CONSOLIDATED TOMOKA LAND CO
Form SC 13D/A
November 29, 2017

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

SCHEDULE 13D

THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. 13)*

Consolidated-Tomoka Land Co.
(Name of Issuer)

Common Stock, par value $1.00 per share
(Title of Class of Securities)

210226106
(CUSIP Number)

Elizabeth N. Cohernour
Wintergreen Advisers, LLC
333 Route 46 West, Suite 204
Mountain Lakes, New Jersey 07046
(973) 263-2600
(Name, Address and Telephone Number of Person Authorized to Receive

Notices and Communications)

November 24, 2017
(Date of Event Which Requires Filing of this Statement)

If the filing
person has
previously filed a
statement on

Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of ss.240.13D-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box [X].

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 210226106

1. NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

Wintergreen Advisers, LLC

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*
(a) [X]
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS*

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) [_]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware, USA

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7. SOLE VOTING POWER

0

8. SHARED VOTING POWER

1,553,075

9. SOLE DISPOSITIVE POWER

0

10. SHARED DISPOSITIVE POWER

1,553,075

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,553,075

12.	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*	[_]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

27.8 %

14. TYPE OF REPORTING PERSON*

IA

CUSIP No. 210226106

1. NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

Wintergreen Fund, Inc.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*
(a) [X]
(b) [_]

3. SEC USE ONLY

4. SOURCE OF FUNDS*

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) [_]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Maryland, USA

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7. SOLE VOTING POWER

0

8. SHARED VOTING POWER

1,232,334

9. SOLE DISPOSITIVE POWER

0

10. SHARED DISPOSITIVE POWER

1,232,334

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,553,075

12.	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*	[_]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

27.8%

14. TYPE OF REPORTING PERSON*

IV

CUSIP No. 210226106

1. NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

Wintergreen Partners Fund, LP

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*
(a) [X]
(b) [_]

3. SEC USE ONLY

4. SOURCE OF FUNDS*

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) [_]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware, USA

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7. SOLE VOTING POWER

0

8. SHARED VOTING POWER

294,100

9. SOLE DISPOSITIVE POWER

0

10. SHARED DISPOSITIVE POWER

294,100

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,553,075

12.	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*	[_]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

27.8%

14. TYPE OF REPORTING PERSON*

PN

CUSIP No. 210226106

1. NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

Wintergreen Partners Offshore Master Fund, Ltd.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*
(a) [X]
(b) [_]

3. SEC USE ONLY

4. SOURCE OF FUNDS*

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) [_]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Cayman Islands

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7. SOLE VOTING POWER

0

8. SHARED VOTING POWER

26,641

9. SOLE DISPOSITIVE POWER

0

10. SHARED DISPOSITIVE POWER

26,641

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,553,075

12.	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*	[_]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

27.8%

14. TYPE OF REPORTING PERSON*

CO

CUSIP No. 210226106

1. NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

David J. Winters

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*
(a) [X]
(b) [_]

3. SEC USE ONLY

4. SOURCE OF FUNDS*

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) [_]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7. SOLE VOTING POWER

0

8. SHARED VOTING POWER

1,553,075

9. SOLE DISPOSITIVE POWER

0

10. SHARED DISPOSITIVE POWER [_]

1,553,075

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,553,075

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

27.8%

14. TYPE OF REPORTING PERSON*

IN

CUSIP No. 210226106

Item 1. Security and Issuer.

Consolidated-Tomoka Land Co. (the "Issuer"), Common Stock, par value $1.00 per share (the "Shares"). The address of the Issuer's offices is 1530 Cornerstone Boulevard, Suite 100 Daytona Beach, Florida 32117. This Schedule 13D relates to the Issuer's Shares.

Item 2. Identity and Background.

(a, f) This statement is being filed by (i) Wintergreen Fund, Inc. ("Wintergreen Fund"), a Maryland corporation registered as an investment company under the Investment Company Act of 1940, as amended (the "Investment Company Act"), (ii) Wintergreen Partners Fund, LP ("Wintergreen Partners"), a Delaware limited partnership, (iii) Wintergreen Partners Offshore Master Fund, Ltd. ("Wintergreen Offshore Master"), a Cayman Islands exempted company, (iv) Wintergreen Advisers, LLC ("Wintergreen Advisers"), a Delaware limited liability company which acts as sole investment manager of the Wintergreen Fund, Wintergreen Partners, Wintergreen Offshore Master and other investment vehicles, and (v) David J. Winters ("Winters"). (Each of Wintergreen Fund, Wintergreen Partners, Wintergreen Offshore Master, Wintergreen Advisers and Winters may be referred to herein as a "Reporting Person" and collectively may be referred to as "Reporting Persons").

(b) The principal business address of the Reporting Persons (except for Wintergreen Offshore Master) is 333 Route 46 West, Suite 204, Mountain Lakes, New Jersey 07046. The principal business address of Wintergreen Offshore Master is c/o Elian Fiduciary Services (Cayman) Ltd, 89 Nexus Way, Camana Bay, Grand Cayman E9 KY1-9007.

(c) Wintergreen Advisers is an investment management firm that serves as the investment adviser to certain registered and private investment funds, including Wintergreen Partners, Wintergreen Fund and Wintergreen Offshore Master. Wintergreen Partners is a Delaware limited partnership. Wintergreen Fund is an investment company registered under the Investment Company Act. Wintergreen Offshore Master is a Cayman Islands exempted company. Winters is the Chief Executive Officer of Wintergreen Advisers.

(d) None of the Reporting Persons have, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) None of the Reporting Persons have, during the last five years, been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding were or are subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration.

As of the date hereof each of the Reporting Persons may be deemed to beneficially own 1,553,075 Shares. The source of funds used to purchase the Shares was the working capital of Wintergreen Fund, Wintergreen Partners, Wintergreen Offshore Master and other investment vehicles managed by Wintergreen Advisers. The aggregate funds used by the Reporting Persons to make the purchases were approximately $71.5 million. The Shares may be deemed to be beneficially owned by each of the Reporting Persons because, although there is no formal written agreement, it is anticipated that each Reporting Person will vote with the other Reporting Persons and the director nominees nominated by Wintergreen Advisers in a letter to the Issuer dated November 24, 2017. Each Reporting Person disclaims beneficial ownership in the securities reported on this Schedule 13D except to the extent of its pecuniary interest, if any, therein, and this report shall not be deemed to be an admission that the Reporting Person is the beneficial owners of such securities for purposes of Section 16 of the Securities Exchange Act of 1934, as amended, or for any other purpose.

Item 4. Purpose of Transaction.

The Reporting Persons acquired the Shares for investment purposes in the course of the Reporting Persons' investing activities, and will review their investment in the Issuer on a regular basis. The Reporting Persons have had and may continue to have discussions with the Issuer's management, members of the Issuer's Board of Directors, other significant shareholders and others regarding the Issuer's business, strategy and future plans and alternatives that the Issuer could employ to maximize shareholder value.

On November 13, 2017, the Reporting Persons delivered a shareholder proposal (the "Shareholder Proposal") to the Issuer for inclusion in the Issuer's 2018 proxy statement. A copy of the Shareholder Proposal is attached hereto as Exhibit B and incorporated herein by reference. The Shareholder Proposal requests the Issuer's Board of Directors to take immediate steps to narrow the discount between NAV and the Issuer's share price by hiring an independent, previously unaffiliated, adviser to maximize shareholder value by evaluating all options for the Issuer, including through a sale of the Issuer or through the liquidation of the Issuer's assets.

On November 24, 2017, the Reporting Persons delivered a nomination (the "Nomination") to the Issuer presenting three director nominees to be voted on at the Issuer's 2018 annual meeting of shareholders. A copy of the Nomination is attached hereto as Exhibit C and incorporated herein by reference. Wintergreen Advisers' nominees (the "Nominees") for the Issuer's 2018 annual meeting include (1) Liz Cohernour, Chief Operating Officer of Wintergreen Advisers, (2) Evan Ho, a former employee of Wintergreen Advisers who currently provides consulting services to Wintergreen Advisers pursuant to an agreement between Wintergreen Advisers and an entity controlled by Mr. Ho, and (3) David J. Winters, Chief Executive Officer of Wintergreen Advisers. Although there is no formal written agreement, it is anticipated that each of the Nominees will vote with the other Reporting Persons and the other Nominees.

Despite the Issuer's assertions during the 2017 Proxy Contest, Wintergreen (as defined in Exhibits B and C below), as the largest shareholder of the Issuer with a 27.82% holding, has no representatives on the Board. The directors who were originally nominated by Wintergreen have not been supported by Wintergreen since 2015. This lack of support was well known by the Issuer, and this blatant misrepresentation that there are Wintergreen directors sitting on the Issuer's board should be grounds for them to **immediately step down.**

Wintergreen believes that the Issuer's apparent march toward a conversion to a REIT would have disastrous results for the Issuer's shareholders. Based on Wintergreen's calculations (please see pages 4-6 of Exhibit C), Wintergreen estimates that Wintergreen's plan to maximize value could result in a 64% to 69% premium to the Issuer's REIT plan. Wintergreen's Nominees will work to ensure that shareholders receive fair value for their shares. Wintergreen believes the Issuer's managements actions continue to cause the Issuer to trade at a massive discount to NAV.

