

SABA SOFTWARE INC
Form PRE 14A
March 20, 2003

SCHEDULE 14(A) INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material pursuant to Rule 14a-12

SABA SOFTWARE, INC.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

1) Amount previously paid:

2) Form, Schedule or Registration Statement No.:

3) Filing party:

4) Date filed:

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To Be Held May 1, 2003

To our Stockholders:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders of Saba Software, Inc., a Delaware corporation, will be held at our corporate headquarters located at 2400 Bridge Parkway, Redwood Shores, California 94065-1166, on Thursday, May 1, 2003, at 9:00 a.m., Pacific time, for the following purposes:

1. To approve amendments to our Amended and Restated Certificate of Incorporation to effect a reverse stock split of our common stock pursuant to which any whole number of outstanding shares between and including two and ten would be combined into one share of our common stock and to authorize our Board of Directors to select and file one such amendment in its discretion.
2. To transact such other business as may properly come before the special meeting and any adjournment or postponement thereof.

The foregoing items of business are more fully described in the proxy statement, which is attached and made a part hereof.

The Board of Directors has fixed the close of business on March 21, 2003 as the record date for determining the stockholders entitled to notice of, and to vote at, the special meeting and any adjournment or postponement thereof. Only stockholders of record at the close of business on that date will be entitled to notice of, and to vote at, the special meeting.

By Order of the Board of Directors,

Peter E. Williams III

Secretary

Redwood Shores, California

April , 2003

WHETHER OR NOT YOU EXPECT TO ATTEND THE SPECIAL MEETING IN PERSON, YOU ARE URGED TO MARK, SIGN, DATE AND RETURN THE ENCLOSED PROXY CARD AS PROMPTLY AS POSSIBLE IN THE POSTAGE-PREPAID ENVELOPE PROVIDED TO ENSURE YOUR REPRESENTATION AT THE SPECIAL MEETING. IF YOU SEND IN YOUR PROXY CARD AND THEN DECIDE TO ATTEND THE SPECIAL MEETING TO VOTE YOUR SHARES IN PERSON, YOU MAY STILL DO SO. YOUR PROXY IS REVOCABLE IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THE PROXY STATEMENT.

SABA SOFTWARE, INC.

2400 Bridge Parkway

Redwood Shores, California 94065-1166

PROXY STATEMENT

May 1, 2003

Special Meeting of Stockholders

General Information

This proxy statement is furnished to stockholders of Saba Software, Inc., a Delaware corporation, in connection with the solicitation by our Board of Directors of proxies in the accompanying form for use in voting at a special meeting of stockholders to be held on May 1, 2003, at 9:00 a.m., Pacific time, at our corporate headquarters located at 2400 Bridge Parkway, Redwood Shores, California 94065-1166, and any adjournment or postponement thereof. The shares represented by the proxies received, properly marked, dated, executed and not revoked will be voted at the special meeting for the purposes set forth in the accompanying notice of special meeting of stockholders.

Revocability of Proxies

Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before it is exercised by delivering to us (to the attention of Peter E. Williams III, our Secretary) a written notice of revocation or a duly executed proxy bearing a later date, or by attending the special meeting and voting in person.

Solicitation and Voting Procedures

The proxy statement and the enclosed proxy card are being mailed to the stockholders on or about April 1, 2003. This proxy statement and the accompanying proxy card are for use by the stockholders.

The close of business on March 21, 2003 has been fixed as the record date for determining the holders of shares of our common stock entitled to notice of, and to vote, at the special meeting. As of the close of business on the record date, we had _____ shares of common stock outstanding and entitled to vote at the special meeting. The presence at the special meeting of a majority, or _____, of these shares of our common stock, either in person or by proxy, will constitute a quorum for the transaction of business at the special meeting. Each outstanding share of common stock on the record date is entitled to one vote on all matters.

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All expenses in connection with the solicitation of proxies will be borne by us. These costs will include the expense of preparing and mailing proxy materials for the special meeting and reimbursements paid to brokerage firms and others for their expenses incurred in forwarding solicitation material regarding the special meeting to beneficial owners of our common stock. We may conduct further solicitation personally, by telephone or by facsimile through our officers, directors and employees, none of who will receive additional compensation for assisting with the solicitation.

An automated system administered by ADP-Investor Communication Services and Mellon Investor Services will tabulate votes cast by proxy at the special meeting, and one of our officers, duly appointed by the Board of Directors, will tabulate votes cast in person at the special meeting.

Under the General Corporation Law of the State of Delaware, an abstaining vote and a broker non-vote are counted as present and are, therefore, included for purposes of determining whether a quorum of shares is present at the special meeting. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular matter because the nominee does not have the discretionary voting power with respect to that matter and has not received instructions from the beneficial owner.

Proposal 1 requires the affirmative vote of a majority of our common stock entitled to vote. Because abstentions and broker non-votes will be included in the tabulation of shares of our common stock entitled to vote for purposes of determining whether a proposal has been approved, abstentions and broker non-votes have the same effect as negative votes.

The shares represented by properly executed proxy cards will be voted at the special meeting as indicated or, if no instructions are given, in favor of proposal 1. We do not presently know of any other business that may come before the special meeting.

PROPOSAL NO. 1

**AMENDMENT OF SABA S AMENDED AND RESTATED CERTIFICATE OF
INCORPORATION TO EFFECT A REVERSE STOCK SPLIT**

Overview

Our Board of Directors has unanimously approved a proposal to amend our certificate of incorporation to effect a reverse stock split of all outstanding shares of our common stock at an exchange ratio ranging from one-to-two to one-to-ten. The Board has recommended that this proposal be presented to our stockholders for approval. You are now being asked to vote upon amendments to our certificate of incorporation to effect this reverse stock split whereby a number of outstanding shares of our common stock between and including two and ten, such number consisting only of whole shares, will be combined into one share of our common stock. Therefore, a vote for Proposal No. 1 will include approval of a 1-for-2, 1-for-3, 1-for-4, 1-for-5, 1-for-6, 1-for-7, 1-for-8, 1-for-9, and 1-for-10 reverse split of our outstanding common stock. Pending stockholder approval, the Board will have the sole discretion pursuant to Section 242(c) of the Delaware General Corporation Law to elect, as it determines to be in the best interests of Saba and its stockholders, whether or not to effect a reverse stock split, and if so, the number of shares of our common stock between and including two and ten which will be combined into one share of our common stock, at any time before the first anniversary of this special meeting of stockholders. The Board believes that stockholder approval of amendments granting the Board this discretion, rather than approval of a specified exchange ratio, provides the Board with maximum flexibility to react to then-current market conditions and, therefore, is in the best interests of Saba and its stockholders.

The text of the forms of proposed amendments to our certificate of incorporation is attached to this proxy statement as Appendix A. By approving these amendments, stockholders will approve a series of amendments to our certificate of incorporation pursuant to which any whole number of outstanding shares between and including two and ten would be combined into one share of our common stock, and authorize the Board to file only one such amendment, as determined by the Board in the manner described herein, and to abandon each amendment not selected by the Board. The Board may also elect not to do any reverse split.

If approved by the stockholders and following such approval the Board determines that effecting a reverse stock split is in the best interests of Saba and its stockholders, the reverse stock split will become effective upon filing one such amendment with the Secretary of State of the State of Delaware. The amendment filed thereby will contain the number of shares selected by the Board within the limits set forth in this proposal to be combined into one share of our common stock.

If the Board elects to effect a reverse stock split following stockholder approval, the number of issued and outstanding shares of common stock would be reduced in accordance with an exchange ratio determined by the Board within the limits set forth in this proposal. Except for adjustments that may result from the treatment of fractional shares as described below, each stockholder will hold the same percentage of our outstanding common stock immediately following the reverse stock split as such stockholder held immediately prior to the reverse stock split. The par value of our common stock would remain unchanged at \$0.001 per share. The amendment would not change the number of authorized shares of common stock.

Reasons for the Reverse Split

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The Board believes that a reverse stock split may be desirable for a number of reasons. The Board believes that a reverse stock split may allow us to avoid having our common stock delisted from the Nasdaq National Market. The Board further believes that a reverse stock split could improve the marketability and liquidity of our common stock.

Our common stock is quoted on the Nasdaq National Market. In order for our common stock to continue to be quoted on the Nasdaq National Market, we must satisfy certain listing maintenance standards established by

Nasdaq. Among other things, if the closing bid price of our common stock is under \$1.00 per share for 30 consecutive trading days and does not thereafter reach \$1.00 per share or higher for a minimum of ten consecutive trading days during the 90 calendar days (or such longer period as may be provided in new rules currently being considered by Nasdaq and the Securities Exchange Commission) following notification by Nasdaq, Nasdaq may delist our common stock from trading on the Nasdaq National Market. If our common stock were to be delisted, and our common stock does not qualify for trading on the Nasdaq SmallCap Market, our common stock would trade on the OTC Bulletin Board or in the pink sheets maintained by the National Quotation Bureau, Inc. Such alternative markets are generally considered to be less efficient than, and not as broad as, the Nasdaq National Market.

