to lower stock-based compensation expense, employee cash compensation and benefits, and marketing related professional service fees.

*Customer Service.* Customer service expenses consist primarily of costs associated with our customer service centers. Customer service expenses decreased 21% to \$1.4 million for the first nine months of 2009 compared to \$1.8 million for the first nine months of 2008. The expense decrease is primarily due to a reduction in employee cash compensation and benefits expense and temporary labor, reflecting greater operating efficiencies at the Company's Beverly Hills, California and Provo, Utah locations.

*Technical Operations.* Technical operations expenses consist primarily of the personnel and systems necessary to support our network, internet connectivity and other data and communication requirements. Technical operations expenses decreased 19% to \$2.5 million for the first nine months of 2009 compared to \$3.1 million for the first nine months of 2008. The decrease is primarily due to lower depreciation and stock-based compensation expense.

*Development.* Development expenses consist primarily of costs incurred in the development, enhancement and maintenance of our Web sites and services. Development expenses decreased 3% to \$3.4 million for the first nine months of 2009 compared to \$3.5 million for the first nine months of 2008.

*General and Administrative.* General and administrative expenses consist primarily of corporate personnel-related costs, professional fees, credit card processing fees, and occupancy and other overhead costs. General and administrative expenses decreased 26% to \$9.0 million for the first nine months of 2009 compared to \$12.1 million for the first nine months of 2008. The decrease is primarily attributable to lower stock-based compensation expense, lower cash compensation and benefits expense, lower professional services fees and lower credit card fees and fines for the first nine months of 2009.

*Amortization of Intangible Assets.* Amortization expenses consist primarily of amortization of intangible assets related to previous acquisitions. Amortization expenses decreased 24% to \$498,000 for the first nine months of 2009 compared to \$658,000 for the first nine months of 2008, reflecting the full amortization of certain assets acquired in the past.

*Impairment of Goodwill and Other Long-lived Assets.* Impairment of goodwill and other long-lived assets expenses primarily represent the write-down of investments in businesses and computer software. Impairment of goodwill and other long-lived assets increased to \$880,000 for the first nine months of 2009 as compared to \$119,000 for the same period in 2008. 2009 expenses consist primarily of HurryDate's earn-out payment that was concurrently impaired in the first quarter of 2009.

*Other (Income)/Expense and Interest, Net.* Other (income)/expense and interest consists primarily of interest income associated with temporary investments in interest bearing accounts and foreign exchange gains and losses related to the intercompany loan with our wholly-owned Israeli subsidiary. Other (income)/expense and interest reflects income of \$1.4 million for the first nine months of 2009 compared to income of \$409,000 for the same period in 2008. The increase is primarily due to income of \$1.7 million, reflecting the possession of certain assets related to a judgment as discussed in Note 7 of the Notes in this report.

*Net Income and Earnings Per Share.* Net income for the first nine months of 2009 was \$3.2 million, or \$0.16 per share, compared to \$5.0 million, or \$0.20 per share for the first nine months of 2008. The decrease is primarily due to lower contribution in 2009. The first nine months of 2009 earnings per share benefited from an approximate 3.9 million share reduction in fully diluted weighted average shares outstanding compared to the first nine months of 2008, reflecting our stock repurchase activities throughout 2008.

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### **Liquidity and Capital Resources**

As of September 30, 2009, we had cash and cash equivalents of \$7.7 million. We have historically financed our operations with internally generated funds.

In February 2008, the Company and its wholly-owned subsidiary, Spark Networks Limited, as borrower, entered into an agreement ("the Initial Agreement") with Bank of America for a \$30.0 million revolving credit facility, which was amended to \$25.0 million on September 29, 2009 (the "Amended Agreement").

The Amended Agreement, among other things, increases the per annum interest rate under the Agreement, which is based upon a financial leverage ratio of less than 1.00, 1.00 to 1.49 and 1.50 and greater. The corresponding interest rates on LIBOR based borrowings are increased to LIBOR plus 1.75%, 2.00% and 2.50%, respectively. In the event the Company elects to borrow under a base rate loan, the corresponding interest rates are increased to the prime rate plus, 0.75%, 1.00% and 1.50%, respectively. Under the Amended Agreement, the Company pays a 0.250% to 0.375% per annum commitment fee on all funds not utilized under the facility, measured on a daily basis.

The Amended Agreement requires the Company to maintain a consolidated leverage ratio at any time during any period of four fiscal quarters of no greater than 2.00 to 1.00 for quarters through December 31, 2009 and 1.50 to 1.00 for quarters on and after March 31, 2010, and a consolidated adjusted EBITDA of \$9 million for the quarters ending September 30, 2009 through December 31, 2009 and \$8 million for the quarters ending on and after March 31, 2010. In addition, the Amended Agreement requires the Company to maintain a fixed charge coverage ratio for each period of four consecutive fiscal quarters of no less than 1.25 to 1.00 through the quarter ending September 30, 2009 and 1.50 to 1.00 for the quarters ending on or after December 31, 2009.