It is time for the Issuer's Board to properly focus on the rights of shareholders and not be beholden to management. Wintergreen believes a vote for each of these Wintergreen Nominees, Liz Cohernour, Evan Ho and David Winters will benefit all shareholders.

The Reporting Persons intend to closely evaluate the performance of the Issuer, including, but not limited to, its share price, business, assets, operations, financial condition, capital structure, management's performance and prospects of the Issuer. In addition, the Reporting Persons reserve the right to, without limitation, acquire additional Shares, dispose of all or some of the Shares they currently hold from time to time, in each case in open market or private transactions, block sales or purchases or otherwise, or may continue to hold the Shares. Further, the Reporting Persons reserve the right to revise their plans or intentions and to take any and all actions that they may deem appropriate to maximize the value of their investment in the Issuer in light of their general investment policies, market conditions, and subsequent developments affecting the Issuer.

The Reporting Persons have no plans or proposals as of the date of this filing which, other than as expressly set forth above, relate to, or would result in, any of the actions enumerated in clauses (a) through (j) of Item 4 of Schedule 13D.

Item 5. Interest in Securities of the Issuer.

As of the date hereof, each Reporting Person may be deemed to be the beneficial owner of 1,553,075 Shares (27.8%) of the Issuer, based upon the 5,581,733 shares outstanding as of the latest practicable date, as represented by the Issuer in its Form 10-Q for the quarterly period ended September 30, 2017. The Shares may be deemed to be beneficially owned by each of the Reporting Persons because, although there is no formal written agreement, it is anticipated that each Reporting Person will vote with the other Reporting Persons and the director nominees nominated by Wintergreen Advisers in a letter to the Issuer dated November 24, 2017. Each Reporting Person disclaims beneficial ownership in the securities reported on this Schedule 13D except to the extent of its pecuniary interest, if any, therein, and this report shall not be deemed to be an admission that the Reporting Person is the beneficial owners of such securities for purposes of Section 16 of the Securities Exchange Act of 1934, as amended, or for any other purpose.

Wintergreen Advisers has the sole power to vote or direct the vote of 0 Shares; has the shared power to vote or direct the vote of 1,553,075 Shares; has the sole power to dispose or direct the disposition of 0 Shares; and has the shared power to dispose or direct the disposition of 1,553,075 Shares.

(a-e)

Wintergreen Fund has the sole power to vote or direct the vote of 0 Shares; has the shared power to vote or direct the vote of 1,232,334 Shares; has the sole power to dispose or direct the disposition of 0 Shares; and has the shared power to dispose or direct the disposition of 1,232,334 Shares.

Wintergreen Partners has the sole power to vote or direct the vote of 0 Shares; has the shared power to vote or direct the vote of 294,100 Shares; has the sole power to dispose or direct the disposition of 0 Shares; and has the shared power to dispose or direct the disposition of 294,100 Shares.

Wintergreen Offshore Master has the sole power to vote or direct the vote of 0 Shares; has the shared power to vote or direct the vote of 26,641 Shares; has the sole power to dispose or direct the disposition of 0 Shares; and has the shared power to dispose or direct the disposition of 26,641 Shares.
Winters has the sole power to vote or direct the vote of 0 Shares; has the shared power to vote or direct the vote of 1,553,075 Shares; has the sole power to dispose or direct the disposition of 0 Shares; and has the shared power to dispose or direct the disposition of 1,553,075 Shares.

The Reporting Persons have not transacted in the Shares during the past sixty days.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

Although there is no formal written agreement, it is anticipated that each Reporting Person intends to vote with the other Reporting Persons and the director nominees nominated by Wintergreen Advisers in a proposal to the Issuer dated November 24, 2017.

Item 7. Material to be Filed as Exhibits.

Exhibit A: Joint Filing Statement

Exhibit B: Shareholder Proposal

Exhibit C: Nomination

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: November 29, 2017

Wintergreen Advisers, LLC

/s/ Elizabeth N. Cohernour
Name: Elizabeth N. Cohernour

Title: Managing Member

Wintergreen Fund, Inc.

/s/ Elizabeth N. Cohernour
Name: Elizabeth N. Cohernour

Title: Executive Vice President

Wintergreen Partners Fund, LP

/s/ Elizabeth N. Cohernour
By: Wintergreen GP, LLC
By: Elizabeth N. Cohernour, Managing Member

Wintergreen Partners Offshore Master Fund, Ltd.

/s/ Elizabeth N. Cohernour
By: Elizabeth N. Cohernour, Director

David J. Winters

/s/ David J. Winters

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

Exhibit A

AGREEMENT

The undersigned agree that this Schedule 13D, amendment number 13, relating to the Common Stock, par value $1.00 per share of Consolidated-Tomoka Land Co. shall be filed on behalf of the undersigned.

Dated: November 29, 2017

Wintergreen Advisers, LLC

/s/ Elizabeth N. Cohernour
Name: Elizabeth N. Cohernour

Title: Managing Member

Wintergreen Fund, Inc.

/s/ Elizabeth N. Cohernour
Name: Elizabeth N. Cohernour

Title: Executive Vice President

Wintergreen Partners Fund, LP

/s/ Elizabeth N. Cohernour
By: Wintergreen GP, LLC
By: Elizabeth N. Cohernour, Managing Member

Wintergreen Partners Offshore Master Fund, Ltd.

/s/ Elizabeth N. Cohernour
By: Elizabeth N. Cohernour, Director

David J. Winters

/s/ David J. Winters

Exhibit B

Consolidated-Tomoka Land Co.

c/o Daniel E. Smith, Corporate Secretary

Post Office Box 10809

Daytona Beach, FL 32120-0809

November 13, 2017

Dear Mr. Smith:

Pursuant to the 2017 proxy statement of Consolidated-Tomoka Land Co. and Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), Wintergreen Advisers, LLC presents the following Shareholder Proposal for inclusion in Consolidated-Tomoka Land Co.'s 2018 proxy statement:

Proposing Shareholder Information:

The nominating shareholders are Wintergreen Partners Fund, LP (the "Partnership") and Wintergreen Advisers, LLC (the "Adviser") on behalf of its clients (as described below), 333 Route 46 West, Suite 204, Mountain Lakes, New Jersey 07046, phone number: (973) 263-2600. As of the date of this notice, the Adviser may be deemed to beneficially own 1,553,075 shares of common stock, par value $1.00 per share ("Stock"), of Consolidated-Tomoka Land Co. ("CTO" or the "Company"), which constitutes 27.82% of CTO's Stock outstanding. The Stock was purchased between February 21, 2006 and November 10, 2016. The dates upon which Wintergreen acquired ownership of CTO's shares is set forth on Appendix B, attached hereto. As of the date of this notice, the Partnership beneficially owns 294,100 shares of Stock (approximately 5.27% of CTO's stock outstanding), which includes 5,882 shares of Stock held of record by the Partnership. The Stock was purchased between February 21, 2006 and November 10, 2016. The Adviser is the investment adviser to Wintergreen Fund, Inc. (the "Fund"), a registered investment company, which owns 1,232,334 shares of Stock (approximately 21.47% of CTO's Stock outstanding). The Adviser also serves as investment adviser to the Partnership and other pooled investment vehicles, which also own additional Stock (the Fund, the Partnership, the other investment vehicles and the Adviser, collectively, "Wintergreen"). Wintergreen has beneficially owned more than 10% of the Stock since May 2006. Wintergreen has a good faith intention to maintain an ownership interest in CTO that complies with the requirements of Rule 14a-8 through the date of the annual meeting and to attend the annual meeting in person or by proxy (in compliance with Rule 14a-8 and CTO's Bylaws) to present this proposal. Attached hereto in Appendix A are copies of Schedule 13D amendments proving Wintergreen's eligibility to make this proposal. As of the date of this proposal, Wintergreen has not made any other proposal under Rule 14a-8 for the Company's 2018 Annual Meeting of Shareholders and does not intend to do so. In addition, the Partnership is a holder of record of capital stock of CTO, entitled to vote at the Company's 2018 Annual Meeting of Shareholders, and intends to appear in person or by proxy at the meeting to bring this business before the meeting.

Shareholder Proposal:

PROPOSED: The shareholders of CTO, assembled at the annual meeting in person and by proxy, hereby request the Board of Directors (the "Directors") to take immediate steps to narrow the discount between NAV and the Company's share price by hiring an independent, previously unaffiliated, adviser to maximize shareholder value by evaluating all options for the Company, including through a sale of CTO or through the liquidation of CTO's assets.