Our common stock has not met Nasdaq's minimum bid price requirement for 30 consecutive trading days. Although, as of the date of this Proxy Statement, we have not received a letter from Nasdaq advising us that our common stock had not met Nasdaq's minimum bid price requirement, we expect that Nasdaq will forward this letter to us in the near future. Once this letter is received, if the closing bid price of our common stock does not reach \$1.00 per share or higher for a minimum of ten consecutive trading days during the 90 calendar days following receipt of such letter (or such longer period as may be provided in new rules currently being considered by Nasdaq and the Securities Exchange Commission), our common stock would be delisted at that time. The Board expects that a reverse stock split of our common stock will increase the market price of our common stock so that we are able to maintain compliance with the Nasdaq minimum bid price listing standard. However, the effect of a reverse split upon the market price of our common stock cannot be predicted with any certainty, and the history of similar stock split combinations for companies in like circumstances is varied. It is possible that the per share price of our common stock after the reverse split will not rise in proportion to the reduction in the number of shares of our common stock outstanding resulting from the reverse stock split, and there can be no assurance that the market price per post-reverse split share will either exceed or remain in excess of the \$1.00 minimum bid price for a sustained period of time. The market price of our common stock is based also on other factors which are unrelated to the number of shares outstanding, including our future performance. In addition, there can be no assurance that we will not be delisted due to a failure to meet other continued listing requirements even if the market price per post-reverse split share of our common stock remains in excess of \$1.00. Notwithstanding the foregoing, the Board believes that the proposed reverse stock split, when implemented within the proposed exchange ratio range, will result in the market price of our common stock rising to the level necessary to satisfy the \$1.00 minimum bid price requirement.

The Board also believes that the increased market price of our common stock expected as a result of implementing a reverse stock split will improve the marketability and liquidity of our common stock and will encourage interest and trading in our common stock. Because of the trading volatility often associated with low-priced stocks, many brokerage houses and institutional investors have internal policies and practices that either prohibit them from investing in low-priced stocks or tend to discourage individual brokers from recommending low-priced stocks to their customers. Some of those policies and practices may function to make the processing of trades in low-priced stocks economically unattractive to brokers. Additionally, because brokers' commissions on low-priced stocks generally represent a higher percentage of the stock price than commissions on higher-priced stocks, the current average price per share of our common stock can result in individual stockholders paying transaction costs representing a higher percentage of their total share value than would be the case if the share price were substantially higher. It should be noted that the liquidity of our common stock may be adversely affected by the proposed reverse split given the reduced number of shares that would be outstanding after the reverse stock split. The Board is hopeful, however, that the anticipated higher market price will reduce, to some extent, the negative effects on the liquidity and marketability of the Common Stock inherent in some of the policies and practices of institutional investors and brokerage houses described above.

Board Discretion to Implement the Reverse Stock Split

If the reverse stock split is approved by our stockholders, it will be effected, if at all, only upon a determination by the Board that a reverse stock split (with an exchange ratio determined by the Board as

described above) is in the best interests of Saba and its stockholders. Such determination shall be based upon certain factors, including meeting the listing requirements for the Nasdaq National Market, existing and expected marketability and liquidity of our common stock, prevailing market conditions and the likely effect on the market price of our common stock. Notwithstanding approval of the reverse stock split by the stockholders, the Board may, in its sole discretion, abandon all of the proposed amendments and determine prior to the effectiveness of any filing with the Secretary of State of the State of Delaware not to effect the reverse stock split prior to the one year anniversary of this special meeting of stockholders, as permitted under Section 242(c) of the Delaware General Corporation Law. If the Board fails to implement any of the reverse stock splits prior to the one year anniversary of this special meeting of stockholders, stockholder approval again would be required prior to implementing any reverse stock split.

Certain Risks Associated With the Reverse Stock Split

While our Board believes that our common stock would trade at higher prices after the consummation of the reverse stock split, there can be no assurance that the increase in the trading price will occur, or, if it does occur, that it will equal or exceed the price that is the product of the market price of the common stock prior to the reverse stock split times the selected reverse split ratio. In some cases, the total market capitalization of a company following a reverse stock split is lower, and may be substantially lower, than the total market capitalization before the reverse stock split. In addition, the fewer number of shares that will be available to trade will possibly cause the trading market of the common stock to become less liquid, which could have an adverse effect on the price of the common stock. We cannot offer any assurance that our common stock will continue to meet the Nasdaq National Market continued listing requirements following the reverse stock split. The market price of our common stock is based on our performance and other factors, some of which may be unrelated to the number of our shares outstanding.

In addition, there can be no assurance that the reverse stock split will result in a per share price that will attract brokers and investors who do not trade in lower priced stock.

Effects of the Reverse Stock Split

After the effective date of the proposed reverse stock split, each stockholder will own a reduced number of shares of our common stock. However, the proposed reverse stock split will affect all of our stockholders uniformly and will not affect any stockholder's percentage ownership interests in us, except to the extent that the reverse split results in any of our stockholders owning a fractional share as described below. Proportionate voting rights and other rights and preferences of the holders of our common stock will not be affected by the proposed reverse stock split (other than as a result of the payment of cash in lieu of fractional shares). For example, a holder of 2% of the voting power of the outstanding shares of common stock immediately prior to the reverse stock split would continue to hold 2% of the voting power of the outstanding shares of common stock immediately after the reverse stock split. The number of stockholders of record will not be affected by the proposed reverse stock split (except to the extent that any stockholder holds only a fractional share interest and receives cash for such interest after the proposed reverse stock split).

Although the proposed reverse stock split will not affect the rights of stockholders or any stockholder's proportionate equity interest in Saba (subject to the treatment of fractional shares), the number of authorized shares of common stock will not be reduced. This will increase significantly the ability of the Board to issue authorized and unissued shares without further stockholder action. The issuance in the future of such additional authorized shares may have the effect of diluting the earnings per share and book value per share, as well as the stock ownership and voting rights, of the currently outstanding shares of common stock. The effective increase in the number of authorized but unissued shares of common stock may be construed as having an anti-takeover effect by permitting the issuance of shares to purchasers who might oppose a hostile takeover bid or oppose any efforts to amend or repeal certain provisions of our certificate of incorporation or bylaws.

The proposed reverse stock split will reduce the number of shares of common stock available for issuance under our 1997 Stock Incentive Plan, 2000 Stock Incentive Plan and 2000 Employee Stock Purchase Plan in proportion to the exchange ratio selected by the Board within the limits set forth in this proposal. We also have certain outstanding stock options and warrants to purchase shares of our common stock. Under the terms of the outstanding stock options and warrants, the proposed reverse stock split will effect a reduction in the number of shares of common stock issuable upon exercise of such stock options and warrants in proportion to the exchange ratio of the reverse stock split and will effect a proportionate increase in the exercise price of such outstanding stock options and warrants. In connection with the proposed reverse stock split, the number of shares of common stock issuable upon exercise or conversion of outstanding stock options and warrants will be rounded to the nearest whole share and no cash payment will be made in respect of such rounding.

If the proposed reverse stock split is implemented, it will increase the number of stockholders of Saba who own odd lots of less than 100 shares of our common stock. Brokerage commission and other costs of transactions in odd lots are generally higher than the costs of transactions of more than 100 shares of common stock.

Our common stock is currently registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, and we are subject to the periodic reporting and other requirements of the Exchange Act. The proposed reverse stock split will not affect the registration of the common stock under the Exchange Act. If the proposed reverse stock split is implemented, our common stock will continue to be reported on the Nasdaq National Market under the symbol SABA (although Nasdaq would likely add the letter D to the end of the trading symbol for a period of 20 trading days to indicate that the reverse stock split has occurred).

The proposed reverse stock split will not affect the par value of our common stock. As a result, on the effective date of the reverse stock split, the stated capital on our balance sheet attributable to the common stock will be reduced in proportion to the exchange ratio selected by the Board in the manner described above, and the additional paid-in capital account shall be credited with the amount by which the stated capital is reduced. The per share net income or loss and net book value of our common stock will be increased because there will be fewer shares of our common stock outstanding.

Effective Date

The proposed reverse stock split would become effective as of 5:00 p.m. Eastern time on the date of filing of a certificate of amendment to our certificate of incorporation with the office of the Secretary of State of the State of Delaware. Except as explained below with respect to fractional shares, on the effective date, shares of common stock issued and outstanding immediately prior thereto will be combined and converted, automatically and without any action on the part of the stockholders, into new shares of common stock in accordance with reverse stock split ratio determined by the Board within the limits set forth in this proposal.