The Company was compliant with the Amended Agreement's customary affirmative and negative covenants, as of September 30, 2009.

At September 30, 2009, there was \$3.5 million outstanding under the Agreement bearing an interest rate of 1.7% with \$21.5 million of borrowing capacity remaining under this revolving credit facility.

Net cash provided by operations was \$6.2 million for the nine months ended September 30, 2009 compared to \$12.1 million for the first nine months of 2008. Lower contribution for the nine months ended September 30, 2009 accounted for the majority of this shortfall.

Net cash used in investing activities was \$1.9 million for the nine months ended September 30, 2009 compared to \$1.4 million for the nine months ended September 30, 2008. Higher capital expenditures in the first nine months of 2009 accounted for the increase. In the first quarter of 2009 and the second quarter of 2008, we paid \$770,000 to the former owners of HurryDate pursuant to an earn-out obligation.

Net cash used in financing activities was \$4.0 for the nine months ended September 30, 2009 compared to \$13.0 million in the same period last year. Cash used in financing activities in 2009 reflect a \$4.0 million repayment of our revolving credit facility. For the nine months ended September 30, 2008, the cash used in financing activities primarily relates to stock repurchases totaling \$15.0 million, offset by \$2.5 million of revolving credit facility advances.

We believe our current cash and cash equivalents and cash flow from operations will be sufficient to meet our anticipated cash needs for working capital, planned capital expenditures and contractual obligations for at least the next 12 months. We may be required or find it desirable prior to such time to raise additional funds through bank financing or through the issuance of debt or equity.

### **Off-Balance Sheet Arrangements**

We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually, limited purposes. We do not have any outstanding derivative financial instruments, off-balance sheet guarantees, interest rate swap transactions or foreign currency forward contracts.

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

Not applicable for a smaller reporting company.

**ITEM 4. CONTROLS AND PROCEDURES**

*(a) Evaluation of disclosure controls and procedures*

As of September 30, 2009, our management, with the participation of our Chief Executive Officer (CEO) and Chief Financial Officer (CFO), performed an evaluation of the effectiveness and the operation of our disclosure controls and procedures as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Based on that evaluation, the CEO and CFO concluded that our disclosure controls and procedures were effective as of September 30, 2009.

*(b) Changes in internal control over financial reporting*

There have been no changes in our internal control over financial reporting identified in connection with the evaluation required by paragraph (d) Rule 13a-15 or Rule 15d-15 under the Exchange Act that occurred during the quarter ended September 30, 2009 that has materially affected, or is reasonably likely to affect, our internal control over financial reporting.

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**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

The information required by this item is contained in the Notes to the Consolidated Financial Statements contained in this report under Note 8 “Commitments and Contingencies—Legal Proceedings” and is incorporated herein by reference. Also, refer to our Annual Report on Form 10-K/A for the year ended December 31, 2008 for a further description of litigation and claims.

**ITEM 1A. RISK FACTORS**

There have been no material changes from the risk factors disclosed in the “Risk Factors” section of our Annual Report on Form 10-K/A for the year ended December 31, 2008

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

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**ITEM 5. OTHER INFORMATION**

On November 11, 2009, the Board of Directors of the Company approved an amendment and restatement (the “Amended and Restated Bylaws”) to the Company’s Bylaws (the “Bylaws”). The Bylaws were amended and restated to reflect certain administrative changes and clarifications, principally with regard to electronic notice of special meetings of the board of directors in Section 3.9, written consent of the board of directors by facsimile or electronic mail in Section 3.11, quorum requirement for the board of directors in Section 3.10 and adjournment procedures for stockholder meetings in a new Section 2.11.

The above information included in this Item 5 is provided in accordance with Item 5.03 of Form 8-K. The Amended and Restated Bylaws are effective as of November 11, 2009. The foregoing description of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the text of the Amended and Restated Bylaws, which is filed as Exhibit 3.2 hereto and is incorporated herein by reference.

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**ITEM 6. EXHIBITS**

(a) Exhibits:

- 3.2 Amended and Restated Bylaws effective November 11, 2009 of Spark Networks, Inc.
- 31.1 Certification of Chief Executive Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1\* Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* This exhibit shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in any filings.

**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.

**SPARK NETWORKS, INC.**

/s/ Brett Zane

by: Brett A. Zane  
Chief Financial Officer

Date: November 12, 2009

**BYLAWS**  
**OF**  
**SPARK NETWORKS, INC.**  
**A Delaware Corporation**  
**AMENDED AND RESTATED AS OF NOVEMBER 11, 2009**  
**ARTICLE I: OFFICES**

**SECTION 1.1 *Registered Office.***

The registered office of Spark Networks, Inc. ("Corporation") shall be at 2711 Centerville Road, Suite 400 in the City of Wilmington, County of New Castle and the name of its registered agent at that address is Corporation Service Company.