Supporting Statement:

We believe the proper focus of CTO management should be the maximization of shareholder value by either a sale of CTO or through the liquidation of CTO's assets. In 2016, over 69% of shareholders backed a proposal submitted by Wintergreen to hire an independent adviser to evaluate ways to maximize shareholder value through the sale of CTO or through the liquidation of CTO's assets. At the time, the Company indicated that one of the factors preventing a sale was its substantial remaining land holdings. Since that time, the Company has placed under contract the majority of the remaining land. Based on the Company's own NAV estimate in the 2017 Q3 Shareholder Presentation, the Company currently trades at a massive discount to NAV. We believe the Company has effectively become a closed-end fund that is trading at a large discount. On the Company's Q3 2017 earnings call on October 19, 2017, the Company's CEO indicated "What we've always said consistently is that if there's some sort of proposal out there that's great for shareholders, we're all about basically bringing that to the board and discussing it, and if that works, bringing it to the shareholders." Therefore, we believe that the greatest value to shareholders will be to carefully evaluate all options for the Company, including through a thoughtful evaluation of the sale of CTO or the liquidation of CTO's assets. We think a conversion to a REIT could have serious tax implications for CTO's shareholders and primarily works to entrench management. During one of the greatest bull markets in real estate over the last 3 years, CTO's stock price has gone nowhere. It is time to realize full NAV for shareholders and to stop rewarding management for what we view as a failed strategy.

A vote for this shareholder proposal would benefit all shareholders.

****

Please direct any questions regarding the information contained in this correspondence to our legal counsel, Edward Horton ((212) 574-1265) of Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004.

Sincerely,

Wintergreen Advisers, LLC

By: /s/ David J. Winters
Print Name: David J. Winters
Title: CEO

By: /s/ Liz Cohernour
Print Name: Liz Cohernour
Title: COO

Wintergreen Partners Fund, LP

By: Wintergreen GP, LLC
its general partner

By: /s/ David J. Winters
Name: David J. Winters
Title: Managing Member

Appendix A

Attached hereto are filed Schedule 13D amendments covering the last 18 months proving Wintergreen's eligibility to make this proposal and reflecting Wintergreen's ownership of CTO's Stock. Wintergreen has beneficially owned more than 10% of the Stock since May 2006. Wintergreen has a good faith intention to maintain an ownership interest in CTO that complies with the requirements of Rule 14a-8 through the date of the annual meeting and to attend the annual meeting in person or by proxy (in compliance with Rule 14a-8 and CTO's Bylaws) to present this proposal.

Appendix A

[INTENTIONALLY OMITTED]

Appendix B

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Exhibit C

Consolidated-Tomoka Land Co.
c/o Daniel E. Smith, Corporate Secretary
Post Office Box 10809
Daytona Beach, FL 32120-0809

November 24, 2017

Dear Mr. Smith:

Pursuant to Section 1.11 of the Amended and Restate Bylaws and the 2017 proxy statement of Consolidated-Tomoka Land Co., Wintergreen Partners Fund, LP and Wintergreen Advisers, LLC on behalf of its clients present the following Director Nominees for election at Consolidated-Tomoka Land Co.'s 2018 annual meeting of shareholders.

Nominating Shareholder Information:

The nominating shareholders are Wintergreen Partners Fund, LP (the "Partnership") and Wintergreen Advisers, LLC (the "Adviser") on behalf of its clients (as described below), 333 Route 46 West, Suite 204, Mountain Lakes, New Jersey 07046, phone number: (973) 263-2600. As of the date of this notice, the Adviser may be deemed to beneficially own 1,553,075 shares of common stock, par value $1.00 per share ("Stock"), of Consolidated-Tomoka Land Co. ("CTO" or the "Company"), which constitutes 27.82% of CTO's Stock outstanding. The Stock was purchased between February 21, 2006 and November 10, 2016. The dates upon which Wintergreen (as defined below) acquired ownership of CTO's shares is set forth on Appendix B, attached hereto. As of the date of this notice, the Partnership beneficially owns 294,100 shares of Stock (approximately 5.27% of CTO's stock outstanding), which includes 5,882 shares of Stock held of record by the Partnership. The Stock was purchased between February 21, 2006 and November 10, 2016 as set forth on Appendix B, attached hereto. The Adviser is the investment adviser to Wintergreen Fund, Inc. (the "Fund"), a registered investment company, which owns 1,232,334 shares of Stock (approximately 22.08% of CTO's stock outstanding), of which 24,647 shares of Stock are held of record. The Adviser is also the investment adviser to Wintergreen Partners Offshore Master Fund, Ltd (the "Master Fund"), a Cayman Islands exempted company, which owns 26,641 shares of Stock (approximately 0.47% of CTO's stock outstanding), of which 533 shares of Stock are held of record. The Adviser also serves as investment adviser to the Partnership. The Partnership, the Fund, the Master Fund and the Adviser are herein referred to as collectively, "Wintergreen." Wintergreen has beneficially owned more than 10% of the Stock since May 2006. Wintergreen has a good faith intention to maintain an ownership interest in CTO through the date of the annual meeting and to attend the annual meeting in person or by proxy (in compliance with CTO's Bylaws) to present the following nominations. In addition, the Partnership hereby represents that it is a holder of record of capital stock of CTO, entitled to vote at the Company's 2018 Annual Meeting of Shareholders, and intends to appear in person or by proxy at the meeting to bring this business before the meeting.

Director Nominee Information:

Wintergreen Partners Fund, LP and the Adviser, on behalf of its clients, seek to nominate Elizabeth Cohernour, Evan Ho and David Winters (the "Wintergreen Nominees") to be elected to CTO's board of directors at the annual meeting of shareholders for a one-year term expiring at the 2019 Annual Meeting of Shareholders. The Wintergreen Nominees are committed to acting in the best interests of all shareholders. Wintergreen believes that the shareholders' voices in the future of CTO can best be expressed through the election of the Wintergreen Nominees rather than the Company's nominees. In accordance with the instructions provided in the Company's Proxy Statement filed on March 21, 2017, we hereby submit the following information (including the information attached as Appendix A), with regards to the Wintergreen nominees:

<u>Nominee Information</u>

Name	Age	Contact Information	Business Experience
		Business Address:	
Elizabeth N. Cohernour	67	<u>Residential Address</u> <u>Telephone</u> <u>Email</u>	Ms. Cohernour has over 30 years of legal experience and more than 25 years of experience investing in real estate companies. Ms. Cohernour is the Chief Operating Officer and a principal of Wintergreen Advisers, LLC. Ms. Cohernour has substantial experience investing in the securities of real estate companies, in which capacity she has worked with issuers' boards of directors and management to unlock shareholder value. Such experience in addition to Wintergreen's investment in CTO since 2006, includes investments in Canary Wharf Group, Florida East Coast Industries, Inc., Pacific Forest Products, Richmond, and Fredericksburg and Potomac Railroad. Prior to co-founding Wintergreen Advisers in 2005, she served as General Counsel and Senior Vice President at Franklin Mutual Advisers and Mutual Series Fund Inc., a group of global and equity value funds. Mrs. Cohernour has responsibility for non-investment operations of Wintergreen. Together with Mr. Winters, Ms. Cohernour has worked with issuers' boards of directors and management to unlock shareholder value. Ms. Cohernour has been integral to Wintergreen's investment in CTO for over eleven years. Ms. Cohernour graduated with a BA from the College of St. Elizabeth and she holds a Juris Doctor degree from the University of Tulsa.

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Evan H. Ho	51	Business Address: Residential Address Telephone Email	Mr. Ho is the founder of Value Investor Resources, Inc. Prior to forming Value Investor Resources, Inc. in 2015, Mr. Ho worked at Wintergreen Advisers from 2006 to 2014 as a securities analyst. Mr. Ho began his career at a real estate consultancy and brokerage firm in Hong Kong, and a bank in Taiwan which was active in construction-related lending. Over the course of Mr. Ho's 20 years of experience in the securities and banking industry, including domestic and international roles at BNP Paribas and Bankers Trust, he has gained broad expertise in equity analysis and corporate credit analysis, as well as developed a network of real estate professionals throughout Asia. Mr. Ho. is proficient in Mandarin Chinese and well acquainted with the business practices and customs of Greater China. Such experience would enable Mr. Ho to aid the Company in marketing the attractiveness of Daytona-area real estate to Chinese investors and property developers. Mr. Ho graduated with a BA in Economics from Georgetown University and an MBA in Finance from the Wharton School of The University of Pennsylvania.
David J. Winters	55	Business Address: Residential Address Telephone	David J. Winters is the Chief Executive Officer of Wintergreen Advisers, LLC. Mr. Winters has over30 years of experience analyzing securities and is responsible for determining general investment advice to be given to clients. Mr. Winters has substantial experience investing in the securities of real estate companies, in which capacity he has worked with issuers' boards of directors and management to unlock shareholder value. Such experience in addition to Wintergreen's investment in CTO since 2006, includes investments in Canary Wharf Group, Florida East Coast Industries, Inc., Pacific Forest Products, Richmond, Fredericksburg and Potomac Railroad, and Weyerhaeuser Company. Mr. Winters has led Wintergreen's investment in CTO for over eleven years. He is Portfolio Manager of Wintergreen Advisers, LLC's clients, including Wintergreen Fund, Inc., a no-load, Global Value Fund which launched in October 2005. Prior to co-founding WintergreenAdvisers, LLC in May 2005, he held various positions with Franklin Mutual Advisers where he led Mutual Series Fund Inc., a group of global and domestic equity value funds, including serving as the Portfolio Manager of Mutual Discovery from2001 through 2005. Mr. Winters served as a Director for the Franklin Mutual Series Fund family from 2001 to 2005. Mr. Winters graduated with a BA from Cornell University and he holds the Chartered Financial Analyst (CFA) designation.