Payment for Fractional Shares

No fractional shares of common stock will be issued as a result of the proposed reverse stock split. Instead, stockholders who otherwise would be entitled to receive fractional shares, upon surrender to the exchange agent of such certificates representing such fractional shares, will be entitled to receive cash in an amount equal to the product obtained by multiplying (i) the closing sales price of our common stock on the effective date as reported on the Nasdaq National Market by (ii) the number of shares of our common stock held by such stockholder that would otherwise have been exchanged for such fractional share interest.

Exchange of Stock Certificates

As soon as practicable after the effective date, stockholders will be notified that the reverse split has been effected. Our transfer agent will act as exchange agent for purposes of implementing the exchange of stock certificates. We refer to such person as the exchange agent. Holders of pre-reverse split shares will be asked to

surrender to the exchange agent certificates representing pre-reverse split shares in exchange for certificates representing post-reverse split shares in accordance with the procedures to be set forth in a letter of transmittal to be sent by us. No new certificates will be issued to a stockholder until such stockholder has surrendered such stockholder's outstanding certificate(s) together with the properly completed and executed letter of transmittal to the exchange agent. **Stockholders should not destroy any stock certificate and should not submit any certificates until requested to do so.**

Accounting Consequences

The par value per share of our common stock would remain unchanged at \$0.001 per share after the reverse stock split. As a result, on the effective date of the reverse split, the stated capital on our balance sheet attributable to the common stock will be reduced proportionally, based on the exchange ratio of the reverse stock split, from its present amount, and the additional paid-in capital account shall be credited with the amount by which the stated capital is reduced. The per share common stock net income or loss and net book value will be increased because there will be fewer shares of our common stock outstanding. We do not anticipate that any other accounting consequences would arise as a result of the reverse stock split.

No Appraisal Rights

Under the Delaware General Corporation Law, our stockholders are not entitled to dissenter's rights with respect to our proposed amendments to our charter to effect the reverse split and we will not independently provide our stockholders with any such right.

Material Federal U.S. Income Tax Consequences of the Reverse Stock Split

The following is a summary of important tax considerations of the proposed reverse stock split. It addresses only stockholders who hold the pre-reverse split shares and post-reverse split shares as capital assets. It does not purport to be complete and does not address stockholders subject to special rules, such as financial institutions, tax-exempt organizations, insurance companies, dealers in securities, mutual funds, foreign stockholders, stockholders who hold the pre-reverse split shares as part of a straddle, hedge, or conversion transaction, stockholders who hold the pre-reverse split shares as qualified small business stock within the meaning of Section 1202 of the Internal Revenue Code of 1986, as amended (the Code), stockholders who are subject to the alternative minimum tax provisions of the Code, and stockholders who acquired their pre-reverse split shares pursuant to the exercise of employee stock options or otherwise as compensation. This summary is based upon current law, which may change, possibly even retroactively. It does not address tax considerations under state, local, foreign, and other laws. Furthermore, we have not obtained a ruling from the Internal Revenue Service or an opinion of legal or tax counsel with respect to the consequences of the reverse stock split. **Each stockholder is advised to consult his or her tax advisor as to his or her own situation.**

The reverse stock split is intended to constitute a reorganization within the meaning of Section 368 of the Code. Assuming the reverse split qualifies as a reorganization, a stockholder generally will not recognize gain or loss on the reverse stock split, except to the extent of cash, if any, received in lieu of a fractional share interest in the post-reverse split shares. The aggregate tax basis of the post-reverse split shares received will be equal to the aggregate tax basis of the pre-reverse split shares exchanged therefor (excluding any portion of the holder's basis allocated to fractional shares), and the holding period of the post-reverse split shares received will include the holding period of the pre-reverse split shares exchanged.

The tax treatment of cash received in lieu of fractional shares will vary, depending on the circumstances of the holder.

No gain or loss will be recognized by the Company as a result of the reverse stock split.

Required Vote

The affirmative vote of stockholders having a majority of the voting power of all outstanding shares of our capital stock entitled to vote at the special meeting is required to approve the reverse stock split. As a result, abstentions and broker non-votes will have the same effect as negative votes.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE IN FAVOR OF PROPOSAL 1.

**SECURITY OWNERSHIP OF
CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information known to us with respect to beneficial ownership of our common stock as of March 15, 2003 by:

each person who is known by us to beneficially own more than 5% of our outstanding shares of common stock,

each of our directors,

our Chief Executive Officer, three other most highly compensated executive officers who were serving as our executive officers at May 31, 2002 and two additional individuals that served as executive officers during a portion, but not at the end, of our fiscal year ended May 31, 2002 (the Named Executive Officers), and

all current executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or exercisable within 60 days of March 15, 2003 are deemed outstanding. Percentage of beneficial ownership as of March 15, 2003 is based upon 52,994,040 shares of common stock. To our knowledge, except as set forth in the footnotes to this table and subject to applicable community property laws, each person named in the table has sole voting and investment power with respect to the shares set forth opposite such person's name. Except as otherwise indicated, the address of each of the persons in this table is: c/o Saba Software, Inc., 2400 Bridge Parkway, Redwood Shores, California 94065-1166.

<u>Name</u>	<u>Shares Beneficially Owned</u>	
	<u>Number</u>	<u>Percent</u>
Bobby Yazdani(1)	6,522,864	12.3%
Michael Moritz(2)	5,120,023	9.7%
3000 Sand Hill Road, Suite 280		
Menlo Park, CA 94025		
Entities Affiliated with Sequoia Capital(3)	4,651,159	8.8%
3000 Sand Hill Road, Suite 280		
Menlo Park, CA 94025		
Fuller & Thaler Asset Management, Inc.(4)	3,341,812	6.3%
411 Borel Avenue, Suite 402		
San Mateo, CA 94402		

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Geno Tolari(5)	967,391	1.8%
Peter Williams(6)	662,250	1.2%
Terry Carlitz(7)	655,000	1.2%
Joe Kiani(8)	353,800	*
Douglas Allred(9)	265,789	*
Clifton Thomas Weatherford(10)		*
Nigel Pullan(11)		*
Ronald Kisling(12)	122,425	*
All current executive officers and directors as a group (8 persons)(13)	14,014,542	26.0%

* Less than 1%.

- (1) Includes 60,000 shares subject to options exercisable within 60 days of March 15, 2003. Excludes options granted after March 15, 2003, of which options to purchase 250,000 shares are exercisable. The percentage of shares beneficially owned by Mr. Yazdani, including such 250,000 options, is 12.7%.

- (2) Includes (i) 20,000 shares subject to options exercisable within 60 days of March 15, 2003 and (ii) 4,651,159 shares held by the entities affiliated with Sequoia Capital. Mr. Moritz disclaims beneficial ownership of shares held by these entities except to the extent of his pecuniary interest in these entities, if any. Excludes options granted after March 15, 2003, of which options to purchase 30,000 shares are exercisable.
- (3) As reported in a Schedule 13D filed with the SEC by the Entities Affiliated with Sequoia Capital on October 11, 2002, includes 868,720 shares held by Sequoia Capital IX, 160,348 shares held by Sequoia Capital IX Principals Fund, 133,720 shares held by Sequoia Capital Entrepreneurs Fund, 3,069,767 shares held by Sequoia Capital Franchise Fund and 418,604 shares held by Sequoia Capital Franchise Partners. Each of the individual named entities has shared voting and dispositive power as to the shares attributed to them.
- (4) As reported in a Schedule 13G filed with the SEC by Fuller & Thaler Asset Management, Inc. (Fuller & Thaler) on February 13, 2003, includes 2,481,992 shares as to which has sole voting power and 3,341,812 shares as to which Fuller & Thaler have sole dispositive power.
- (5) Includes 600,000 shares subject to options exercisable within 60 days of March 15, 2003.
- (6) Includes 118,125 shares of common stock subject to a right of repurchase in favor of Saba that lapses over time; and 8,750 shares subject to options exercisable within 60 days of March 15, 2003.
- (7) Ms. Carlitz resigned as a Director in April 2002 and as Chief Executive Officer in May 2002.
- (8) Includes 120,000 shares subject to options exercisable within 60 days of March 15, 2003. Excludes options granted after March 15, 2003, of which options to purchase 30,000 shares are exercisable.
- (9) Includes 74,144 shares of common stock subject to a right of repurchase in favor of Saba that lapses over time. Excludes options granted after March 15, 2003, of which options to purchase 20,000 shares are exercisable.
- (10) Excludes options granted after March 15, 2003, of which options to purchase 35,000 shares are exercisable.
- (11) Mr. Pullan served as an executive officer from through May 2002 and resigned as Senior Vice President International Sales in November 2002.
- (12) Includes 118,125 shares subject to options exercisable within 60 days of March 15, 2003.
- (13) Includes (i) 192,269 shares of common stock subject to a right of repurchase in favor of Saba that lapses over time and (ii) 926,875 shares subject to options exercisable within 60 days of March 15, 2003 held by all current executive officers and directors of Saba. Excludes options granted after March 15, 2003, of which options to purchase 365,000 shares are exercisable.

