AETHER HOLDINGS INC
Form 10-K
March 15, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10 K

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

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2005

OR

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

COMMISSION FILE NUMBER: 000 27707

AETHER HOLDINGS, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE (State or other jurisdiction of incorporation or organization)	**52-2186634** (IRS Employer Identification Number)
621 E. Pratt St., Suite 601, Baltimore, MD (Address of principal executive offices)	**21202** (Zip Code)

(Registrant s telephone number, including area code): **(443) 573 9400**

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: **NONE.**

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

COMMON STOCK, PAR VALUE $.01

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes o No ý

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes o No ý

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ý No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of regulation S K is not contained herein, and will not be contained, to the best of the registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Form 10 K or any amendment of this Form 10 K. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o Accelerated filer ý Non-accelerated filer o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes o No ý

The aggregate market value of the voting stock held by nonaffiliates of the registrant was $128,669,166 ($3.29 per share) as of June 30, 2005.

As of March 10, 2006, 44,018,946 shares of the registrant s common stock, $.01 par value per share, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

AETHER HOLDINGS, INC.

ANNUAL REPORT ON FORM 10-K

FOR THE YEAR ENDED DECEMBER 31, 2005

INDEX

PART I

Item 1	Business
Item 1A	Risk Factors
Item 1B	Unresolved Staff Comments
Item 2	Properties
Item 3	Legal Proceedings
Item 4	Submission of Matters to a Vote of Security Holders

PART II

Item 5	Market for the Company s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities
Item 6	Selected Financial Data
Item 7	Management s Discussion and Analysis of Financial Condition and Results of Operations
Item 7A	Quantitative and Qualitative Disclosures About Market Risk
Item 8	Financial Statements and Supplementary Data
Item 9	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure
Item 9A	Controls and Procedures
Item 9B	Other Information

PART III

Item 10	Directors and Executive Officers of the Registrant
Item 11	Executive Compensation
Item 12	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.
Item 13	Certain Relationships and Related Transactions
Item 14	Principal Accounting Fees and Services

PART IV

Item 15	Exhibits, Financial Statement Schedules

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements that involve risks and uncertainties. When used in this Report, the words anticipate, believe, estimate, intend, may, will, expect and similar expressions as they relate to our company or our management are in identify a statement as a forward-looking statement. Our actual results, performance or achievements could differ materially from the results expressed in, or implied by, these forward-looking statements. Factors that could cause or contribute to such differences include those discussed in Item 1A of this Report under the heading Risk Factors. Forward-looking statements reflect our reasonable beliefs and expectations as of the time we make them, and we have no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In this Report on Form 10-K, we refer to Aether Holdings, Inc. as Aether, the Company, we or us.

PART I

ITEM 1. BUSINESS

Introduction

Our overall business objective is to become profitable and produce taxable earnings that will enable us to realize value, in the form of tax savings, from our significant accumulated tax loss carryforwards. In pursuit of this objective, we own and manage a portfolio of mortgage-backed securities (MBS). We own hybrid adjustable-rate mortgage-backed securities issued by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). Hybrid adjustable-rate MBS are characterized by periodic caps on the interest rates on the underlying mortgages (generally, rate adjustments are limited to 2% every twelve months following the initial rate adjustment) as well as lifetime caps. The initial interest rate adjustment, on the securities we own occurs 36-60 months following the date of origination.

In general, earnings from our MBS business activities represent the interest income we earn on the MBS we own, less the interest expense we incur on borrowings used to finance the purchase of such securities (to the extent we use borrowed funds), plus or minus any gains or losses we recognize on the sale of securities, minus any other than temporary declines in the value of our MBS, minus the amortization of any premiums, plus the accretion of any discounts and minus the other expenses of managing our business. The expenses of managing our business include the fees we have agreed to pay our outside investment manager, FBR Investment Management, Inc. (FBR), and our outside advisor, FinPro, Inc. (FinPro).