Email

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Supporting Statement:

Despite the Company's assertions during the 2017 Proxy Contest, Wintergreen, as the largest shareholder of the Company with a 27.82% holding, has no representatives on the Board. With the exception of Mr. Olivari, who Wintergreen believes has worked in shareholders' interests, the other directors that were originally nominated by Wintergreen have not been supported by Wintergreen since 2015. This lack of support was well known by the Company, and this blatant misrepresentation should be grounds for them to immediately step down. As an example, during CTO's first and only Investor Day in December 2016, Mr. Olivari was the only director to leave the sequestered conference room where the board was listening in to the presentation so he could speak with investors, some of whom had traveled quite a distance to attend the meeting and all of whom had invested their time in attending the Investor Day. Mr. Albright, who presented at the Investor Day, attempted to leave the event as soon as the presentation was completed. Only after significant objection from investors other than Wintergreen did Mr. Albright participate in the Q&A. As soon as possible he ran from the room and did not join investors for any conversation or for the scheduled bus tour around the CTO properties.

In addition to creating this false impression about Wintergreen directors, the Company's 2017 proxy materials and solicitation included several mistruths about Wintergreen. These untruths to shareholders included misrepresentations about Wintergreen's business and the impact of Wintergreen's past actions, which CTO has previously said have benefited all shareholders. It is unclear whether the then current Board members and the then newly Company proposed directors are who authorized the use of corporate funds for conducting a very negative campaign. However, as the statements have not been corrected or retracted, we believe that the full Board has implicitly approved of their use, and therefore, are responsible.

The current Board members own a de minimis amount of stock and therefore we believe their interests are not aligned with the true shareholders of the company. The three true Wintergreen nominees, Liz Cohernour, Evan Ho, and David Winters, will represent shareholders true interests, including fulfilling the shareholder mandate to maximize value and minimize the discount between current NAV and the corporate recognized and acknowledged value.[1]

In 2016, the Board of CTO made a change to the Company's bylaws that required any action against the company to be heard in Volusia County, FL. This is a further example of the shareholder unfriendly attitude of this Board, and we believe that the change should be immediately repealed.

Wintergreen believes that the Company's apparent march toward a conversion to a REIT[2] would have disastrous results for CTO's shareholders. Based on our calculations, we estimate that Wintergreen's plan to maximize value could result in a 64% to 69% premium to the Company's REIT plan. Wintergreen's nominees will work to ensure that shareholders receive fair value for their shares. Wintergreen is focused on narrowing the discount and maximizing shareholder value. Wintergreen is in no way beholden to any current member of management or the board, nor is Wintergreen interested in prolonging the process of winding up CTO's current business which except for trading in the open market right now looks and is valued much like a closed end fund. Most of the land has now been sold, and the portfolio is now liquid and can be liquidated in an orderly sale. We believe CTO's managements actions continue to cause CTO to trade at a massive discount to NAV. Wintergreen is not interested in permanent employment as directors of CTO.

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[1] Page 27 of CTO's REIT World 2017 Investor Presentation, filed on November 13, 2017.

[2] Page 30 of CTO's REIT World 2017 Investor Presentation, filed on November 13, 2017

Wintergreen's Plan
For Maximizing Shareholder Value
Estimate of CTO NAV

$456,100,000 —
$509,100,100 *from CTO REIT World Presentation, Page 27, dated Nov 13, 2017*
$81.71 — $91.21 /share
Potential Hidden Value within CTO

$5.68 — $26.13 /share *Wintergreen's Estimate of Potential Hidden Value at CTO, using CTO's estimated yield ranges, and other estimates.*
Wintergreen's estimate of Current NAV per share
$87.39 — $117.34/share

For organizations supporting RIM Blackberry devices, the Web Messenger Mobile Server also interfaces with the Blackberry Enterprise Server (BES). Each mobile device must run the WebMessenger Mobile Client. The client communicates with the WebMessenger Mobile Server using a proprietary WebMessenger protocol (i.e. not SIP based). Information passed between the client and the server contains the IM and presence information available within OCS.

Our Legacy technology is delivered by our desktop based Phone Companion Software (PCS) through our proprietary Enhanced Services Platform. Our wholly owned subsidiary Liberty Telecom, a competitive local exchange carrier (CLEC), provides us with proprietary call routing and switching technology. We have designed our call-bridging software to be highly configurable and flexible, enabling us to deliver customized services to each of our subscribers through a common software platform, and to quickly add or enhance applications and features to meet the evolving needs of the mainstream market. Our Enhanced Services Platform intercepts inbound calls from traditional landline, wireless and IP-based networks, manages and filters calls and delivers calls to our subscribers on landline telephones, mobile phones and personal computers. Our platform contains a number of component applications, or communications applets, which we bundle into customized services to address the unique needs of our different target markets. For example, our software allows subscribers who are using their landline telephones for Internet access to screen and accept telephone calls on other devices such as a mobile or landline telephone.

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CallWave FUZE

We launched our new enterprise-class collaboration, presence and real time communications product called FUZE on September 17, 2008 in New York at the Web 2.0 Expo New York and Interop New York 2008 tradeshows. FUZE allows customers to meet online and bridges the gulf between the office and mobile devices. With FUZE, customers are now able to collaborate with clients and their teams instantly from anywhere and on any device. Meetings can be conducted from your desktop or mobile phone with High Definition (HD) quality and leverages proprietary synching technology that ensures that content is always in-sync across multiple connections and countries. Our new FUZE platform incorporates high fidelity conferencing and enterprise-class security and reliability. FUZE also integrates federated IM across all popular IM platforms, is presence enabled and syncs with Microsoft Outlook so meetings are easy to schedule and coordinate.

CallWave WebMessenger

CallWave acquired certain assets of WebMessenger in August 2008 for $9.0 million. WebMessenger s presence engine and federated IM technology has been integrated into our FUZE web collaboration product line which was launched on September 17, 2008. The Web Messenger product line allows the FUZE platform to extend collaboration to the mobile phone. We believe that it will be critical for web meeting and content providers to have an enterprise class collaboration solution that can be extended to the mobile endpoint devices. WebMessenger will also be sold as a stand alone product line to small and medium sized companies as well as enterprise customers. We plan to offer the following WebMessenger product lines:

WebMessenger Message Alerts. WebMessenger Message Alerts allows end users and group administrators to define custom filters and alert rules that are automatically applied to all incoming email, SMS messages, and phone calls. Message Alerts manages and controls communications on mobile business devices. The WebMessenger Message Alerts product will be sold in a standard, enterprise and compliance package, at various pricing tiers depending upon the number of users and architecture requirements.

WebMessenger Mobile Voice. WebMessenger Mobile Voice works in conjunction with WebMessenger Mobile Enterprise Collaboration solutions to unify mobile (instant messaging) IM and (internet protocol) IP telephony within the enterprise environment, significantly enhancing real-time collaboration for mobile professionals, while dramatically reducing mobile phone costs. WebMessenger Mobile Voice simplifies IT deployment of mobile collaboration and IP telephony solutions. Mobile professionals can communicate from their mobile device in the same way they do from their desk. By combining mobile IM and voice in a single solution, an enterprise can extend its investment in real-time collaboration platforms from Microsoft, IBM and others, as well as investments in VoIP and IP PBX solutions. WebMessenger Mobile Voice will be sold as a premise, hosted and stand-alone package with various pricing tiers depending upon the number of users and architecture requirements.

WebMessenger Mobile. WebMessenger Mobile extends presence and secure enterprise class IM to the mobile phone. The solution is federated across all enterprise collaboration platforms and public IM networks including Microsoft OCS/LCS, IBM Lotus Sametime, Jabber/XMPP, Reuters Messaging, MSN Messenger, AOL IM, Yahoo IM, Google Talk, Skype and ICQ. The platform is optimized for all major mobile platforms including BlackBerry, Windows Mobile, Apple iPhone, Symbian and Palm. WebMessenger Mobile will be sold as both consumer and fully integrated enterprise solutions with various pricing packages depending on the number of users and the architecture requirements.