STOCKHOLDER PROPOSALS

Deadline for Receipt of Stockholder Proposals. Stockholders are entitled to present proposals for action at a forthcoming meeting if they comply with Saba's bylaws and the requirements of the proxy rules promulgated by the Securities Exchange Commission. If you intend to submit a proposal for consideration at the 2003 Annual Meeting, the stockholder must have given timely notice therefore in writing to our Secretary. To be timely, a stockholder's notice must be delivered to or mailed and received by our Secretary at our principal executive offices between July 11, 2003 and August 10, 2003. A stockholder's notice to our Secretary must set forth as to each matter the stockholder proposes to bring before the special meeting (i) a brief description of the business desired to be brought before the special meeting and the reasons for conducting such business at the special meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of Saba which are beneficially owned by the stockholder and (iv) any material interest of the stockholder in such business.

Requirements for Stockholder Proposals to be Considered for Inclusion in our Proxy Materials. Stockholder proposals submitted pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the Exchange Act) and intended to be presented at our 2003 annual meeting of stockholders must be received by us not later than May 27, 2003 in order to be considered for inclusion in our proxy materials for that special meeting.

OTHER MATTERS

The Board of Directors knows of no other business, which will be presented to the special meeting. If any other business is properly brought before the special meeting, it is intended that proxies in the enclosed form will be voted in respect thereof in accordance with the judgments of the persons voting the proxies.

It is important that the proxies be returned promptly and that your shares be represented. Stockholders are urged to mark, date, execute and promptly return the accompanying proxy card in the enclosed envelope.

By Order of the Board of Directors,

Peter E. Williams III

Secretary

Redwood Shores, California

April 1, 2003

CERTIFICATE OF AMENDMENT OF AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION OF SABA SOFTWARE, INC.

Saba Software, Inc. (the Corporation), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

FIRST: The name of the Corporation is Saba Software, Inc.

SECOND: The date on which the Corporation's original Certificate of Incorporation was filed with the Delaware Secretary of State is April 16, 1997.

THIRD: The Board of Directors of the Corporation, acting in accordance with the provision of Sections 141 and 242 of the General Corporation Law of the State of Delaware adopted resolutions to amend Article IV of the Amended and Restated Certificate of Incorporation of the Corporation to read in its entirety as follows:

This corporation is authorized to issue two classes of stock to be designated, respectively, Common Stock and Preferred Stock. The total number of shares which the corporation is authorized to issue is Two Hundred Five Million (205,000,000) shares, Two Hundred Million (200,000,000) shares of which shall be Common Stock (the Common Stock) and Five Million (5,000,000) shares of which shall be Preferred Stock (the Preferred Stock). The Common Stock shall have a par value of \$0.001 per share and the Preferred Stock shall have a par value of \$0.001 per share. Effective as of 5:00 p.m., Eastern time, on the date this Certificate of Amendment of Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware, each [*] shares of the corporation's Common Stock, par value \$.001 per share, issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock, par value \$.001 per share, of the corporation. No fractional shares shall be issued and, in lieu thereof, any holder of less than one share of Common Stock shall be entitled to receive cash for such holder's fractional share based upon the closing sales price of the corporation's Common Stock as reported on The Nasdaq National Market as of the date this Certificate of Amendment is filed with the Secretary of State of the State of Delaware. Whether or not the stock split provided above would result in fractional shares for a holder of record, shall be determined on the basis of the total number of shares of Common Stock held by such holder of record at the time the stock split occurs.

The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. Subject to applicable protective voting rights which have been or may be granted to the Preferred Stock, the Board of Directors is authorized to determine or alter any or all of the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and to fix, alter or reduce the number of shares comprising any such series (but not below the number of such shares outstanding for any such series) and the designation thereof, or any of them, and to provide for rights and terms of redemption or conversion of the shares of any such series.

FOURTH: This Certificate of Amendment of Amended and Restated Certificate of Incorporation was submitted to the stockholders of the Corporation and was duly approved by the required vote of stockholders of the Corporation in accordance with Sections 222 and 242 of the Delaware General Corporation Law. The total number of outstanding shares entitled to vote or consent to this Amendment was _____ shares of Common Stock. A majority of the outstanding shares of Common Stock, voting together as a single class, voted in favor of this Certificate of

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Amendment of Amended and Restated Certificate of Incorporation. The vote required was a majority of the outstanding shares of Common Stock, voting together as a single class.

A-1

FIFTH: This Certificate of Amendment of Amended and Restated Certificate of Incorporation was duly approved and adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware and the Corporation's By-Laws at a meeting of the Board of Directors of the Corporation on _____ at which a quorum was present and acting throughout. The Board of Directors previously declared the advisability of the amendment and directed that the amendment be submitted to the stockholders of the Corporation for approval.

IN WITNESS WHEREOF, Saba Software, Inc. has caused this Certificate of Amendment to be signed by its Chief Executive Officer as of _____, 2003.

Saba Software, Inc.

Geno P. Tolari

Chief Executive Officer

* By approving these amendments, stockholders will approve the combination of any whole number of shares of Common Stock between and including two (2) and ten (10) into one (1) share of Common Stock, i.e., each of the following combination ratios: 1 for 2, 1 for 3, 1 for 4, 1 for 5, 1 for 6, 1 for 7, 1 for 8, 1 for 9, and 1 for 10. The Certificate of Amendment filed with the Secretary of State of the State of Delaware will include only that number determined by the Board of Directors to be in the best interests of the Corporation and its stockholders. In accordance with these resolutions, the Board of Directors will not implement any amendment providing for a different split ratio.

COMPANY #

CONTROL #

SABA SOFTWARE, INC.
PROXY SOLICITED BY THE BOARD OF DIRECTORS
FOR THE SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON MAY 1, 2003

The undersigned hereby appoints Geno P. Tolari and Peter E. Williams III, and each of them, as attorneys and proxies of the undersigned, with full power of substitution, to vote all of the shares of stock of Saba Software, Inc. which the undersigned may be entitled to vote at the Special Meeting of Stockholders of Saba Software, Inc. to be held at Saba's corporate headquarters, 2400 Bridge Parkway, Redwood Shores, California 94065-1166 on May 1, 2003 at 9:00 a.m. (local time), and at any and all postponements, continuations and adjournments thereof, with all powers that the undersigned would possess if personally present, upon and in respect of the following matters and in accordance with the following instructions, with discretionary authority as to any and all other matters that may properly come before the meeting.

UNLESS A CONTRARY DIRECTION IS INDICATED, THIS PROXY WILL BE VOTED FOR PROPOSAL 1, AS MORE SPECIFICALLY DESCRIBED IN THE PROXY STATEMENT. IF SPECIFIC INSTRUCTIONS ARE INDICATED, THIS PROXY WILL BE VOTED IN ACCORDANCE THEREWITH.

(Please Sign on Reverse Side)

**Please date, sign and mail your
Proxy card back as soon as possible!**

Special Meeting of Stockholders

SABA SOFTWARE, INC.

May 1, 2003

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Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Saba Software, Inc., 2400 Bridge Parkway, Redwood Shores, California 94065-1166.

Please Detach Here and Mail in Envelope Provided

MANAGEMENT RECOMMENDS A VOTE FOR PROPOSAL 1.

PROPOSAL 1: To approve proposed amendments to our Certificate of Incorporation to effect a reverse stock split of our common stock pursuant to which two, three, four, five, six, seven, eight, nine, or ten of our outstanding shares would be combined into one share of our common stock at the discretion of our Board of Directors.

FOR

AGAINST

ABSTAIN

Signature(s) _____

Dated _____

Please sign exactly as your name appears hereon. If the stock is registered in the names of two or more persons, each should sign. Executors, administrators, trustees, guardians and attorneys-in-fact should add their titles. If signer is a corporation, please give full corporate name and have a duly authorized officer sign, stating title. If signer is a partnership, please sign in partnership name by authorized person.