**SECTION 1.2 *Principal Office.***

The principal office for the transaction of the business of the Corporation shall be as set forth in a resolution adopted by the Board of Directors of the Corporation (the "Board").

**SECTION 1.3 *Other Offices.***

The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or as the business of the Corporation may require.

**ARTICLE II: MEETINGS OF STOCKHOLDERS**

**SECTION 2.1 *Place of Meetings.***

All annual meetings of stockholders and all other meetings of stockholders shall be held either at the principal office of the Corporation or at any other place within or without the State of Delaware that may be designated by the Board pursuant to authority hereinafter granted to the Board.

**SECTION 2.2 *Annual Meetings.***

Annual meetings of stockholders of the Corporation for the purpose of electing directors and for the transaction of such other business as may properly come before such meetings may be held at such time and place and on such date as the Board shall determine by resolution.

**SECTION 2.3 *Special Meetings.***

A special meeting of the stockholders for the transaction of any proper business may be called at any time exclusively by the Board, the Chairman, the Chief Executive Officer or the President.



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**SECTION 2.4 Notice of Meetings.**

Except as otherwise required by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting by delivering a typewritten or printed notice thereof to such stockholder personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to such stockholder at such stockholder's post office address furnished by such stockholder to the Secretary of the Corporation for such purpose, or, if such stockholder shall not have furnished an address to the Secretary for such purpose, then at such stockholder's post office address last known to the Secretary, or by transmitting a notice thereof to such stockholder at such address by telegraph, cable, wireless or facsimile. Except as otherwise expressly required by law, no publication of any notice of a meeting of stockholders shall be required. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the Delaware General Corporation Law, as the same exists or may hereafter be amended (the "DGCL")) by the stockholder to whom the notice is given. Every notice of a meeting of stockholders shall state the place, date and hour of the meeting and, in the case of a special meeting, shall also state the purpose for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder to whom notice may be omitted pursuant to applicable Delaware law or who shall have waived such notice, and such notice shall be deemed waived by any stockholder who shall attend such meeting in person or by proxy, except a stockholder who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Except as otherwise expressly required by law, notice of any adjourned meeting of stockholders need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken.

**SECTION 2.5 Fixing Date for Determination of Stockholders of Record**

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any other change, conversion or exchange of stock or for the purpose of any other lawful action other than to consent to corporate action in writing without a meeting, the Board may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any such other action. If in any case involving the determination of stockholders for any purpose other than notice of or voting at a meeting of stockholders the Board shall not fix such a record date, then the record date for determining stockholders for such purpose shall be the close of business on the day on which the Board shall adopt the resolution relating thereto. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

**SECTION 2.6 Quorum.**

Except as otherwise required by law, the holders of a majority in voting interest of the shares of stock of the Corporation entitled to be voted thereat, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of stockholders of the Corporation or any adjournment thereof. Subject to the requirement of a larger percentage vote, if any, contained in the Certificate of Incorporation, these Bylaws or by statute, the stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding any withdrawal of stockholders that may leave less than a quorum remaining, if any action taken (other than adjournment) is approved by the vote of at least a majority in voting

interest of the shares required to constitute a quorum. In the absence of a quorum at any meeting or any adjournment thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat or, in the absence thereof of all the stockholders, any officer entitled to preside at, or to act as secretary of, such meeting may adjourn such meeting from time to time.

#### **SECTION 2.7 *Voting.***

(A) Each stockholder shall, at each meeting of stockholders, be entitled to vote, in the manner prescribed by the Corporation's Certificate of Incorporation, in person or by proxy each share of the stock of the Corporation that has voting rights on the matter in question and that shall have been held by such stockholder and registered in such stockholder's name on the books of the Corporation:

- (i) on the date fixed pursuant to Section 2.5 of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or
- (ii) if no such record date shall have been so fixed, then (a) at the close of business on the business day next preceding the day upon which notice of the meeting shall be given or (b) if notice of the meeting shall be waived, at the close of business on the business day next preceding the day upon which the meeting shall be held.

(B) Shares of the Corporation's own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or the pledgee's proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of DGCL.

(C) Subject to the provisions of the Corporation's Certificate of Incorporation, any such voting rights may be exercised by the stockholder entitled thereto in person or by such stockholder's proxy appointed by an instrument in writing, subscribed by such stockholder or by such stockholder's attorney thereunto authorized and delivered to the secretary of the meeting. The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless such stockholder shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of stockholders at which a quorum is present, all matters, except as otherwise provided in the Certificate of Incorporation, in these Bylaws (including pursuant to Section 3.4 regarding the election of Directors), by applicable law or pursuant to the rules and regulations of any stock exchange or quotation system on which the Corporation's securities are listed or quoted, if applicable, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon. The vote at any meeting of stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy, and it shall state the number of shares voted.