CallWave Internet Answering Machine

Our CallWave Internet Answering Machine services have historically generated most of our revenues. These services extend the functionality of our subscribers existing telecommunications services by adding easy-to-use enhancements such as real-time voicemail, which allows subscribers to screen a message being left on their landline number from their mobile phone or their Internet-connected personal computer. Our landline services also include virtual telephone numbers that enable our subscribers to receive the benefits of a personalized or dedicated phone number routed to their existing telephone lines, without requiring additional physical phone lines to be installed. We do not plan to invest additional resources in this business. However, we view this business as a core asset that allows the Company to test new products and feature sets and importantly provides significant free cash flow that can be invested in our unified communications products.

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We offer three principal levels of CallWave service:

CallWave Alert ($1.50 per month or $17.95 per year). CallWave Alert is our lowest-priced subscription level. Our CallWave Alert service delivers notifications of calls placed to any of our subscribers telephone numbers, even when those lines are not answered or are in use by sending a message to a device of our subscribers choosing.

CallWave Messenger ($5.95 per month). CallWave Messenger is our mid-level subscription, providing all of the features of CallWave Alert, as well as caller identification and delivery of voice messages, even when subscribers lines are in use or are not answered.

CallWave Connect ($7.95 per month). CallWave Connect is our most feature-rich and high-end service level currently offered. CallWave Connect service enables customers to screen, transfer or receive calls in real-time, and if they choose, interrupt the message to take the call. In addition, subscribers to CallWave Connect receive the benefits of a system that automatically creates a contact book based on the calls received and allows them to use our enhanced features to reply or call back to persons listed in their address book and to initiate text or voice communications to other persons as well.

CallWave Internet Fax

CallWave Fax utilizes the same Enhanced Services Platform to offer customers personalized fax numbers that send and receive faxes to the user s e-mail account. This provides greater flexibility to customers by allowing them to receive and print faxes from any location where they are connected to a personal computer and allows customers to keep an unlimited digital history of all faxes. We provide various pricing packages ranging from $7.95-$12.95 per month.

CallWave Voicemail-To-Text

CallWave Voicemail-To-Text, launched January 2007, enables users to manage calls from multiple sources (i.e. PCs, and mobile and home phones), making available unlimited, searchable, easily archived digital voicemail. Voicemail-to-Text sends a copy of mobile phone voicemail messages to users email, enabling them to sort and prioritize, listen and respond to messages all from their email inbox. When not at the computer, users are notified of mobile voicemail messages via detailed text message, with the ability to sort messages, listen, pause, replay, save, delete or reply to the caller (via text or callback), all from their desktop. In January 2008, CallWave also launched Voicemail-to-Text for Apple products that have the look and feel of Apple operating systems. We provide various pricing packages ranging from $14.95-$49.95 per month.

CallWave Web 2.0 Widgets

Widgets are mini web applications that are very simple to download and highly cost-effective channels for delivering software and services to consumers whom we may not reach through other marketing channels. During the year, CallWave introduced SMS text messaging widgets in addition to the wireless industry s first visual voicemail widget. The visual voicemail widget enables users to view their list of wireless mobile voice messages on their desktop and then prioritize and listen to these messages. The SMS text widget allows desktop sending of text messages domestically within the United States. All widgets have access to a PhonePage described below. We distribute our widgets on popular galleries including Google, Apple, Yahoo!, Microsoft, and social networks. The widgets are currently free and will be used as a lead generation channel for our FUZE and WebMessenger products.

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Our Strategy

CallWave s business objective is to become a leading provider of software solutions to enterprises, SMEs and mobile professionals with differentiated technologies and products that address the high-growth collaboration and conferencing segment of the unified communications market. We plan to achieve this objective through the following strategies:

Leverage CallWave s first mover advantage with its unique WebMessenger and FUZE collaboration and conferencing platforms. The Company s product lines offer differentiated features and address major development hurdles in the collaboration and conferencing market including providing platform agnostic mobile collaboration capabilities across devices, high-def audio, video and document sharing. With this first mover advantage, CallWave believes it is well positioned to become a leader in the collaboration and conferencing market.

Extend FUZE to mobile devices smartphones and business users. Integrating WebMessenger s presence-based technology with FUZE allows CallWave to offer FUZE to Mobile endpoint devices. With this unique capability, FUZE collaboration applications can be extended globally, securely and across platforms to mobile devices without downloading any software. FUZE is designed to work through any mobile endpoint device or personal computer (PC) screen and an IP connection, which means FUZE will be able to operate on most end-point devices including set-top boxes, gaming consoles and other platforms that are being developed and will be brought to market. CallWave plans to leverage FUZE s unique mobile extensibility, technology independence and platform agnostic abilities.

Establish global footprint through FUZE and WebMessenger rollout. CallWave s FUZE and WebMessenger product lines address growing global trends in collaboration and conferencing. With collaboration and conferencing solutions that extend RSA-encrypted, enterprise class applications to the mobile phone regardless of the platform, CallWave s products are designed to meet global demand.

Make strategic acquisitions that accelerate, enhance and/or defend CallWave s leadership position. CallWave s acquisition strategy is opportunistic and based on three criteria. The Company evaluates acquisition opportunities that it believes will generate additional subscribers or customers, provide unique technologies or capabilities, and/or help accelerate the Company s revenues and earnings growth.

Invest in future growth and current trends while controlling operating expense. In conjunction with its new product launches and to remain at the forefront of evolving technology, the Company expects to continue to invest in sales, marketing, and research and development in fiscal 2009. CallWave operates software teams in Silicon Valley, California and Sofia, Bulgaria.

Scale technology using cloud computing and virtualization. CallWave plans to use cloud computing to scale its business without incurring traditional costs that are associated with growth of operations. Cloud computing and virtualization provide computer networking and storage services for business customers. It can also eliminate a company s need for its own data center and allows business to pay for bandwidth on an on-demand basis.

Our historical business has been a traditional direct-to-consumer dial-up business with an Internet voicemail application that ensures subscribers won t miss calls while on line with their dial-up connection. Our legacy business includes approximately 361,000 subscribers as of December 31, 2008.

The customer base for our legacy products has been declining. At this time we do not plan to invest additional resources in our legacy business. However, we do expect to maintain the legacy infrastructure and limited advertising to drive profitable new subscribers to our legacy businesses. We view the legacy business as a core asset that allows us to test new products and feature sets and provide significant free cash flow that can be invested in our new line of unified communications products. We expect that over time sales of our new products will mitigate the impact of declining revenue from our legacy business.

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Critical Accounting Policies and the Use of Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our Condensed Consolidated Financial Statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, we evaluate our estimates, including those related to revenue recognition, allowances for doubtful accounts, accounting for income taxes, loss contingencies, marketable securities, stock-based compensation, and valuation of acquired intangible assets. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates. We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our Condensed Consolidated Financial Statements. Management has discussed the development and selection of the following critical accounting policies, estimates and assumptions with the Audit Committee of our Board of Directors and the Audit Committee has reviewed these disclosures.

Revenue recognition.

We earn revenues primarily from paid subscriber services and, to a lesser extent, from local exchange carrier call termination access charges and the offering of third-party products and services to our subscribers.

We recognize revenue in accordance with accounting principles generally accepted in the United States and with Securities and Exchange Commission Staff Accounting Bulletin 104 (SAB 104), *Revenue Recognition*, which clarifies certain existing accounting principles for the timing of revenue recognition and classification of revenues in the financial statements. We recognize revenue beginning when there is persuasive evidence of an arrangement, delivery has occurred or services have been rendered, the fees are fixed and determinable and collection is reasonably assured. Our subscriber revenues consist mainly of monthly recurring subscription fees. We recognize revenue ratably over the subscription period when the SAB 104 criteria are met. Revenues and associated expenses are deferred and recognized over the associated service period. Associated expenses are deferred only to the extent of such deferred revenue.

In addition to the direct relationship that we have with the majority of our paid subscribers, we also have indirect relationship agreements with Internet service providers (ISPs) and other companies whereby those companies customers are offered a co-branded subscription service. When the agreement provides that we are the party responsible for providing the service, have control over the fees charged to customers and bear the credit risk, we record the gross amount billed as revenue in accordance with Emerging Issues Task Force 99-19 (EITF 99-19), *Reporting Revenues Gross as a Principal Versus Net as an Agent*. When the agreement provides that we receive a net payment from our co-branding partners based upon the number of their customers registered for our services, we record the net amount received as revenue in accordance with EITF 99-19.

Allowances for Doubtful Accounts

We record an allowance for doubtful accounts based on our historical experience with bad debts. We periodically review and evaluate bad debt reserves held by the local telephone companies and the third party that manages our billing relationship with the telephone companies. Judgment is required when we assess the realization of receivables, including assessing the probability of collection. Our allowance for doubtful accounts totaled $235,000 as of December 31, 2008 and $285,000 as of June 30, 2008. Our allowance for doubtful accounts is correlated with our aggregate billings through the local telephone companies.