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Operating expense

Research and development

37,511 82,679 90,854

General & administrative

135,430 419,452 690,733

Stock issued for services

- 260,000 260,000

Stock options & warrants

30,770 109,037 109,037

Amortization

43,020 128,186 155,737

Total operating expense

246,731 999,354 1,306,361

Net operating loss

\$(246,731) \$(999,354) \$(1,306,361)

Other income

Interest income

7,682 37,843 63,453

Total Other Income

7,682 37,843 63,453

Net Loss

\$(239,049) \$(961,511) \$(1,242,908)

Loss per share

Net loss per share, basic and diluted

\$(0.01) \$(0.02) \$(0.04)

Basic and diluted weighted average number of common shares outstanding

41,823,602 40,930,487 33,032,287

See Accompanying Notes to Financial Statements

BIO-PATH HOLDINGS, INC.
(A Development Stage Company)

CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY
Unaudited

Date	Description	Common Stock		Additional	Accumulated	Total
		Shares	Amount	Paid in Capital	Deficit	
May-07	Common stock issued for cash	6,480,994	\$ 6,481	\$ -	\$ -	\$ 6,481
Jun-07	Common stock issued for cash	25,000	25			25
	2nd Quarter fund raising expense			(26,773)		(26,773)
	Net loss 2nd Quarter 2007				(56,210)	(56,210)
Balances at June 30, 2007		6,505,994	6,506	(26,773)	(56,210)	(76,477)
Aug-07	Common stock issued for cash in seed round	3,975,000	3,975	989,775		993,750
Aug-07	Common stock issued for cash in second round	1,333,334	1,333	998,667		1,000,000
Aug-07	Common stock issued to Placement Agent for services	530,833	531	198,844		199,375
	3rd Quarter fund raising expense			(441,887)		(441,887)
	Net loss 3rd Quarter 2007				(81,986)	(81,986)
Balances at September 30, 2007		12,345,161	12,345	1,718,626	(138,196)	1,592,775
Nov-07	Common stock issued MD Anderson for License	3,138,889	3,139	2,351,028		2,354,167
	4th Quarter fund raising expense			(60,506)		(60,506)
	Net loss 4th Quarter 2007				(143,201)	(143,201)
Balances at December 31, 2007		15,484,050	\$ 15,484	\$ 4,009,148	\$ (281,397)	\$ 3,743,235
Feb-08	Common stock issued for cash in 3rd round	1,579,400	1,579	1,577,821		1,579,400
Feb-08	Common stock issued to Placement Agent	78,970	79	78,891		78,970
Feb-08	Common stock issued for services	80,000	80	79,920		80,000
Feb-08	Merger with 2.20779528 : 1 exchange ratio	20,801,158	20,801	(20,801)		-
Feb-08	Add merger partner Odgen Golf shareholders	3,600,000	3,600	(3,600)		-
				(251,902)		(251,902)

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	1st Quarter fund raising expense						
	Net loss 1st Quarter 2008				(226,206)		(226,206)
Balances at March 31, 2008		41,623,578	\$ 41,623	\$ 5,469,477	\$ (507,603)		\$ 5,003,497
Apr-08	Common stock issued to PCS, Inc. in connection with merger	200,000	200	179,800			180,000
Apr-08	Stock option awards			42,216			42,216
Apr-08	Warrants issued for services			36,050			36,050
Apr-08	Share rounding	24					-
	2nd Quarter fund raising expense				(6,243)		(6,243)
	Net loss 2nd Quarter 2008				(496,256)		(496,256)
Balances at June 30, 2008		41,823,602	\$ 41,823	\$ 5,721,300	\$ (1,003,859)		\$ 4,759,264
Apr-08	Stock option vesting			30,770			30,770
	2nd Quarter fund raising expense				(12,886)		(12,886)
	Net loss 2nd Quarter 2008				(239,049)		(239,049)
Balances at September 30, 2008		41,823,602	\$ 41,823	\$ 5,739,184	\$ (1,242,908)		\$ 4,538,099

See Accompanying Notes to Financial Statements

BIO-PATH HOLDINGS, INC.
(A Development Stage Company)

CONSOLIDATED CASH FLOW STATEMENT
Unaudited

	Year to Date 01/01/2008 to 09/30/2008	From inception 05/10/2007 to 09/30/2008
CASH FLOW FROM OPERATING ACTIVITIES		
Net loss	\$ (961,511)	\$ (1,242,908)
Adjustments to reconcile net loss to net cash used in operating activities		
Amortization	128,186	155,737
Common stock issued for services	260,000	260,000
Stock options and warrants	109,037	109,037
(Increase) decrease in assets		
Restricted escrow cash	208,144	
Drug product for testing	(280,800)	(280,800)
Other current assets	(33,001)	(60,435)
Increase (decrease) in liabilities		
Accounts payable and accrued expenses	(28,523)	1,650
Escrow cash payable	(208,144)	
Net cash used in operating activities	(806,612)	(1,057,719)
INVESTING ACTIVITIES		
Purchase of exclusive license	(25,000)	(225,000)
Net cash used in investing activities	(25,000)	(225,000)
FINANCING ACTIVITIES		
Proceeds from convertible notes		435,000
Cash repayment of convertible notes	.	(15,000)
Net proceeds from sale of common stock	1,387,339	2,637,804
Net cash from financing activities	1,387,339	3,057,804
NET INCREASE IN CASH	555,727	1,775,085
Cash, beginning of period	1,219,358	-
Cash, end of period	\$ 1,775,085	\$ 1,775,085
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid for		
Interest	\$ -	\$ -
Income taxes	\$ -	\$ -

Non-cash financing activities

Common stock issued upon conversion of convertible notes		\$	420,000
Common stock issued to Placement Agent	\$	78,970	\$ 278,165

See Accompanying Notes to Financial Statements

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Notes to the Interim Consolidated Financial Statements Ending September 30, 2008

The accompanying interim financial statements have been prepared without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted. In the opinion of management, the accompanying interim financial statements contain all adjustments, consisting of normal recurring accruals, necessary for a fair presentation. The results of operations for the period ended September 30, 2008, are not necessarily indicative of the results for a full-year period.

1. Organization and Business

Bio-Path Holdings, Inc. (“Bio-Path” or the “Company”) is a development stage company founded with technology from The University of Texas, M. D. Anderson Cancer Center (“M. D. Anderson”) dedicated to developing novel cancer drugs under an exclusive license arrangement. The Company has drug delivery platform technology with composition of matter intellectual property that enables systemic delivery of antisense, small interfering RNA (“siRNA”) and small molecules for treatment of cancer. In addition to its existing technology under license, the Company expects to have a close working relationship with key members of the M. D. Anderson’s staff, which should provide Bio-Path with a strong pipeline of promising drug candidates in the future. Bio-Path expects the program with M. D. Anderson to enable the Company to broaden its technology to include cancer drugs other than antisense and siRNA.

Bio-Path believes that its core technology, if successful, will enable it to be at the center of emerging genetic and molecular target-based therapeutics that require systemic delivery of DNA and RNA-like material. The Company’s two lead drug candidates treat acute myeloid leukemia, chronic myelogenous leukemia, acute lymphoblastic leukemia and follicular lymphoma, and if successful, could potentially be used in treating many other indications of cancer. These two lead drug candidates will be ready for clinical trials after receiving an investigational new drug (“IND”) status from the FDA. The Company has filed an IND application for its lead drug candidate and currently anticipates commencing a Phase I clinical trial of this drug by the end of the year.

The Company was founded in May of 2007 as a Utah corporation. In February of 2008, Bio-Path completed a reverse merger with Ogden Golf Co. Corporation, a public company traded over the counter that has no current operations. The name of Ogden Golf was changed to Bio-Path Holdings, Inc. and the directors and officers of Bio-Path, Inc. became the directors and officers of Bio-Path Holdings, Inc. Bio-Path has become a publicly traded company (symbol OTCBB: BPTH) as a result of this merger.

The Company’s operations to date have been limited to organizing and staffing the Company, acquiring, developing and securing its technology and undertaking product development for a limited number of product candidates. As the Company has not begun its planned principal operations of commercializing a product candidate, the accompanying financial statements have been prepared in accordance with principles established for development stage enterprises.

2. Drug Product for Testing

The Company paid an initial installment to Althea Technologies, Inc. of \$280,800 during the third quarter pursuant to a Project Plan and Supply Agreement (see Note 6. below) for the manufacture and delivery of the Company’s lead drug product for testing in a Phase I clinical trial. This amount is carried on the Balance Sheet as of September 30, 2008 at cost as Drug Product for Testing and will be expensed as the drug product is used during the Phase I clinical trial.