Our outside professional financial and investment advisors have substantial experience in the MBS market and in managing a leveraged portfolio of MBS investments. In June 2004, we engaged FBR as our outside investment advisor to carry out the day-to-day management of our MBS portfolio, subject to oversight by our management and our Board of Directors and to investment policies adopted by our Board. FBR currently manages a multi-billion dollar leveraged portfolio of MBS for one of its affiliates, but that affiliate announced in December 2005 that as a result of continued unfavorable market conditions for MBS it planned to reposition a portion of its MBS portfolio. As of July 1, 2005, the initial one-year term of our agreement with FBR expired, and this agreement is now continuing without a fixed term, subject to the right of either party to terminate the agreement with ninety days prior notice. In addition, we have contracted with FinPro to provide us with independent oversight of FBR and to assist us in developing, evaluating and managing our MBS strategy. FinPro is an investment advisory and management-consulting firm that specializes in providing financial advisory services to financial institutions. FinPro has substantial experience in the MBS market and related markets.

The leverage we have employed consists of borrowings under repurchase agreements, which are short-term borrowings that we renew on a monthly basis. We renew our short-term borrowings at the interest rates offered on the renewal date. As a result, during a period of rising short-term interest rates, as was the case during 2005, the cost of our borrowings increases more rapidly than the yield on our MBS, which adjust much less frequently. This reduces the spread that we realize between the cost of our borrowings and the yield on our MBS, which results in a reduction in overall net interest income. As of the end of 2005, the interest rate spread on our leveraged MBS portfolio was negative.

During 2005, the fair market value of our MBS portfolio declined. Continued increases in short-term interest rates, partially offset by the benefit associated with the seasoning of our MBS (as the securities individual coupon rates move closer to an interest rate reset date), caused this decline in market value. In addition, the net interest income we earned on our portfolio declined as our borrowing costs associated with the leveraged portion of the portfolio increased. As a result of unfavorable market conditions for MBS, we have not purchased any MBS since May 2005. In the second half of 2005, we sold approximately $106.7 million of MBS. In addition, on March 8, 2006, we entered into a commitment to sell an additional $140 million of MBS, which will settle on March 27, 2006. At settlement, we plan to use approximately $120 million of the sale proceeds to repay all of our then-outstanding borrowings under repurchase agreements. Because the weighted average cost of our short-term borrowings has begun to exceed the weighted average yield on our MBS, de-leveraging our MBS portfolio will have a favorable effect on our net interest income from MBS.

Although we have experienced a decline in our net interest income due to current market conditions, as of December 31, 2005, we have realized $3.7 million in net earnings from our MBS portfolio since the inception of our MBS strategy in June 2004. This amount represents the net of $5.6 million in net interest income, $2.1 million of net gains on sales of MBS, and a $4.0 million write down of the book value of our MBS, which we discuss below under Recent Developments.

We have decided not to purchase any additional MBS in the near term, pending the results of our strategic activities, which we discuss below under Recent Developments, and a further assessment of the outlook for our MBS business in light of market conditions later in 2006. Although we expect to maintain our unleveraged MBS portfolio (following the March 2006 sales) during this period, we may sell additional MBS based upon our continued evaluation of market conditions and the advice of our outside professional investment advisors.

At December 31, 2005, we had approximately $9.7 million of cash (including $8.6 million in restricted cash) and cash equivalents, and we owned approximately $253.9 million of MBS at fair value. Our total assets were approximately $266.0 million, and our total liabilities were approximately $139.6 million, of which $133.4 million reflected borrowings under repurchase agreements. We had accumulated federal net operating losses of approximately $777.8 million that we can carry forward and use to offset future taxable income until they expire between 2011 and 2025. We also had accumulated federal capital losses of approximately $287.8 million that we can carry forward and use to offset future capital gains until they expire between 2006 and 2010.

In this Report, discussions of our Company s current operations will reflect our MBS business. Our historical financial results reflect the operations of our current business as continuing operations. The financial results of our mobile and wireless data businesses, which we sold during 2004, are reported as discontinued operations.

Recent Developments

In light of ongoing market conditions that have continued to negatively affect the value of our MBS, as well as reduce the amount of net interest income we earn from our leveraged MBS portfolio, we have been evaluating additional and alternative business strategies that have the potential to help us achieve our business objectives more quickly. On February 17, 2006 we retained Jefferies & Company, Inc. (Jefferies) to assist us in this process and to help us identify additional potential strategic opportunities. As of the date of this Report, we have not decided to pursue any new strategic alternatives. In the future, if we decide to pursue one or more new business opportunities, we may need to sell some or all of our MBS investments. Such sales of MBS may need to be made under adverse market conditions, or for prices and on terms that are less favorable than those we might otherwise be able to secure. In such situations, we may realize a loss on our investments. See Item 1A Risk Factors- Other Risks of Our Business for a further discussion of the risks associated with our exploration of potential new business strategies.