Accounting for Income Taxes

We account for income taxes using the asset and liability method in accordance with SFAS No. 109, *Accounting for Income Taxes*, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and tax bases of the assets and liabilities. At December 31, 2008, we had net deferred tax assets of $12.6 million. Due to the uncertainty of realizing these net deferred tax assets, we have recorded a valuation allowance for the entire balance of the deferred tax assets. Such uncertainty primarily relates to the potential for net operating loss carryforwards and tax credits which begin to expire in 2010 and 2009, respectively, to be realized against future taxable income. We will continue to assess the likelihood of realization of these assets.

Loss Contingencies

We are subject to the possibility of various loss contingencies arising in the ordinary course of business. We consider the likelihood of loss or impairment of an asset or the incurrence of a liability, as well as our ability to reasonably estimate the amount of loss, in determining loss contingencies. An estimated loss contingency is accrued when it is probable that an asset has been impaired or a liability has been incurred and the amount of loss can be reasonably estimated. We regularly evaluate current information available to us to determine whether such accruals should be adjusted and whether new accruals are required.

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Marketable securities

Marketable securities consist of investment grade government agency and corporate debt securities. Investments with maturities beyond one year are classified as short-term based on their highly liquid nature and because such investments represent the investment of cash that is available for current operations. All investments are classified as available-for-sale and are recorded at market value. Unrealized gains and losses are reflected in other comprehensive loss.

We have adopted SFAS No. 157 which establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Observable inputs are obtained from independent sources and can be validated by a third party whereas unobservable inputs reflect assumptions regarding what a third party would use in pricing an asset or liability. A financial instrument s categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. SFAS No. 157 establishes three levels of inputs that may be used to measure fair value:

Level 1 Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2 Include 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 also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

In accordance with SFAS 157, the Company measures its cash equivalents and marketable securities at fair value within Level 1. Auction rate securities are measured at fair value within Level 3. Fair value measurements for auction rate securities have been estimated using an income approach (discounted cash-flow analysis). When estimating fair value, we consider both observable market data and non-observable factors, including credit quality, duration, insurance wraps, collateral composition, comparable trading instruments, and likelihood of redemption. Significant assumptions used in the analysis include estimates for interest rates, spreads, cash flow timing and amounts, and holding periods of the securities.

Both the Financial Accounting Standards Board (FASB) and the staff of the SEC have re-emphasized the importance of sound fair value measurement in financial reporting. In October 2008, the FASB issued FASB Staff Position No. FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset is Not Active*. This statement clarifies that determining fair value in an inactive or dislocated market depends on facts and circumstances and requires significant management judgment. This statement specifies that it is acceptable to use inputs based on management estimates or assumptions, or for management to make adjustments to observable inputs to determine fair value when markets are not active and relevant observable inputs are not available. Our fair value measurement policies are consistent with the guidance in FSP No. FAS 157-3.

Stock-Based Compensation

We account for stock-based compensation in accordance with the provisions of SFAS No. 123 (Revised 2004), *Share-Based Payment* (SFAS No. 123R). Under the fair value recognition provision of SFAS No. 123R, stock-based compensation cost is estimated at the grant date based on the fair value of the award. We estimate the fair value of stock options granted using the Black-Scholes-Merton option pricing model and a single option award approach. The fair value is amortized on a straight-line basis over the requisite service period of the awards, which is generally the vesting period.

Determining the appropriate fair value of stock-based awards at the grant date requires judgment, including estimating stock price volatility, forfeiture rates and expected term. We compute expected volatility based on a combination of both historical volatility and market-based implied volatility, as we believe that the combination provides a more accurate estimate of future volatility. The expected term represents the period of time that our stock-based awards are expected to be outstanding and is determined based on historical experience of similar awards. Due to the inherent uncertainty in valuing awards for publicly-traded stock as of the grant date, given that such awards will be exercised, purchased or sold at indeterminate future dates, the actual value realized by the recipients, if any, may vary significantly from the value of the awards estimated by us at the grant date.

Valuation of acquired intangible assets

We have acquired intangible assets primarily via the acquisition of license agreements. These license agreements give us the right to practice and use certain technologies in the fax, voice and internet telephony space. These assets are accounted for under Statement of Financial Accounting Standards (SFAS) No. 142, *Goodwill and Other Intangible Assets*. SFAS No. 142 requires us to record these assets at their fair value. Historically, we have used the cash purchase price at the time of acquisition as the best indicator of fair value. SFAS No. 142 also requires us to periodically evaluate the carrying value of intangible assets to determine if an impairment loss should be recorded under Statement of Financial Accounting Standards (SFAS) No. 144. In accordance with Statement 144, an impairment loss shall be recognized if the carrying amount of an intangible asset is not recoverable and its carrying amount exceeds its fair value.

SFAS No. 144 outlines the factors which individually or in combination could trigger an impairment review as follows:

A significant decrease in the market price of a long-lived asset (asset group)

A significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition

A significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset (asset group), including an adverse action or assessment by a regulator

An accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset (asset group)

A current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group)

A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.

If we determine that the carrying value of intangible assets may not be recoverable based upon the existence of one or more of the above indicators of impairment, we would measure any impairment based on a projected discounted cash flow method using a discount rate commensurate with the risk inherent in our business.

Recent Accounting Pronouncements

A discussion of recent accounting pronouncements is included in Note 9 of the Notes to the Unaudited Condensed Consolidated Financial Statements.

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Results of Operations

The following tables set forth our statement of operations data for each of the periods indicated (in thousands).

	Three Months Ended December 31, 2008	Three Months Ended December 31, 2007	Six Months Ended December 31, 2008	Six Months Ended December 31, 2007
Statement of Operations Data:				
Revenues	$ 4,031	$ 4,877	$ 8,373	$ 10,229
Cost of sales	1,858	1,807	3,636	3,739
Gross profit	2,173	3,070	4,737	6,490
Operating expenses:				
Sales and marketing	1,551	1,951	2,795	3,521
Research and development	1,331	1,448	2,958	3,050
General and administrative	1,622	1,766	3,283	3,946
Restructuring charges			787	1,095
Total operating expenses	4,504	5,165	9,823	11,612
Operating loss	(2,331)	(2,095)	(5,086)	(5,122)
Impairment loss on marketable securities	(2,500)		(2,500)	
Interest income	175	690	454	1,390
Loss before income taxes	(4,656)	(1,405)	(7,132)	(3,732)
Income tax expense				
Net loss	$ (4,656)	$ (1,405)	$ (7,132)	$ (3,732)

Three Months Ended December 31, 2008 and December 31, 2007

Revenues. Revenues were $4,031,000 for the three months ended December 31, 2008, compared to $4,877,000 for the three months ended December 31, 2007, a decrease of $846,000, or 17%. Subscription revenues were $4,016,000 for the three months ended December 31, 2008, representing 99% of revenues, compared to $4,809,000 for the three months ended December 31, 2007, representing 99% of revenues, a decrease of $793,000, or 16%. The decrease in our revenues was attributable primarily to a decrease in the number of paying subscribers from approximately 536,000 at December 31, 2007 to approximately 361,000 at December 31, 2008. The decrease in subscribers is driven by the migration of dial up users to broad band which is a trend we expect to continue. Revenues from our indirect channel distributors for the three months ended December 31, 2008, were $524,000 or 13% of revenues compared to $570,000 or 12% of revenues for the same period last year. Revenue from our new Unified Communications services did not contribute materially to our current quarter s performance and we do not expect a material contribution for the remainder of our fiscal year.

Cost of sales. Cost of sales was $1,858,000 for the three months ended December 31, 2008, compared to $1,807,000 for the three months ended December 31, 2007, an increase of $51,000, or 3%. The significant increase as a percentage of sales is caused by the amortization of acquired intangible assets. The amortization expense incurred in the current quarter was $527,000, or 13% of sales. This non-cash amortization expense will negatively impact our gross margin throughout the remainder of our current fiscal year and for approximately the next five years as we amortize the purchase price into cost of sales.

Sales and marketing. Sales and marketing expenses were $1,551,000, or 38% of revenues, for the three months ended December 31, 2008, compared to $1,951,000, or 40% of revenues, for the three months ended December 31, 2007, a decrease of $400,000, or 21%. We have significantly reduced our advertising expense associated with our legacy services as we focus on bringing our new service offerings to market. In addition, headcount associated with the marketing and sales of our legacy products has been reduced. We expect sales and marketing expenses will increase in future quarters as we build out our sales force and expand our web based advertising associated with our new product lines.