3. Convertible Debt

The Company issued \$435,000 in notes convertible into common stock at a rate of \$.25 per common share. As of December 31, 2007, \$15,000 of the convertible notes had been repaid in cash and \$420,000 of the convertible notes had been converted into 1,680,000 shares of Bio-Path common stock and were included in the seed round completed in August of 2007. No interest was recorded because interest was nominal prior to conversion. No beneficial conversion feature existed as of the debt issuance date since the conversion rate was greater than or equal to the fair value of the common stock on the issuance date.

4. Stockholders' Equity

Issuance of Common Stock – In May and June of 2007, the Company issued 6,505,994 shares of common stock for \$6,506 in cash to founders of the Company. In August of 2007, the Company issued 3,975,000 shares of common stock for \$993,750 in cash to investors in the Company pursuant to a private placement memorandum. In August of 2007 the Company issued an additional 1,333,334 shares of common stock for \$1,000,000 in cash to investors in the Company pursuant to a second round of financing. The Company issued 530,833 shares of common stock to the Placement Agent as commission for the shares of common stock sold to investors. In November of 2007, the Company issued 3,138,889 shares in common stock to MD Anderson as partial consideration for its two technology licenses from MD Anderson. In February of 2008, the Company issued 1,579,400 shares of common stock for \$1,579,400 in cash to investors in the Company pursuant to a private placement memorandum. The Company issued 78,970 in common stock to the Placement Agent as commission for the shares of common stock sold to investors. In February, the Company completed a reverse merger with Ogden Golf Co. Corporation and issued 38,023,578 shares of common stock of the public company Bio-Path Holdings (formerly Ogden Golf Co. Corporation) in exchange for pre-merger common stock of Bio-Path, Inc. In addition, shareholders of Ogden Golf Co. Corporation retained 3,600,000 shares of common stock of Bio-Path Holdings. In February of 2008 Bio-Path issued 80,000 shares of common stock to strategic consultants pursuant to executed agreements and the fair value was expensed upfront as common stock for services. In April of 2008, the Company issued 200,000 shares of common stock to a firm in connection with introducing Bio-Path, Inc. to its merger partner Ogden Golf Co. Corporation. The fair value of this stock issuance was expensed upfront as common stock for services. In April of 2008, the Company recorded an additional 24 shares for rounding in accordance with FINRA rules. There were no issuances of common or preferred stock during the third quarter 2008. As of September 30, 2008 there were 41,823,602 shares of common stock issued and outstanding. There are no preferred shares outstanding as of September 30, 2008.

5. Stock Options and Warrants

Stock Options - In April of 2008 the Company made stock option grants for services over the next three years to purchase in the aggregate 1,615,000 shares of the Company's common stock. Terms of the stock option grants require, among other things, that the individual continues to provide services over the vesting period of the option, which is four or five years from the date that each option granted to the individual becomes effective. The exercise price of the options is \$0.90 a share. None of the stock options grants are for current officers of the Company. The Company determined the fair value of the stock options granted using the Black Scholes model and expenses this value monthly based upon the vesting schedule for each stock option award. For purposes of determining fair value, the Company used an average annual volatility of seventy two percent (72%), which was calculated based upon an average of volatility of similar biotechnology stocks. The risk free rate of interest used in the model ranged from 2.54% to 3.63% and was taken from a table of the market rate of interest for U. S. Government Securities for the date of the stock option awards and interpolated as necessary to match the appropriate effective term for the award. The total value of stock options granted was determined using this methodology to be \$761,590, which will be expensed over the next six years based on the stock option vesting schedule.

In August 2008, Dr. Ulrich Mueller resigned as a consultant and director of the Company. There were no disagreements with Dr. Mueller at the time of his resignation. As a result of his resignation, the Company cancelled granted but unvested stock options to purchase in the aggregate 450,000 shares of common stock granted to Dr. Mueller for three years of planned service as a director and consultant to the Company. An adjustment was made to the third quarter 2008 stock option expense to reverse \$13,022 in expense for Dr. Mueller's unvested stock option expense recognized in the second quarter of 2008 and subsequently cancelled in the third quarter 2008. As of September 2008, the Company had outstanding stock option grants to purchase 1,165,000 shares of the Company's common stock. The expense for the three months ended September 30, 2008 was \$30,770.

Warrants - In April of 2008 the Company awarded warrants for services to purchase in the aggregate 85,620 shares of the Company's common stock. The exercise price is \$0.90 a share. The warrants were one hundred percent (100%) vested upon issuance and were expensed upfront as warrants for services. The fair value of the warrants expensed was determined using the same methodology as described above for stock options. The total value of the warrants granted was determined using this methodology to be \$36,050, the total amount of which was expensed in the second quarter 2008.

6. Drug Project Plan and Supply Agreement

In June of 2008, Bio-Path entered into a Project Plan agreement with Althea Technologies, Inc. for delivery of drug product in November of 2008 to support commencement of the Company's Phase I clinical trial of its first cancer drug product. In September 2008, the Company further executed a Supply Agreement with Althea Technologies that incorporates the Project Plan agreement as well as the broader commercial terms and conditions normally included in a full contractual supplier and customer agreement. Among other things, the Supply Agreement and Project Plan require Althea Technologies to manufacture the Company's lead drug product in accordance with current Good Manufacturing Practice (cGMP) guidelines. Althea Technologies will be paid a total of \$705,750 in three installments if all drug products are manufactured and delivered to the Company in conformance with cGMP quality guidelines. The Company's requirement to pay for the manufactured drug product is based on Althea Technologies successfully delivering finished and tested drug product. The Supply Agreement allows for cancellation, subject to various penalties depending on the time of notification of cancellation. The first batch of cGMP drug product is expected to be manufactured in the fourth quarter of 2008.

7. Commitments and Contingencies

Technology License - The Company has negotiated exclusive licenses from MD Anderson to develop drug delivery technology for siRNA and antisense drug products. These licenses require, among other things, the Company to reimburse MD Anderson for ongoing patent expense. As of September 2008, the Company estimates these expenses will total approximately \$300,000. The Company will be required to pay the patent expenses at the rate of \$25,000 per quarter per license.

8. Subsequent Events

In July of 2008, Bio-Path initiated discussions with M. D. Anderson for commencement of a Phase I clinical trial for its first cancer drug product. The Company anticipates that it will execute an agreement with M. D. Anderson in the fourth quarter 2008 for the conduct of this clinical trial. The costs of M. D. Anderson services to conduct this trial are expected to be approximately \$400,000.

During the first quarter of 2008, Bio-Path engaged Westcap Securities as a placement agent to raise additional capital for the Company through sale of its common stock. As of June 30, 2008, Westcap Securities had not closed on any sales of common stock and the Company subsequently notified Westcap Securities in July 2008 that it was canceling its placement agent agreement.

In October 2008 the Company entered into co-placement agent agreements with broker-dealers Equinox Securities, Inc. and Acap Financial, Inc. to raise additional capital for the Company through sale of its common stock.

In early November 2008, the Company received notification from the Financial Industry Regulatory Authority (FINRA) that its common stock would now be listed on the OTC Bulletin Board (symbol OTCBB: BPTH).

In October 2008, the Company granted stock options to purchase in the aggregate 2,500,000 shares of common stock to the Chief Executive Officer and Vice President of Operations. Terms of the stock option grants provide for an immediate vesting of 50% of the options shares with the remaining options shares vesting monthly over a three year period. The exercise price of these options is \$1.40 a share.

9. New Accounting Pronouncements

In December 2007, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 141(R), "Business Combinations." SFAS No. 141(R) changes the accounting for and reporting of business combination transactions in the following way: Recognition with certain exceptions, of 100% of the fair values of assets acquired, liabilities assumed, and non controlling interests of acquired businesses; measurement of all acquirer shares issued in consideration for a business combination at fair value on the acquisition date; recognition of contingent consideration arrangements at their acquisition date fair values, with subsequent changes in fair value generally reflected in earnings; recognition of pre-acquisition gain and loss contingencies at their acquisition date fair value; capitalization of in-process research and development (IPR&D) assets acquired at acquisition date fair value; recognition of acquisition-related transaction costs as expense when incurred; recognition of acquisition-related restructuring cost accruals in acquisition accounting only if the criteria in Statement No. 146 are met as of the acquisition date; and recognition of changes in the acquirer's income tax valuation allowance resulting from the business combination separately from the business combination as adjustments to income tax expense. SFAS No. 141(R) is effective for the first annual reporting period beginning on or after December 15, 2008 with earlier adoption prohibited. The adoption of SFAS No. 141(R) will affect valuation of business acquisitions made in 2009 and forward. We do not anticipate a material impact upon adoption.

In December 2007, the FASB issued SFAS No. 160 "Noncontrolling Interest in Consolidated Financial Statements – an Amendment of ARB 51" (SFAS 160). SFAS 160 clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. It also requires consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest, and requires disclosure, on the face of the consolidated statement of income, of the amounts of consolidated net income attributable to the parent and to the noncontrolling interest. SFAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. We do not anticipate a material impact upon adoption.