As of December 31, 2004 and 2005, our investments consisted primarily of MBS and cash equivalents. As a result of the decline in the profitability of our leveraged MBS portfolio, our recent decision to repay the leveraged portion of our MBS portfolio, and our decision to evaluate additional and alternative business opportunities that may require the sale of some or all of our remaining MBS, management does not continue to have the firm intention to hold existing MBS investments until maturity or until such time as the market value of those securities has recovered. Accordingly, we determined that unrealized losses in the MBS portfolio at December 31, 2005 should be considered other than temporary impairments under Statement of Accounting Standards 115 and should be charged against operating results as of that date. This decision reflects a change in our intention to hold all MBS until a recovery of fair value occurs. During the fourth quarter of 2005, the Company recognized the unrealized loss of approximately $2.1 million and wrote-off the unamortized premium of $1.9 million for a total other than temporary impairment charge of approximately $4.0 million.

We will continue to account for our MBS portfolio as available for sale. Accordingly, in accordance with US generally accepted accounting principles (GAAP), we will continue to evaluate the fair value of our MBS portfolio on a quarterly basis. Any further decreases in market values that we concluded are other than temporary impairments will be included in results from continuing operations.

On March 8, 2006, based on the advice of our outside professional financial and investment advisors, we entered into a commitment with Jefferies to sell approximately $140 million of our MBS (with settlement on March 27, 2006). The terms we received from Jefferies were as good as or better than the terms offered by other investment banks. We will use approximately $120 million of the sale proceeds to repay all of our then-outstanding short-term borrowings under repurchase agreements. As a result, we expect that our MBS portfolio will not be leveraged by the end of the first quarter of 2006. The impairment charge of $4.0 million that is included in loss from continuing operations in the fourth quarter of 2005 includes $2.5 million of losses associated with the specific MBS that we committed to sell on March 8, 2006. As a result of the March 8 sale, we will record an additional loss on the sale of MBS of approximately $490,000 in the first quarter of 2006. We intend to continue to closely monitor market conditions and their effect on our MBS portfolio value and yield.

MORTGAGE-BACKED SECURITIES

MBS Approach and Policies

Under the investment policy and guidelines that we adopted for our MBS business, we may invest up to $100 million of our cash in MBS and may leverage our MBS portfolio up to eight times. Although we incurred a moderate level of borrowings earlier in 2005, to allow us to expand our MBS portfolio, as discussed above, we have de-leveraged the portfolio gradually during the second half of 2005, as changing market conditions made the use of leverage significantly less attractive financially.

In the fourth quarter of 2005 because the interest we were earning on our short-term investments was less than the interest rates we were paying on our MBS, we used approximately $20 million of available cash to reduce the borrowings we had outstanding under our master repurchase agreements. These repayments and the corresponding reduction in leverage on our portfolio increased our net equity in MBS to approximately $120 million. After the completion of the sales of MBS in March 2006 and the repayment of approximately $120 million of our outstanding borrowings under our repurchase agreements and taking into account the repayments on our MBS received during the first quarter of 2006 and the $4.0 million unrealized loss associated with the portfolio, our net investment in MBS will be approximately $95 million as of the end of the first quarter of 2006, which is within the range of investments authorized by the Board of Directors.

As discussed above, we will have completely de-levered our MBS portfolio by the end of the first quarter of 2006 and will have a significantly smaller MBS portfolio than we had in 2005. We do not expect to re-leverage our MBS portfolio or purchase additional MBS absent a significant improvement in market conditions, and then only based on the advice of our outside financial and investment advisors, after consultation with our Board of Directors. At the recommendation of our management, after consultation with FBR, FinPro and other outside advisors, our Board of Directors has adopted a set of investment guidelines and policies that govern our MBS business. These guidelines and policies remain subject to ongoing review, as well as amendment or waiver at the discretion of the Board. Under the terms of our management agreement with FBR, we must approve in advance any actions by FBR that are not within the scope of our guidelines and policies. As a matter of corporate policy, we will not approve any action that deviates from our guidelines and policies unless such deviation has been reviewed with FinPro and, with the advice of management and FinPro, approved by our Board of Directors.