#### **SECTION 2.8 *Inspectors of Election.***

Prior to each meeting of stockholders, the Chairman of such meeting shall appoint an inspector(s) of election to act with respect to any vote. Each inspector of election so appointed shall first subscribe an oath faithfully to execute the duties of an inspector of

election at such meeting with strict impartiality and according to the best of such inspector of election's ability. Such inspector(s) of election shall decide upon the qualification of the voters and shall certify and report the number of shares represented at the meeting and entitled to vote on any question, determine the number of votes entitled to be cast by each share, shall conduct the vote and, when the voting is completed, accept the votes and ascertain and report the number of shares voted respectively for and against each question, and determine, and retain for a reasonable period a record of the disposition of, any challenge made to any determination made by such inspector(s) of election. Reports of inspector(s) of election shall be in writing and subscribed and delivered by them to the Secretary of the Corporation. The inspector(s) of election need not be stockholders of the Corporation, and any officer of the Corporation may be an inspector(s) of election on any question other than a vote for or against a proposal in which such officer shall have a material interest. The inspector(s) of election may appoint or retain other persons or entities to assist the inspector(s) of election in the performance of the duties of the inspector(s) of election.

**SECTION 2.9 Advance Notice of Stockholder Proposals and Stockholder Director Nominations**

(A) Except for (1) any directors entitled to be elected by the holders of preferred stock, (2) any directors elected in accordance with Section 3.6 hereof by the Board of Directors to fill a vacancy or newly-created directorships or (3) as otherwise required by applicable law or stock market regulation, only persons who are nominated in accordance with the procedures in this Section 2.9 shall be eligible for election as directors. Nomination for election to the Board of Directors at a meeting of stockholders may be made (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who (x) complies with the notice procedures set forth in Section 2.9(B) and (y) is a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such meeting. At any annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (1) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (2) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (3) properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the business must constitute a proper matter under Delaware law for stockholder action and the stockholder must (x) have given timely notice thereof in writing to the Secretary in accordance with the procedures set forth in the Section 2.9(B) and (y) be a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such annual meeting.

(B) To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90<sup>th</sup>) day nor earlier than the close of business on the one hundred twentieth (120<sup>th</sup>) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting differs by more than thirty (30) days from such anniversary date or if the Corporation has not previously held an annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120<sup>th</sup>) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation. In the case of an election of directors at a special meeting of stockholders, provided that the Board of Directors has determined that directors shall be elected at such meeting, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the Corporation not earlier than the one hundred twentieth (120<sup>th</sup>) day prior to such special meeting and not later than the close of business on the later of (x) the ninetieth (90<sup>th</sup>) day prior to such special meeting and (y) the tenth (10<sup>th</sup>) day following the day on which notice of the date of such special meeting was mailed or public disclosure of the date of such special meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an annual meeting (or the public announcement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice.

Such stockholder's notice shall set forth (I) as to each person whom the stockholder proposes to nominate for election or reelection as a director (a) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (or any successor thereto) and Rule 14a-11 thereunder (or any successor thereto) (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (b) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated, (c) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting and nominate the person or persons specified in the notice; (d) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; and (e) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the United States Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, by the Board, (II) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text relating to the business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting, and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (III) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (a) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (b) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (c) a description of all arrangements or understandings between such stockholder or such beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (d) a representation that such stockholder intends to appear in person or by proxy at the meeting to bring such business before the meeting and (e) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (y) otherwise to solicit proxies from stockholders in support of such proposal. In addition, the stockholder making such proposal shall promptly provide any other information reasonably requested by the Corporation. In addition, with regards to any director-nominee, the stockholder's notice must be accompanied by the written consent of the proposed nominee to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any meeting of stockholders except in accordance with the procedures set forth in this Section 2.9; *provided that* any stockholder proposal which complies with Rule 14a-8 of the proxy rules (or any successor provision) promulgated under the Securities Exchange Act of 1934, as amended, and is to be included in the Corporation's proxy statement for an annual meeting of stockholders shall be deemed to comply with the requirements of this Section 2.9. A stockholder shall not have complied with this Section 2.9(B) if the stockholder (or beneficial owner, if any, on whose behalf the nomination is made) solicits or does not solicit, as the case may be, proxies in support of such stockholder's proposal or director-nominee in contravention of the representations with respect thereto required by this Section 2.9.