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Research and development. Research and development expenses were $1,331,000, or 33% of revenues, for the three months ended December 31, 2008, compared to $1,448,000, or 30% of revenues, for the three months ended December 31, 2007. The decrease on an absolute dollar basis reflects the consolidation and migration of most of our research and development to Eastern Europe. The increase as a percentage of sales was driven by the decline in our legacy revenue which has not yet been offset by revenue from our new Unified Communications services. We believe it is essential to have a strong and efficient research and development team as we develop new products in the unified communications and collaboration market. We will be frequently adapting to new mobile device specifications and updating our existing product base because one of our key differentiators will be mobile collaboration. We will continue to invest in new technologies and will frequently upgrade our mobile collaboration and conferencing technologies in an effort to stay at the forefront of the Unified Collaboration and Conferencing market. We expect research and development costs to remain relatively flat throughout the remainder of our current fiscal year.

General and administrative. General and administrative expenses were $1,662,000, or 40% of revenues for the three months ended December 31, 2008, compared to $1,766,000, or 36% of revenues, for the three months ended December 31, 2007, a decrease of $144,000, or 8%. The increase as a percentage of sales was driven by the decline in our legacy revenue which has not yet been offset by revenue from our new Unified Communications services. Overall, general and administrative expenses have declined due to reductions in headcount associated with our legacy lines of business, lower bad debt expense, and lower management incentive compensation. We expect general and administrative expenses to remain relatively flat for the remainder of the fiscal year as the majority of these expenses are fixed.

Impairment loss on marketable securities. Based on third party valuation models and an analysis of other-than-temporary impairment factors, we had previously determined that our auction rate securities were not permanently impaired. However, during the quarter ended December 31, 2008, one of the auction rate securities stopped paying interest. This particular security was a contingency fund for Financial Guarantee Insurance Company (FGIC), a bond insurer that has been substantially downgraded by ratings agencies due to financial hardship. FGIC removed the assets of the fund and replaced them with FGIC preferred stock. The lack of performance and the deterioration of FGIC have led us to conclude that this security is other than temporarily impaired. Accordingly, we have recorded a permanent impairment loss of $2.5 million for the entire value of the security.

Income tax provision. No tax benefit was derived from the net loss recognized during the three months ended December 31, 2008 and 2007 due to the valuation allowance established to offset our deferred tax assets. Total deferred tax assets amount to $12.6 million and have been fully offset by a valuation allowance reflecting the fact that we have not determined that it is more likely than not that we will be able to use our deferred tax assets to reduce income taxes. We will continue to assess the likelihood of realization of our net deferred tax assets and will adjust the balance accordingly.

Net loss. Net loss was $4,656,000 for the three months ended December 31, 2008, compared to net loss of $1,405,000 for the three months ended December 31, 2007. The increase in the net loss is due primarily to the impairment of marketable securities, lower interest income, and increased amortization of purchased intangibles.

Six Months Ended December 31, 2008 and December 31, 2007

Revenues. Revenues were $8,373,000 for the six months ended December 31, 2008, compared to $10,229,000 for the six months ended December 31, 2007, a decrease of $1,856,000, or 18%. Subscription revenues were $8,337,000 for the six months ended December 31, 2008, representing 99% of revenues, compared to $10,133,000 for the six months ended December 31, 2007, representing 99% of revenues, a decrease of $1,796,000, or 18%. The decrease in our revenues was attributable primarily to a decrease in the number of paying subscribers from approximately 536,000 at December 31, 2007 to approximately 361,000 at December 31, 2008. The decrease in subscribers is driven primarily from the migration of dial up users to broad band which is a trend we expect to continue. Revenues from our indirect channel distributors for the six months ended December 31, 2008, were $992,000 or 12% of revenues compared to $1,190,000 or 12% of revenues for the same period last year. Revenue from our new Unified Communications services did not contribute materially to our performance during the six months ended December 31, 2008, and we do not expect a material contribution for the remainder of our fiscal year.

Cost of sales. Cost of sales was $3,636,000 for the six months ended December 31, 2008, compared to $3,739,000 for the six months ended December 31, 2007. The significant increase as a percentage of sales is caused by the amortization of acquired intangible assets. The amortization expense incurred in six months ended December 31, 2008 was $923,000, or 11% of sales. This non-cash amortization expense will negatively impact our gross margin throughout the remainder of our current fiscal year and for approximately the next five years as we amortize the purchase price into cost of sales.

Sales and marketing. Sales and marketing expenses were $2,795,000, or 33% of revenues, for the six months ended December 31, 2008, compared to $3,521,000, or 34% of revenues, for the six months ended December 31, 2007. We have significantly reduced our advertising expense associated with our legacy services as we focus on bringing our new service offerings to market. In addition, headcount associated with the marketing and sales of our legacy products has been reduced. We expect sales and marketing expenses will increase in future quarters as we build out our sales force and expand our web based advertising associated with our new product lines.

Research and development. Research and development expenses were $2,958,000, or 35% of revenues, for the six months ended December 31, 2008, compared to $3,050,000, or 30% of revenues, for the six months ended December 31, 2007. The decrease on an absolute dollar basis reflects the consolidation and migration of most of our research and development to Eastern Europe. The increase as a percentage of sales was driven by the decline in our legacy revenue which has not yet been offset by revenue from our new Unified Communications services. We believe it is essential to have a strong and efficient research and development team as we develop new products in the unified communications and collaboration market. We will be frequently adapting to new mobile device specifications and updating our existing product base because one of our key differentiators will be mobile collaboration. We will continue to invest in new technologies and will be frequently upgrading our mobile collaboration and conferencing technologies in an effort to stay at the forefront of the Unified Collaboration and Conferencing market. We expect research and development costs to remain relatively flat throughout the remainder of our current fiscal year.

General and administrative. General and administrative expenses were $3,283,000, or 39% of revenues for the six months ended December 31, 2008, compared to $3,946,000, or 39% of revenues, for the six months ended December 31, 2007, a decrease of $663,000, or 17%. General and administrative expenses have declined due to reductions in headcount associated with our legacy lines of business, lower bad debt expense, and lower management incentive compensation. We expect general and administrative expenses to remain relatively flat for the remainder of the fiscal year as the majority of these expenses are fixed.

Impairment loss on marketable securities. Based on third party valuation models and an analysis of other-than-temporary impairment factors, we had previously determined that our auction rate securities were not permanently impaired. However, during the quarter ended December 31, 2008, one of the auction rate securities stopped paying interest. This particular security was a contingency fund for Financial Guarantee Insurance Company (FGIC), a bond insurer that has been substantially downgraded by ratings agencies due to financial hardship. FGIC removed the assets of the fund and replaced them with FGIC preferred stock. The lack of performance and the deterioration of FGIC have led us to conclude that this security is other than temporarily impaired. Accordingly, we have recorded a permanent impairment loss of $2.5 million for the entire value of the security.

*Restructuring charge*s. During the quarter ended September 30, 2007, we announced a reorganization and reduction in force and the termination of our Chief Executive Officer. As a result of the reorganization we incurred a charge of approximately $1.1 million associated primarily with severance, health insurance, and accelerated stock option compensation expense. The entire charge was recognized in the quarter ended September 30, 2007.

On August 28, 2008, the Company announced a third reorganization and reduction in workforce. As a result of the reorganization the Company incurred a charge of approximately $800,000 associated primarily with severance, health insurance, facilities consolidation, and accelerated stock option compensation expense. The entire charge was recognized in the quarter ended September 30, 2008. We do not expect further restructuring charges during our fiscal year ending June 30, 2009.

Income tax provision. No tax benefit was derived from the net loss recognized during the six months ended December 31, 2008 and 2007 due to the valuation allowance established to offset our deferred tax assets. Total deferred tax assets amount to $12.6 million and have been fully offset by a valuation allowance reflecting the fact that we have not determined that it is more likely than not that we will be able to use our deferred tax assets to reduce income taxes. We will continue to assess the likelihood of realization of our net deferred tax assets and will adjust the balance accordingly.

Net loss. Net loss was $7,132,000 for the six months ended December 31, 2008, compared to net loss of $3,732,000 for the six months ended December 31, 2007. The increase in the net loss is due primarily to the impairment of marketable securities, lower interest income, and increased amortization of purchased intangibles.

Liquidity and Capital Resources

At December 31, 2008, our principal sources of liquidity were cash and cash equivalents of $21,643,000, marketable securities of $4,345,000, and accounts receivable net of allowance for doubtful accounts of $1,384,000. We do not expect cash flow from operations to be positive in the current fiscal year. Although we expect losses from operations as we migrate our business from our legacy dial-up line of business to our current unified communications product suite, we believe our current cash reserves are adequate to cover the anticipated losses over the next twelve months. We reexamine our cash requirements periodically in light of changes in our business.

Cash and cash equivalents and marketable securities declined from $38.6 million at June 30, 2008 to $26.0 million at December 31, 2008. This decrease is primarily due to the purchase of technology from WebMessenger for $9.0 million, cash used in operations of $2.3 million, and the repayment of short term debt of $1.0 million.