Our current MBS guidelines and policies include the following:

FBR must obtain our permission before purchasing MBS individually in an amount exceeding $50 million or purchasing hybrid adjustable rate MBS greater than 5 years to reset, fixed-rate MBS, or MBS derivatives.

FBR must obtain our permission before taking any actions that would cause the portfolio s asset-to-equity ratio to exceed 9:1.

FBR may not enter into repurchase agreements on our behalf with any counter-party in an amount that would exceed 35% of the aggregate amount of our then outstanding repurchase agreements.

FBR may not enter into interest rate swap agreements or futures contracts without our prior approval.

Risk management systems will be used to actively monitor and manage our exposure to interest and mortgage prepayment rates, the shape of the yield curve, credit risk, risk of capital loss, the availability and cost of financing, and changing yield spreads relating to MBS.

During the second half of 2005, in light of changed market conditions, we directed FBR not to take any action with regard to our MBS portfolio without our express prior approval.

We have the right to modify or waive these policies and strategies without the consent of our stockholders to the extent that the Board of Directors determines, based upon the recommendations of management and with the advice of our outside investment and financial advisors, that a modification or waiver is in the best interests of our stockholders. Among other factors, developments in the market that affect our policies and strategies or that change our assessment of the market may cause us to revise our policies and strategies.

MBS Investments

The MBS in which we invest are agency mortgage-backed securities which, although not rated, carry an implied AAA rating. Agency mortgage-backed securities are MBS where a government agency or federally chartered corporation, such as FHLMC, FNMA or Government National Mortgage Association (GNMA), guarantees payments of principal and/or interest on the securities.

MBS provide funds for mortgage loans made primarily to residential homeowners. These securities generally represent interests in pools of mortgage loans made by savings and loan institutions, mortgage bankers, commercial banks and other mortgage lenders.

These pools of mortgage loans are assembled for sale to investors, like us, by various governments, government-related and private organizations. MBS differ from other forms of traditional debt securities, which normally provide for periodic payments of interests and principal payments in scheduled amounts or at maturity or on specified call dates. Instead, MBS provide for monthly payment, which consists of both interest and principal. In effect, these payments are a pass-through of the monthly interest and principal payments made by the individual borrower on the mortgage loans, net of any fees paid to the issuer or guarantor of the securities. Additional payments result from prepayments of principal upon the sale, refinancing or foreclosure of the underlying residential property. Some MBS, such as securities issued by GNMA, are described as modified pass-through securities. These securities entitle the holder to receive all interest and principal payments owed on the mortgage pool, net of certain fees, regardless of whether the mortgagors actually make mortgage payments when due. To date, we have not invested in any securities issued by GNMA.

The investment characteristics of pass-through MBS differ from those of traditional fixed-income securities. The major differences include the payment of interest and principal on the MBS on a more frequent schedule, as described above, and the possibility that principal may be prepaid at any time due to prepayments on the underlying mortgage loans or other assets. These differences can result in significantly greater price and yield volatility than is the case with fixed-income securities.

Various factors affect the rate at which mortgage prepayments occur, including changes in interest rates, general economic conditions, the age of the mortgage loan, the location of the property and other social and demographic conditions. Generally prepayments on MBS increase during periods of falling mortgage interest rates and decrease during periods of rising mortgage interest rates. We may reinvest prepayments at a yield that is higher or lower than the yield on the initial underlying MBS security purchased, thus affecting the weighted average yield of our investments.

To the extent MBS are purchased at a premium, faster than expected prepayments result in accelerated amortization of the premium paid, which can have a negative effect on the yield from our MBS portfolio. Conversely, if these securities were purchased at a discount, faster than expected prepayments accelerate our recognition of the discount and can have a positive effect on the yield from our MBS portfolio.

FHLMC Certificates

FHLMC is a privately-owned, government-sponsored enterprise created pursuant to an act of Congress on July 24, 1970. The principal activity of FHLMC currently consists of the purchase of mortgage loans or participation interests in mortgage loans and the resale of the loans and participations in the form of guaranteed MBS. FHLMC guarantees to each holder of FHLMC certificates the timely payment of interest at the applicable pass-through rate and ultimate collection of all principal on the holder s pro rata share of the unpaid principal balance of the related mortgage loans, but does not guarantee the timely payment of scheduled principal of the underlying mortgage loans. The obligations of FHLMC under its guarantees are solely those of FHLMC and are not backed by the full faith and credit of the United States. If FHLMC were unable to satisfy these obligations, distributions to holders of FHLMC certificates would consist solely of payments and other recoveries on the underlying mortgage loans and, accordingly, defaults and delinquencies on the underlying mortgage loans would adversely affect monthly distributions to holders of FHLMC certificates.