(B) The chairman of any meeting shall have the power and duty to determine whether business was properly brought before the meeting or a nomination was made in accordance with the provisions of this Section 2.9 (including whether the stockholder or beneficial owner, if any, on whose behalf a proposal or nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's proposal or nominee in compliance with the representations with respect thereto required by this Section 2.9), and if the chairman should determine that business was not properly brought before the meeting or a nomination was not made in accordance with the provisions of this Section 2.9, the chairman shall so declare to the meeting and such business shall not be brought before the meeting or such nomination shall be disregarded, as applicable.

(C) Except as otherwise required by law, nothing in this Section 2.9 shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for director submitted by a stockholder or proposal.

(D) Notwithstanding the foregoing provisions of this Section 2.9, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or such business, such nomination shall be disregarded or such business shall not be considered, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.9, to be considered a qualified representative of the stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, at the meeting of stockholders.

(E) For purposes of this Section 2.9, "public disclosure" shall include disclosure in a press release reported by the Dow Jones New Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

**SECTION 2.10 *No Action Without Meeting.***

Stockholders of the Corporation may not take any action by written consent in lieu of a meeting.

**SECTION 2.11 *Adjournment.***

Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place. At the adjourned meeting the Corporation may transact any business which might have been properly transacted at the original meeting.

**ARTICLE III: BOARD OF DIRECTORS**

**SECTION 3.1 *General Powers.***

Subject to any requirements in the Certificate of Incorporation, these Bylaws, or of the DGCL as to action which must be authorized or approved by the stockholders, any and all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be under the direction of, the Board to the fullest extent permitted by law. Without limiting the generality of the foregoing, it is hereby expressly declared that the Board shall have the following powers:

(A) to select and remove all the officers, agents and employees of the Corporation, prescribe such powers and duties for them as may not be inconsistent with law, the Certificate of Incorporation or these Bylaws, fix their compensation, and require from them security for faithful service;

(B) to conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations therefor not inconsistent with law, the Certificate of Incorporation or these Bylaws, as it may deem best;

(C) to change the location of the registered office of the Corporation in Section 1.1 hereof; to change the principal office and the principal office for the transaction of the business of the Corporation from one location to another as provided in Section 1.2 hereof; to fix and locate from time to time one or more offices of the Corporation within or without the State of Delaware as provided in Section 1.3 hereof; to designate any place within or without the State of Delaware for the holding of any meeting or meetings of stockholders; and to adopt, make and use a corporate seal, and to prescribe the forms of certificates of stock, and to alter the form of such seal and of such certificates from time to time, and in its judgment as it may deem best, provided such seal and such certificate shall at all times comply with the provisions of law;

(D) to authorize the issuance of shares of stock of the Corporation from time to time, upon such terms and for such considerations as may be lawful;

(E) to borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust and securities therefor; and

(F) by resolution adopted by a majority of the whole Board to designate an executive and other committees of the Board, each consisting of one or more directors, to serve at the pleasure of the Board, and to prescribe the manner in which proceedings of such committee or committees shall be conducted.

**SECTION 3.2 *Number and Term of Office.***

(A) Until this Section 3.2 is amended by a resolution duly adopted by the Board or by the stockholders of the Corporation, the number of directors constituting the entire Board shall be not less than two (2) members nor more than nine (9) members. Directors need not be stockholders. Each of the directors of the Corporation shall hold office until his successor shall have been duly elected or until he shall resign or shall have been removed in the manner hereinafter provided.

(B) The Board shall be divided into three classes: Class I, Class II and Class III. Each Director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected; provided, however, that the directors first elected to Class I shall serve for a term ending on the date of the next annual meeting of stockholders, the directors first elected to Class II shall serve for a term ending on the first annual meeting of stockholders following the next annual meeting, and the directors first elected to Class III shall serve for a term ending on the second annual meeting of stockholders following the next annual meeting. Notwithstanding the foregoing provisions of this Article, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of an incumbent director.

**SECTION 3.3 *Chairman of the Board.***

The Chairman of the Board, when present, shall preside at all meetings of the Board and all meetings of stockholders. The Chairman of the Board shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

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**SECTION 3.4 Election of Directors.**

Except as provided in Section 3.6 hereof, the directors shall be elected by the stockholders of the Corporation, and at each election, the persons receiving the greater number of votes, up to the number of directors then to be elected, shall be the persons then elected. The election of directors is subject to any provision contained in the Certificate of Incorporation relating thereto, including any provision regarding the rights of holders of preferred stock to elect directors.