During the quarter ended December 31, 2007, the Company s auction rate securities began to fail auction due to sell orders exceeding buy orders. Of our $7.7 million marketable securities portfolio at December 31, 2008, $3.3 million is currently associated with failed auctions. The funds associated with failed auctions will not be accessible until a successful auction occurs or a buyer is found outside of the auction process. All of the auction rate securities were AAA quality and were in compliance with our investment policy at the time of acquisition. We currently have the ability and intent to hold these investments until a recovery of the auction process or until maturity. Auction failures related to this type of security are symptomatic of current conditions in the broader debt markets and are not unique to CallWave.

Based on third party valuation models and an analysis of other-than-temporary impairment factors, we had previously determined that these securities were not permanently impaired. However, during the quarter ended December 31, 2008, one of our auction rate securities stopped paying interest. The lack of performance on this security has led us to conclude that it is other than temporarily impaired. Accordingly, we have recorded a permanent impairment loss of $2.5 million for the entire value of the security.

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The remaining auction rate securities are still rated as investment grade and continue to pay interest. It is our opinion that liquidity will eventually be restored and the par value of these securities will be recovered. However, we have recorded accumulated unrealized losses within other comprehensive loss of approximately $4.2 million pre-tax as of December 31, 2008, related to a temporary impairment of these auction rate securities.

We are uncertain when liquidity will be restored to these securities. Accordingly, the remaining auction rate securities have been classified as non-current assets. These securities are being analyzed each reporting period for impairment, including other-than-temporary impairment factors.

Off-Balance Sheet Arrangements

We have not entered into any off-balance sheet arrangements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign currency exchange risk. We do not currently hedge foreign currency exposures. We believe that a sudden or significant change in foreign exchange rates would not have a material impact on future net income or cash flows.

Interest rate sensitivity. We had cash and cash equivalents totaling $21.6 million and marketable securities totaling $8.0 million (including auction rate securities) at December 31, 2008, and cash and cash equivalents totaling $29.8 million and marketable securities totaling $16.3 million (including auction rate securities) at June 30, 2008. Cash and cash equivalents were held for working capital purposes in depository accounts at FDIC-regulated banking institutions. Marketable securities consist of investment grade securities, including auction-rate securities, which carry interest or dividend rates that reset every seven to 28 days, corporate bonds, and government and agency securities. We do not enter into investments for trading or speculative purposes. Declines in interest rates, however, will reduce our future interest income. If interest rates were to decline by 3.0% as compared to the rates at December 31, 2008, our interest income would decrease by approximately $227,000 on a quarterly basis based on the outstanding balance of our marketable securities and money market funds at September 30, 2008. A decline in market value of 3.0% would reduce the value of our marketable securities by approximately $230,000.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. Our Chief Executive Officer and our Chief Financial Officer, after evaluating the effectiveness of our disclosure controls and procedures (as defined in the Securities Exchange Act of 1934 (Exchange Act) Rules 13a-15(e) or 15d-15(e)) as of the end of the period covered by this quarterly report, have concluded that our disclosure controls and procedures are effective based on their evaluation of these controls and procedures required by paragraph (b) of Exchange Act Rules 13a-15 or 15d-15.

Changes in Internal Control over Financial Reporting. There were no changes in our internal control over financial reporting that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls. Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. 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 in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about 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; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost effective control system, misstatements due to error or fraud may occur and not be detected.

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PART II OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

A determination that we have infringed the intellectual property rights of a third party could expose us to substantial damages, restrict our operations or require us to procure costly licenses to the intellectual property that is the subject of the infringement claims. Such a license may not be available to us on acceptable terms or at all. Any effort to defend ourselves from assertions of infringement or misappropriation of a third party s intellectual property rights, whether or not we are successful, would be expensive and time-consuming and would divert management resources. Any adverse determination that we have infringed the intellectual property rights of a third party, or the costs we incur to defend ourselves against such claims, whether or not we are successful, would have a material adverse impact on our business and results of operations.

Our customers or other companies with whom we have a commercial relationship could also become the target of litigation relating to the patent and other intellectual property rights of others. This could trigger support and indemnification obligations, which could result in substantial expenses, including the payment by us of costs and damages relating to patent infringement. In addition to the time and expense that could be required for us to meet our support and indemnification obligations, any such litigation could hurt our relations with our customers and other companies. Thus, the sale of our services could decrease. Claims for indemnification may be made by third parties with whom we do business and such claims may harm our business, prospects, financial condition and results of operations.

From time to time, we may be subject to litigation, such as class action lawsuits, that could negatively affect our business operations and financial position. Such disputes could cause us to incur unforeseen expenses, could occupy a significant amount of our management s time and attention, and could negatively affect our business operations and financial condition.

ITEM 1A. RISK FACTORS

In addition to the other information set forth in this report, you should carefully consider the factors set forth under the caption Risk Factors in Part I, Item 1A, of our Annual Report on Form 10-K, for our fiscal year ended June 30, 2008. The risks discussed in our Annual Report on Form 10-K could materially affect our business, financial condition and future results. The risks described in our Annual Report on Form 10-K are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially and adversely affect our business, financial condition or operating results. Other than those described below, there have been no material changes to the Risk Factors as previously disclosed in our Form 10-K for the fiscal year ended June 30, 2008.

We are subject to risks relating to currency rate fluctuations and we do not hedge this risk.

Although our Bulgarian operation does not generate revenue, approximately 5 percent of our costs are denominated in Leva, the Bulgarian currency. Any movement in the exchange rate for the Leva may adversely affect our cash flows, operating results, and financial position. We do not currently hedge against this risk.

In some foreign jurisdictions, our rights may not be as strong as the rights we enjoy in the U.S.

The legal systems of many foreign countries do not protect or honor intellectual property rights to the same extent as the legal system of the United States. It may be difficult, time-consuming and costly for us to attempt to enforce our intellectual property rights in these jurisdictions.

As the number of individuals whom we employ in our Finance Department decreases, there is a risk that we will not have sufficient individuals to enable us to segregate duties among our employees.

A fundamental objective of effective internal controls is to segregate duties among responsible individuals so that no single person can inflict financial damage by reason of possessing unsupervised control over significant portions of the business financial or accounting functions. Over the past year, we have implemented several reductions in force, and the number of individuals whom we employ in our finance function has been reduced significantly. We believe that we currently have segregated duties among our employees on an acceptable basis, and that the integrity of our internal controls has not been impaired by the reductions in the number of our finance employees. However, if we realize any additional reductions in the number of our finance employees, then the effectiveness of our internal controls, and the integrity of our financial reporting, may be adversely affected.

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

Sales of Unregistered Securities

None.

Use of Proceeds

Not applicable.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

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

At our 2008 Annual Meeting of Stockholders held on December 15, 2008 (the Annual Meeting), our stockholders: (i) elected seven directors to serve until the 2009 Annual Meeting (Proposal No. 1); and (ii) ratified the appointment of Mayer Hoffman McCann P.C. as independent auditors for the fiscal year ending June 30, 2009 (Proposal No. 2). The tabulation of votes for each of the proposals is set forth below:

Proposal No. 1

Election of seven directors to serve until the 2009 Annual Meeting:

FOR	AGAINST
14,366,766	4,040,267

Proposal No. 2

Ratification of the appointment of Mayer Hoffman McCann P.C. as independent auditors of the Company for the 2009 fiscal year:

FOR	AGAINST	ABSTAIN
16,815,491	1,409,669	181,873

ITEM 5. OTHER INFORMATION

None.

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ITEM 6. EXHIBITS

Exhibit Number	Description
3.1[(1)]	Amended and Restated Certificate of Incorporation of the Registrant.
3.2[(2)]	Certificate of Amendment to Amended and Restated Certificate of Incorporation.
3.3[(3)]	Certificate of Amendment to Amended and Restated Certificate of Incorporation.
3.4[(4)]	Bylaws of the Registrant.
10.1	Fourth Amendment to 2004 Stock Incentive Plan.
31.1	Certification of Chief Executive Officer pursuant to Securities Exchange Act Rules 13a-14 and 15d-14, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Securities Exchange Act Rules 13a-14 and 15d-14, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(1) Previously filed in the Registrant s Registration Statement Amendment No. 5 on Form S-1 (File No. 333-115438) filed on September 27, 2004 and incorporated herein by reference.

(2) Previously filed in the Registrant s Quarterly Report on Form 10-Q filed on February 14, 2006 and incorporated herein by reference.

(3) Previously filed in the Registrant s Quarterly Report on Form 10-Q filed on February 13, 2007 and incorporated herein by reference.

(4) Previously filed in the Registrant s Registration Statement on Form S-1 (File No. 333-115438) on May 13, 2004 and incorporated herein by reference.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CALLWAVE, INC.,

Date: February 13, 2009	By: /s/ Jeffrey Cavins Jeffrey Cavins President and Chief Executive Officer
Date: February 13, 2009	By: /s/ Mark Stubbs Mark Stubbs Chief Financial Officer (principal financial and accounting officer)

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