FHLMC certificates may be backed by pools of single-family mortgage loans or multi-family mortgage loans. These underlying mortgage loans may have original terms to maturity of up to 40 years. FHLMC certificates may be issued under cash programs (composed of mortgage loans purchased from a number of sellers) or guarantor programs (composed of mortgage loans acquired from one seller in exchange for certificates representing interests in the mortgage loans purchased).

FHLMC certificates may pay interest at a fixed rate or an adjustable rate. The interest rate paid on adjustable-rate FHLMC certificates (FHLMC ARMs) adjusts periodically within 60 days prior to the month in which the interest rates on the underlying mortgage loans adjust. The interest rates paid on certificates issued under FHLMC ARMs standard programs adjust in relation to the Treasury index. Other specified indices used in FHLMC ARM programs include the 11th District Cost of Funds Index published by the Federal Home Loan Bank of San Francisco, LIBOR and other indices. Interest rates paid on fully-indexed FHLMC ARM certificates equal the applicable index rate plus a specified number of basis points. The majority of series of FHLMC ARM certificates issued to date have

pools of mortgage loans with monthly, semi-annual or annual interest adjustments. Adjustments in the interest rates paid are generally limited to an annual increase or decrease of either 100 or 200 basis points and to a lifetime cap of 500 or 600 basis points over the initial interest rate. Certain FHLMC programs include mortgage loans which allow the borrower to convert the adjustable mortgage interest rate to a fixed rate. Adjustable-rate mortgages which are converted into fixed-rate mortgage loans are repurchased by FHLMC or by the seller of the loan to FHLMC at the unpaid principal balance of the loan plus accrued interest to the due date of the last adjustable rate interest payment.

FNMA Certificates

FNMA is a privately-owned, federally-chartered corporation organized and existing under the Federal National Mortgage Association

Charter Act. FNMA provides funds to the mortgage market primarily by purchasing home mortgage loans from local lenders, thereby replenishing their funds for additional lending. FNMA guarantees to the registered holder of a FNMA certificate that it will distribute amounts representing scheduled principal and interest on the mortgage loans in the pool underlying the FNMA certificate, whether or not received, and the full principal amount of any such mortgage loan foreclosed or otherwise finally liquidated, whether or not the principal amount is actually received. The obligations of FNMA under its guarantees are solely those of FNMA and are not backed by the full faith and credit of the United States. If FNMA were unable to satisfy its obligations, distributions to holders of FNMA certificates would consist solely of payments and other recoveries on the underlying mortgage loans and, accordingly, defaults and delinquencies on the underlying mortgage loans would adversely affect monthly distributions to holders of FNMA.

FNMA certificates may be backed by pools of single-family or multi-family mortgage loans. The original term to maturity of any such mortgage loan generally does not exceed 40 years. FNMA certificates may pay interest at a fixed rate or an adjustable rate. Each series of FNMA ARM certificates bears an initial interest rate and margin tied to an index based on all loans in the related pool, less a fixed percentage representing servicing compensation and FNMA s guarantee fee. The specified index used in different series has included the Treasury Index, the 11th District Cost of Funds Index published by the Federal Home Loan Bank of San Francisco, LIBOR and other indices. Interest rates paid on fully-indexed FNMA ARM certificates equal the applicable index rate plus a specified number of basis points. The majority of series of FNMA ARM certificates issued to date have evidenced pools of mortgage loans with monthly, semi-annual or annual interest rate adjustments. Adjustments in the interest rates paid are generally limited to an annual increase or decrease of either 100 or 200 basis points and to a lifetime cap of 500 or 600 basis points over the initial interest rate. Certain FNMA programs include mortgage loans which allow the borrower to convert the adjustable mortgage interest rate of the adjustable-rate mortgage to a fixed rate. Adjustable-rate mortgages which are converted into fixed-rate mortgage loans are repurchased by FNMA or by the seller of the loans to FNMA at the unpaid principal of the loan plus accrued interest to the due date of the last adjustable rate interest payment. Adjustments to the interest rates on FNMA ARM certificates are typically subject to lifetime caps and periodic rate or payment caps.