**SECTION 3.5 Resignations.**

Any director of the Corporation may resign at any time by giving written notice to the Board or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, it shall take effect immediately upon receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 3.6 Vacancies.**

Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, removal, or any other cause, may be filled by vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. Increases in the number of directors shall be filled in accordance with the rule that each class of directors shall be as nearly equal in number of directors as possible. Notwithstanding such rule, in the event of any change in the authorized number of directors each director then continuing to serve as such will nevertheless continue as a director of the class of which he or she is a member, until the expiration of his current term or his earlier death, resignation or removal. If any newly created directorship or vacancy on the Board, consistent with the rule that the three classes shall be as nearly equal in number of directors as possible, may be allocated to one (1) or two (2) or more classes, the Board shall allocate it to that of the available class whose term of office is due to expire at the earliest date following such allocation. When the Board fills a vacancy, the director chosen to fill that vacancy shall be of the same class as the director he succeeds and shall hold office until such director's successor shall have been elected and shall qualify or until such director shall resign or shall have been removed. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

**SECTION 3.7 Place of Meeting.**

The Board or any committee thereof may hold any of its meetings at such place or places within or without the State of Delaware as the Board or such committee may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or a waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board or any committee thereof by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board or such committee can hear each other, and such participation shall constitute presence in person at such meeting.

**SECTION 3.8 Regular Meetings.**

Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine.

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**SECTION 3.9 *Special Meetings.***

Special meetings of the Board for any purpose or purposes shall be called at any time by the Chairman of the Board or, if the Chairman of the Board is absent or unable or refuses to act, by the Chief Executive Officer or the President, and may also be called by any two members of the Board. Except as otherwise provided by law or by these Bylaws, written notice of the time and place of special meetings shall be delivered personally, by facsimile or by electronic mail to each director, or sent to each director by mail or by other form of written communication, charges prepaid, addressed to such director at such director's address as it is shown upon the records of the Corporation, or, if it is not so shown on such records and is not readily ascertainable, at the place in which the meetings of the directors are regularly held. In case such notice is mailed, it shall be deposited in the United States mail in the county in which the principal office for the transaction of the business of the Corporation is located at least forty-eight (48) hours prior to the time of the holding of the meeting. In case such notice is delivered personally, by facsimile or by electronic mail as above provided, it shall be delivered at least twenty-four (24) hours prior to the time of the holding of the meeting. Such mailing, delivery, facsimile transmission or electronic mail as above provided shall be due, legal and personal notice to such director. Except where otherwise required by law or by these Bylaws, notice of the purpose of a special meeting need not be given. Notice of any meeting of the Board shall not be required to be given to any director who is present at such meeting, except a director who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**SECTION 3.10 *Quorum and Manner of Acting***

Except as otherwise provided in these Bylaws, the Certificate of Incorporation or by applicable law, (i) the presence of a majority of the total number of directors then in office shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and (ii) all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, provided any action taken is approved by at least a majority of the required quorum for such meeting. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

**SECTION 3.11 *Action by Unanimous Written Consent***

Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if consent in writing, or by facsimile or electronic mail, is given thereto by all members of the Board or of such committee, as the case may be, and such consent is filed with the minutes of proceedings of the Board or of such committee.

**SECTION 3.12 *Compensation.***

Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. Nothing herein contained shall be construed to preclude any director from serving the Corporation or any of its parent or subsidiary entities in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

**SECTION 3.13 *Committees.***

The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one (1) or more of the directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board and subject to any restrictions or limitations on the delegation of power and authority imposed by applicable law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may



authorize the seal of the Corporation to be affixed to all papers which may require it. Any such committee shall keep written minutes of its meetings and report the same to the Board at the next regular meeting of the Board. Unless the Board or these Bylaws shall otherwise prescribe the manner of proceedings of any such committee, meetings of such committee may be regularly scheduled in advance and may be called at any time by the chairman of the committee or by any two (2) members thereof; otherwise, the provisions of these Bylaws with respect to notice and conduct of meetings of the Board shall govern.

**SECTION 3.14 *Affiliated Transactions.***

Notwithstanding any other provision of these Bylaws, each transaction, or, if an individual transaction constitutes a part of a series of transactions, each series of transactions, proposed to be entered into between the Corporation, on the one hand, and any affiliate of the Corporation, on the other hand, must be approved by the Board. For the purposes of this Section 3.14, (a) "affiliate" shall mean (i) any person that, directly or indirectly, controls or is controlled by or is under common control with the Corporation, (ii) any other person that owns, beneficially, directly or indirectly, twenty percent (20%) or more of the outstanding capital shares, shares or equity interests of the Corporation, or (iii) any officer or director of the Corporation; (b) "person" shall mean and include individuals, corporations, general and limited partnerships, stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other entities and governments and agencies and political subdivisions thereof; and (c) "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through the ownership of voting securities, partnership interests or other equity interests.

**ARTICLE IV: OFFICERS**

**SECTION 4.1 *Officers.***

The officers of the Corporation shall be a Chief Executive Officer, a President, one or more Vice Presidents (the number thereof and their respective titles to be determined by the Board), a Secretary, a Chief Financial Officer, and such other officers as may be appointed at the discretion of the Board in accordance with the provisions of Section 4.3 hereof.