In March 2008, the FSAB issued FASS No. 161, "Disclosures about Derivative Instruments and Hedging Activities." SFAS 161 is intended to improve financial reporting about derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for financial statements issued for fiscal years

and interim periods beginning after November 15, 2008, with early application encouraged. We do not anticipate a material impact upon adoption.

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

When you read this section of this Quarterly Form 10-QSB, it is important that you also read the financial statements and related notes included elsewhere in this Form 10-QSB. This section of this quarterly report contains forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations, and intentions. We use words such as “anticipate,” “estimate,” “plan,” “project,” “continuing,” “ongoing,” “e,” “believe,” “intend,” “may,” “will,” “should,” “could,” and similar expressions to identify forward-looking statements. Our a results could differ materially from those anticipated in these forward-looking statements for many reasons, including the matters discussed under the caption “Risk Factors” in the Company’s Form 8-K that was filed February 19, 2008

Overview

Bio-Path Holdings, Inc. (the “Company”), was formed under the name of Ogden Golf Co. Corporation. The Company terminated its retail golf store operations in December 2006. On February 14, 2008, the Company acquired Bio-Path, Inc. (“Bio-Path”) in a merger transaction. In connection with the Merger, we changed our name to Bio-Path Holdings, Inc., we acquired Bio-Path as a wholly owned subsidiary and we appointed new officers and directors. In connection with the Merger, we also increased our authorized capital stock and adopted a Stock Incentive Plan. The Merger and related matters are further described in a Form 8-K filed on February 19, 2008.

Subsequent to the Merger, we changed our fiscal year end from September 30th to December 31st.

Bio-Path Holdings, Inc., through our subsidiary Bio-Path, Inc. is engaged in the business of financing and facilitating the development of novel cancer therapeutics. Our initial plan is to acquire licenses for drug technologies from The University of Texas M. D. Anderson Cancer Center (“M. D. Anderson”), to fund clinical and other trials for such technologies and to commercialize such technologies. We have negotiated and executed two exclusive licenses (“License Agreements”) for three lead products and nucleic acid drug delivery technology. These licenses specifically provide drug delivery platform technology with composition of matter intellectual property that enables systemic delivery of antisense, small interfering RNA (“siRNA”) and small molecules for treatment of cancer.

Our business plan is to act efficiently as an intermediary in the process of translating newly discovered drug technologies into authentic therapeutic drugs candidates. Our strategy is to selectively license potential drug candidates for certain cancers, and, primarily utilizing the comprehensive drug development capabilities of M. D. Anderson, to advance these candidates proof of concept (Phase I), to human efficacy trials (Phase IIA), and then out-license each successful potential drug to a pharmaceutical company.

Bio-Path Subsidiary was formed in May 2007. Bio-Path acquired Bio-Path Subsidiary in February 2008 in a reverse merger transaction (the “Merger”).

Plan of Operation

Our plan of operation over the next 36 months is focused on achievement of milestones with the intent to demonstrate clinical proof-of concept of our drug delivery technology and lead drug products. Furthermore, we will attempt to validate our business model by in-licensing additional products to broaden our drug product pipeline. We anticipate that over the next 36 months, we will need to raise approximately \$11,500,000 to completely implement our current business plan. Since its formation in May 2007, Bio-Path Subsidiary has completed several financings, raising net proceeds of \$3,057,804.

Our short term plan is to achieve three key milestones:

- (1) conduct a Phase I clinical trial of our lead drug BP-100-1.01, which if successful, will validate our liposomal delivery technology for nucleic acid drug products including siRNA;
- (2) perform necessary pre-clinical studies in our lead liposomal siRNA drug candidate to enable the filing of an Investigational New Drug ("IND") for a Phase I clinical trial; and
- (3) out-license (non-exclusively) our delivery technology for either antisense or siRNA to a pharmaceutical partner to speed development applications of our technology.

The Phase I clinical trial of BP-100-1.01 is budgeted for \$1,675,000. BP-100-1.01 is our lead lipid delivery RNAi antisense drug, which will be clinically tested for valuation in Acute Myeloid Leukemia (AML), Myelodysplastic Syndrome (MDS) and Chronic Myelogenous Leukemia (CML). If this outcome is favorable, we expect there will be numerous opportunities to negotiate non-exclusive license applications involving upfront cash payments with pharmaceutical companies developing siRNA and antisense drugs that need systemic delivery technology. Commencement of the Phase I clinical trial depends on the Federal Drug Administration ("FDA") approving the IND for BP-100-1.01. In June 2008, we entered into a Project Plan Agreement with Althea Technologies, Inc. ("Althea") relating to our first Phase I clinical trials. In September 2008, we entered into a Supply Agreement with Althea to manufacture our drug requirements for the upcoming Phase I clinical trial of BP-100-1.01.

BP-100-2.01 is our lead siRNA drug, which will be clinically tested for validation as a novel, targeted ovarian cancer therapeutic agent. Performing the remaining pre-clinical development work for BP-100-2.01 will be required before an IND is filed with the FDA. The pre-clinical development is budgeted for \$225,000.

Results of Operations

Except as discussed below, a discussion of our past financial results is not pertinent to the business plan of the Company on a going forward basis, due to the change in our business which occurred upon consummation of the Merger on February 14, 2008.

Results of Operations for the three months and nine months ended September 30, 2008 and period from inception (May 10, 2007) to September 30, 2008.

We have no operating revenues since our inception. Our operating expenses for the three months ended September 30, 2008 aggregated \$246,731 and consisted of general and administrative expenses of \$135,430, stock issued for services of \$ -0-, cost of stock options and warrants of \$30,770, research and development of \$37,511, and amortization expense of \$43,020 for the Company's technology license.

Our operating expenses for the nine months ended September 30, 2008 aggregated \$999,354 and consisted of general and administrative expenses of \$419,452, stock issued for services of \$260,000, cost of stock options and warrants of \$109,037, research and development of \$82,679 and amortization expenses of \$128,186 for the Company's technology license. We expect these costs to increase moderately as we proceed with our development plans.

We had interest income of \$7,682 and \$37,843, for the three months and nine months ended September 30, 2008. Our interest income was derived from cash and cash equivalents net of bank fees.

Our net loss was \$239,049 and \$961,511, for the three months and nine months ended September 30, 2008, respectively. Net loss per share, both basic and diluted was \$0.01 and \$0.02 for the respective periods.

Liquidity and Capital Resources

At September 30, 2008, we had cash of \$1,775,085. Cash used in operations since inception to September 30, 2008 totaled \$1,057,719. Since inception we have net cash from financing activities of \$3,057,804. As discussed in our Plan of Operation above, we believe that our available cash will be sufficient to fund our liquidity and capital expenditure requirements through the current fiscal year ending December 31, 2008. However, we believe that we will need to raise approximately an additional \$11,500,000 to completely implement our business plan.

Projected Financing Needs

We anticipate that we will need to raise an additional \$11,500,000 in the next 36 months in funding to complete our \$15 million fund raising objective to conduct additional clinical trials in other Bio-Path drug candidates and extend operations through 36 months.

The Phase I clinical trial of BP-100-2.01 is expected to cost \$2,000,000. Commencement of the Phase I clinical trial depends on the FDA approving the IND for BP-100-2.01. Success in the Phase I clinical trial will be based on the demonstration that the delivery technology for siRNA has the same delivery characteristics seen in other non-siRNA, small molecule cancer drug applications.

If the Phase I clinical trial in BP-100-1.01 is successful, the Company will follow with a Phase IIa trial in BP-100-1.01. Successful Phase I and IIa trials of BP-100-1.01 will demonstrate clinical proof-of-concept that BP-100-1.01 is a viable therapeutic drug product for treatment of AML, MDS and CML. The Phase IIa clinical trial in BP-100-1.01 is expected to cost approximately \$1,600,000.

We intend to attempt to raise additional capital. If we are successful in our attempts to raise additional capital of \$11,500,000 in net proceeds, of which there can be no assurance, we anticipate that the additional capital will also allow us to conduct a Phase I clinical trial of BP-100-1.02, which is an anti-tumor drug that treats a broad range of cancer tumors. This trial is budgeted to cost \$2,500,000 and is higher than the Phase I clinical trial for BP-100-1.01 due to expected higher hospital, patient monitoring and drug costs. Similar to the case with BP-100-1.01, commencement of the Phase I clinical trial of BP-100-1.02 requires that the FDA approve the IND application for BP-100-1.02.