**SECTION 4.2 *Election.***

The officers of the Corporation, except such officers as may be appointed or elected in accordance with the provisions of Sections 4.3 or 4.5 hereof, shall be chosen annually by the Board at the first meeting thereof after the annual meeting of stockholders, and each officer shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

**SECTION 4.3 *Other Officers.***

In addition to the officers chosen annually by the Board at its first meeting, the Board also may appoint or elect such other officers as the business of the Corporation may require, each of whom shall have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time specify, and shall hold office until such officer shall resign or shall be removed or otherwise disqualified to serve, or until such officer's successor shall be elected and qualified.

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**SECTION 4.4 Removal and Resignation.**

Except as provided by DGCL Section 141(k), any officer may be removed, either with or without cause, by resolution of the Board, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. Any officer or assistant may resign at any time by giving written notice of his resignation to the Board or the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, upon receipt thereof by the Board or the Secretary, as the case may be; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 4.5 Vacancies.**

A vacancy in any office because of death, resignation, removal, disqualification or any other cause may be filled by the vote of the majority of the directors present at any meeting in which a quorum is present, or pursuant to Section 3.11 of these Bylaws.

**SECTION 4.6 Chief Executive Officer.**

The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board has been appointed and is present. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the Corporation. The Chief Executive Officer shall also perform such other duties and have such other powers as the Board of Directors may designate from time to time.

**SECTION 4.7 President.**

The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board has been appointed and is present or, in the absence of the Chairman of the Board, the Chief Executive Officer has been appointed and is present. Subject to the provisions of these Bylaws and to the direction of the Board of Directors and Chief Executive Officer, the President shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of President or which are delegated to him by the Board of Directors. The President shall have the power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all the other officers, employees and agents of the Corporation.

**SECTION 4.8 Vice President.**

Each Vice President shall have such powers and perform such duties with respect to the administration of the business and affairs of the Corporation as are commonly incident to their office or as may from time to time be assigned to such Vice President by the Chairman of the Board, or the Board, or the Chief Executive Officer, or the President, or as may be prescribed by these Bylaws. In the absence or disability of the Chairman of the Board, the Chief Executive Officer and the President, the Vice Presidents in order of their rank as fixed by the Board, or if not ranked, the Vice President designated by the Board, shall perform all of the duties of the Chairman of the Board, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board.

**SECTION 4.9 Secretary.**

(A) The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the Corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board shall designate from time to time.

(B) The Secretary shall keep, or cause to be kept, at the principal office of the Corporation or such other place as the Board may order, a book of minutes of all meetings of directors and stockholders, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at meetings of directors, the number of shares present or represented at meetings of stockholders, and the proceedings thereof.

(C) The Secretary shall keep, or cause to be kept, at the principal office of the Corporation's transfer agent, a share register, or a duplicate share register, showing the name of each stockholder, the number of shares of each class held by such stockholder, the number and date of certificates issued for such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

**SECTION 4.10 Chief Financial Officer.**

The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board or the Chief Executive Officer shall designate from time to time.

**ARTICLE V: CORPORATE INSTRUMENTS, CHECKS,  
DRAFTS, BANK ACCOUNTS, ETC.**

**SECTION 5.1 Execution of Corporate Instruments.**

The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the Corporation the corporate name without limitation, or enter into contracts on behalf of the Corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the Corporation. Such authority may be general or confined to specific instances, and unless so authorized by the Board or by these Bylaws, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

**SECTION 5.2 Checks, Drafts, Etc.**

All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such officer, assistant, agent or attorney shall give such bond, if any, as the Board may require.

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**SECTION 5.3 Deposits.**

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall from time to time be determined by the Board) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

**SECTION 5.4 General and Special Bank Accounts.**

The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

**ARTICLE VI: SHARES AND THEIR TRANSFER****SECTION 6.1 Certificates of Stock.**

Shares of the capital stock of the Corporation may be certificated or uncertificated, as provided under the DGCL. Each stockholder, upon written request to the transfer agent or registrar of the Corporation, shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall bear the Corporation seal and shall be signed by the Chairman of the Board of the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. The Corporation seal and the signatures by Corporation officers may be facsimiles if the certificate is manually countersigned by an authorized person on behalf of a transfer agent or registrar other than the Corporation or its employee. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. The Corporation shall not be permitted to issue fractional shares.

**SECTION 6.2. Transfers.**

Subject to any restrictions on transfer and unless otherwise provided by the Board of Directors, shares of stock may be transferred only on the books of the Corporation, if such shares are certificated, by the surrender to the Corporation or its transfer agent of the certificate therefore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, or upon proper instructions from the holder of uncertificated shares, in each case with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require.

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**SECTION 6.3. Record Holders.**

Except as may otherwise be required by law, by the Certificate of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

It shall be the duty of each stockholder to notify the Corporation of his, her or its post office address and any changes thereto.

**SECTION 6.4. Replacement of Certificates.**

In case of the alleged loss, destruction or mutilation of a certificate of stock, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe, provided, however, that if such shares have ceased to be certificated, a new certificate shall be issued only upon written request to the transfer agent or registrar of the Corporation.

**SECTION 6.5 Regulations.**

The Board may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

**ARTICLE VII: INDEMNIFICATION**

**SECTION 7.1 Indemnification of Directors and Officers.**

To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended (provided that the effect of any such amendment shall be prospective only) (the "Delaware Law"), a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director. The Corporation shall indemnify, in the manner and to the fullest extent permitted by the Delaware Law (but in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise. The Corporation may, to the fullest extent permitted by the Delaware Law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against such person. The Corporation may create a trust fund, grant a security interest or use other means (including without limitation a letter of credit) to ensure the payment of such sums as may become necessary or desirable to effect the indemnification as provided herein. To the fullest extent permitted by the Delaware Law, the indemnification provided herein shall include expenses as incurred (including attorneys' fees), judgments, fines and amounts paid in settlement and any such expenses shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the person seeking indemnification to repay such amounts if it is ultimately determined that he or she is not entitled to be indemnified. Notwithstanding the foregoing or any other provision of this Section 7.1, no advance shall be made by the Corporation if a determination is reasonably and promptly made by the Board by a majority vote of a quorum of disinterested Directors, or (if such a quorum is not obtainable or, even if obtainable, a quorum of

disinterested Directors so directs) by independent legal counsel to the Corporation, that, based upon the facts known to the Board or such counsel at the time such determination is made, (a) the party seeking an advance acted in bad faith or deliberately breached his or her duty to the Corporation or its stockholders, and (b) as a result of such actions by the party seeking an advance, it is more likely than not that it will ultimately be determined that such party is not entitled to indemnification pursuant to the provisions of this Section 7.1. The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the fullest extent permitted by the Delaware Law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under any agreement, the Corporation's Bylaws, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The Corporation may, but only to the extent that the Board of Directors may (but shall not be obligated to) authorize from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Section 7.1 as it applies to the indemnification and advancement of expenses of directors and officers of the Corporation. Nothing contained in this Section, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to law, either as a matter of public policy, or under the provisions of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or any other applicable state or federal law.

**SECTION 7.2 *Indemnification of Employees and Agents.***

Subject to Section 7.1, the Corporation may, but only to the extent that the Board may (but shall not be obligated to) authorize from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII as they apply to the indemnification and advancement of expenses of directors and officers of the Corporation.

**SECTION 7.3 *Enforcement of Indemnification.***

The rights to indemnification and the advancement of expenses conferred above shall be contract rights. If a claim under this Article VII is not paid in full by the Corporation within 60 days after written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of such claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expenses of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board, independent legal counsel or stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board, independent legal counsel or stockholders) that the indemnitee has not met such applicable standard of conduct, shall either create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Corporation.

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**ARTICLE VIII: MISCELLANEOUS**

**SECTION 8.1 *Seal.***

The Board shall adopt a corporate seal, which shall be in the form set forth in a resolution approved by the Board.

**SECTION 8.2 *Waiver of Notices.***

Whenever notice is required to be given by these Bylaws or the Certificate of Incorporation or by law, the person entitled to said notice may waive such notice in writing, either before or after the time stated therein, and such waiver shall be deemed equivalent to notice.

**SECTION 8.3 *Amendments.***

Except as otherwise provided herein, by law, or in the Certificate of Incorporation, these Bylaws or any of them may be altered, amended, repealed or rescinded and new Bylaws may be adopted by the Board or by the stockholders at any annual or special meeting of stockholders, provided that notice of such proposed alteration, amendment, repeal, recession or adoption is given in the notice of such meeting of stockholders.

Adopted pursuant to DGCL Section 109 this 11th day of November 2009.

/s/ Joshua A. Kreinberg

Joshua A. Kreinberg  
Secretary

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO ITEM 601(B)(31) OF REGULATION S-K,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Adam S. Berger, certify that:

1. I have reviewed this report on Form 10-Q for the period ending September 30, 2009 of Spark Networks, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Adam S. Berger

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Adam S. Berger  
Chief Executive Officer  
November 12, 2009



CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO ITEM 601(B)(31) OF REGULATION S-K,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Brett A. Zane, certify that:

1. I have reviewed this report on Form 10-Q for the period ending September 30, 2009 of Spark Networks, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Brett A. Zane

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Brett A. Zane  
Chief Financial Officer  
November 12, 2009

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the report of Spark Networks, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned, in the capacities and on the dates indicated below, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Adam S. Berger

Adam S. Berger  
Chief Executive Officer  
November 12, 2009

/s/ Brett A. Zane

Brett A. Zane  
Chief Financial Officer  
November 12, 2009