We have currently budgeted approximately \$3,000,000 for additional drug development opportunities, including the possibility of funding an additional Phase I clinical trial for a second siRNA drug product. The balance of the funding is planned to fund patent expenses, licensing fees, pre-clinical costs to M. D. Anderson's Pharmaceutical Development Center, consulting fees and management and administration costs.

We have generated approximately one full year of financial information and have not previously demonstrated that we will be able to expand our business through an increased investment in our technology and trials. We cannot guarantee that plans as described in this report will be successful. Our business is subject to risks inherent in growing an enterprise, including limited capital resources and possible rejection of our new products and/or sales methods. If financing is not available on satisfactory terms, we may be unable to continue expanding our operations. Equity financing will result in a dilution to existing shareholders.

There can be no assurance of the following: (1) That the actual costs of a particular trial will come within our budgeted amount; (2) That any trials will be successful or will result in drug commercialization opportunities, or (3) That we will be able to raise the sufficient funds to allow us to operate for three years or to complete our trials.

Other Events

In October 2008, we entered into a Placement Agent Agreement with Equinox Securities, Inc. and ACAP Financial, Inc. for the sale of our common stock in a private offering.

In October we granted stock options to purchase in the aggregate 2,500,000 shares of our common stock to our Chief Executive Officer and Vice President of Operations. Terms of the stock option grants provide for an immediate vesting of 50% of the options shares with the remaining options shares vesting monthly over a three year period. The exercise price of these options is \$1.40 a share.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Contractual Obligations and Commitments

Bio-Path has recently entered into two Patent and Technology License Agreements (the "Licenses") with M. D. Anderson relating to its technology. A summary of certain material terms of each of the Licenses is as follows:

Licensor:	The Board of Regents of the University of Texas System on behalf of The University of Texas M. D. Anderson Cancer Center
Licensee:	Bio-Path, Inc.
License:	A royalty bearing, exclusive license to manufacture, use and sell the Licensed Products
Territory:	Worldwide
Retained Rights	Certain research and academic rights are retained by Licensor
License Fees:	Documentation Fee - \$40,000 for the first license and \$60,000 for the second license; annual maintenance fee - \$25,000 for years 1, 2 & 3 increasing to \$100,000 in the eighth year. After the first sale, increasing to \$125,000
Royalties:	Three percent of net sales
Milestone Payments:	One-time payments range from \$150,000 to \$2,000,000. Total up to \$8,150,000

Securities Issuance: 1,883,333 shares of Bio-Path for first License and 1,255,556 shares for second License. These shares were converted into shares of the Company's common stock in the Merger.

Expense: Bio-Path will reimburse M. D. Anderson for expenses

Term: Full term of patents

In September 2008, we entered into a supply agreement with Althea Technologies, Inc. for the manufacture of BP-100-1.01 for our upcoming Phase I Clinical Trial. Althea is a contract manufacturer who will formulate and lyophilize our BP-100-1.01 product requirements according to current Good Manufacturing Practices (cGMP). The contract includes payments by Bio-Path of approximately \$700,000 for process development and manufacture of cGMP product suitable for use in human patients in the Company's Phase I clinical trial. Bio-Path has the right to terminate the agreement at any time, subject to payment of a termination fee to Althea. The termination fee is not material.

Inflation

The Company does not believe that inflation will negatively impact its business plans.

Critical Accounting Policies

The preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") in the United States has required the management of the Company to make assumptions, estimates and judgments that affect the amounts reported in the financial statements, including the notes thereto, and related disclosures of commitments and contingencies, if any. The Company considers its critical accounting policies to be those that require the more significant judgments and estimates in the preparation of financial statements, including the following:

Concentration of Credit Risk -- Financial instruments that potentially subject the Company to a significant concentration of credit risk consist of cash. The Company maintains its cash balances with one major commercial bank. The balances are insured by the Federal Deposit Insurance Corporation up to \$250,000. As a result, \$1,525,085 of the Company's cash balances are not covered by the FDIC.

Impairment of Long-Lived Assets -- As of September 30, 2008, Other Assets total \$2,423,429 for the Company's two technology licenses, comprised of \$2,579,167 in original value less accumulated amortization of \$155,738. The original value consists of \$200,000 in cash paid to M. D. Anderson plus 3,138,889 shares of common stock granted to M. D. Anderson valued at \$2,354,167. This value is being amortized over a fifteen year (15 year) period from November 7, 2007, the date that the technology licenses became effective. The Company accounts for the impairment and disposition of its long-lived assets in accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets. In accordance with SFAS No. 144, long-lived assets are reviewed for events of changes in circumstances which indicate that their carrying value may not be recoverable.

Research and Development Costs -- Costs and expenses that can be clearly identified as research and development are charged to expense as incurred in accordance with SFAS No. 2, "Accounting for Research and Development Costs."

Stock-Based Compensation -- Stock Options - In April of 2008 the Company made stock option grants for services over the next three years to purchase in the aggregate 1,615,000 shares of the Company's common stock. Terms of the stock option grants require, among other things, that the individual continues to provide services over the vesting period of the option, which is four or five years from the date that each option granted to the individual becomes effective. The exercise price of the options is \$0.90 a share. None of the stock options grants are for current officers of the Company. The Company determined the fair value of the stock options granted using the Black Scholes model and expenses this value monthly based upon the vesting schedule for each stock option award. For purposes of determining fair value, the Company used an average annual volatility of seventy two percent (72%), which was calculated based upon an average of volatility of similar biotechnology stocks. The risk free rate of interest used in the model was taken from a table of the market rate of interest for U. S. Government Securities for the date of the stock option awards and interpolated as necessary to match the appropriate effective term for the award. The total value of stock options granted was determined using this methodology to be \$1,053,940, which will be expensed over the next six years based on the stock option vesting schedule. The expense for the three months ended September 30, 2008 was \$30,770.

Warrants - In April of 2008 the Company awarded warrants for services to purchase in the aggregate 85,620 shares of the Company's common stock. The exercise price is \$0.90 a share. The warrants were one hundred percent (100%) vested upon issuance and were expensed upfront as warrants for services. The fair value of the warrants expensed was determined based using the same methodology as described above for stock options. The total value of the warrants granted was determined using this methodology to be \$36,050, the total amount of which was expensed in the second quarter 2008.

Net Loss Per Share – In accordance with SFAS No. 128, Earnings Per Share, and SEC Staff Accounting Bulletin (“SAB”) No. 98, basic net loss per common share is computed by dividing net loss for the period by the weighted average number of common shares outstanding during the period. Under SFAS No. 128, diluted net income (loss) per share is computed by dividing the net income (loss) for the period by the weighted average number of common and common equivalent shares, such as stock options and warrants, outstanding during the period.

Comprehensive Income -- Comprehensive income (loss) is defined as all changes in a company's net assets, except changes resulting from transactions with shareholders. At September 30, 2008, the Company has no reportable differences between net loss and comprehensive loss.

Use of Estimates -- The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the Company's consolidated financial statements and accompanying notes. On an ongoing basis, the Company evaluates its estimates and judgments, which are based on historical and anticipated results and trends and on various other assumptions that the Company believes to be reasonable under the circumstances. By their nature, estimates are subject to an inherent degree of uncertainty and, as such, actual results may differ from the Company's estimates.

ITEM 3A(T). CONTROLS AND PROCEDURES

An evaluation was carried out by the Company's Chief Executive Officer and Principal Financial Officer of the effectiveness of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of September 30, 2008, the end of the period covered by this Form 10-QSB. Based upon that evaluation, the Chief Executive Officer and Principal Financial Officer concluded that these disclosure controls and procedures were effective at a reasonable level..

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations on all control systems, no evaluation of controls can provide absolute assurance that all errors, control issues and instances of fraud, if any, with a company have been detected. The design of any system of controls is also based in part on certain assumptions regarding the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None.

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

None

ITEM 3. DEFAULTS BY THE COMPANY ON ITS SENIOR SECURITIES

None

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

No matter was submitted to our shareholders for a vote or consent during the quarter ended September 30, 2008. On or about January 9, 2008, we distributed an Information Statement to each of our shareholders relating to our plans to take corporation action by written consent in lieu of taking action at a special meeting of shareholders. This information statement was discussed in our Form 10-QSB for the quarter ended March 31, 2008.

ITEM 5. OTHER INFORMATION

None

ITEM 6. EXHIBITS

Exhibit 31 Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 302 of the Sarbanes Oxley Act of 2002.

Exhibit 32 Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes Oxley Act of 2002.

SIGNATURE

In accordance with the requirements of the Exchange Act, the Company has caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: November 14, 2008

BIO-PATH HOLDINGS, INC.

By /s/ Peter H. Nielsen,
Chief Executive Officer, President/Principal
Executive Officer, Chief Financial Officer,
Principal Financial Officer