GNMA Certificates

GNMA certificates are those issued by the Government National Mortgage Association. GNMA is a wholly owned corporate instrumentality of the United States within the Department of Housing and Urban Development. The National Housing Act of 1934 (the Housing Act) authorizes GNMA to guarantee the timely payment of the principal of and interest on certificates which represent an interest in a pool of mortgages insured by the Federal Housing Administration or partially guaranteed by the Department of Veterans Affairs and other loans eligible for inclusion in mortgage pools underlying GNMA certificates. Section 306(g) of the Housing Act provides that the full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guaranty by GNMA.

At present, most GNMA certificates are backed by single-family mortgage loans. The interest rate paid on GNMA certificates may be a fixed rate or an adjustable rate. The interest rate on GNMA certificates issued under GNMA s standard ARM program adjusts annually in relation to the Treasury index. Adjustments in the interest rate are generally limited to an annual increase or decrease of 100 basis points and to a lifetime cap of 500 basis points over the initial coupon rate.

LEVERAGE AND BORROWINGS

During 2005, we used short-term repurchase agreements as our sole source of financing in connection with the leveraging of our MBS portfolio. Amounts due at maturity under our repurchase agreements are funded primarily through rollover/reissuance of new repurchase agreements along with principal and interest payments received from MBS we own. As of December 31, 2005, our debt to equity ratio was 1.1 to 1. We will have no debt associated with our MBS portfolio as of the end of the first quarter of 2006.

We have established master repurchase arrangements with five financial institutions. These master repurchase arrangements do not constitute commitments by us or by the counterparties. A repurchase agreement, although structured as a sale and repurchase obligation, acts as a financing under which we effectively pledge our MBS as collateral to secure a short-term loan and although the MBS is used as collateral, we continue to receive principal and interest payments in respect of the MBS. Generally, the other party to the agreement makes the loan in an amount equal to a percentage of the market value of the pledged collateral. At the maturity of the repurchase agreement, we are required to repay the loan and correspondingly receive back our collateral. These types of leveraging arrangements for MBS purchases typically permit more than 90% of the purchase price of the underlying MBS to be financed through the repurchase agreement.

Repurchase agreements may require us to pledge additional assets to the lender in the event the estimated fair value of existing pledged collateral declines below a specified percentage. The pledged collateral fluctuates in value during the life of the repurchase agreement due to, among other things, principal repayments, market changes in interest rates and credit quality. When the fluctuation negatively impacts the collateral, a lender may require us to post additional collateral, or we may choose to sell the pledged security and repay the loan. This type of activity could adversely affect the performance of our portfolio of MBS. During 2005, we typically used repurchase agreements that had original maturities of approximately 30-31 days. In the event a lender under a repurchase agreement decides not to renew a repurchase agreement at its maturity, we would be required to use our own cash or obtain other financing to close out the repurchase agreement and pay off the loan. In addition, differences in timing of interest rate adjustments on our acquired securities and our borrowings may adversely affect our MBS strategy and the returns on the portion of our cash we invest in MBS, because the interest rates paid by our MBS investments typically do not adjust more than once per year and in the current environment of increasing short-term interest rates, our borrowing costs increased more quickly than the interest rates paid by our MBS portfolio. As a result, rising interest rates have had a negative effect on our financial performance and have significantly reduced the yield we realize from our MBS portfolio.

In the event of our insolvency or bankruptcy, certain repurchase agreements may qualify for special treatment under the Bankruptcy Code, the effect of which, among other things, would be to allow the creditor under the agreement to avoid the automatic stay provisions of the Bankruptcy Code and to foreclose on the collateral agreement without delay. In the event of the insolvency or bankruptcy of a lender during the term of a repurchase agreement, the lender may be permitted, under applicable insolvency laws, to repudiate the contract, and our claim against the lender for damages may be treated simply as an unsecured claim. In addition, if the lender is a broker or dealer subject to the Securities Investor Protection Act of 1970, or an insured depository institution subject to the Federal Deposit Insurance Act, our ability to exercise our rights to recover our securities under a repurchase agreement or to be compensated for any damages resulting from the lender s insolvency may be further limited by those statutes. These claims would be subject to significant delay and, if and when received, may be substantially less than the damages we actually incur.

We have repurchase arrangements in place with five financial institutions that have each received the highest available long-term debt rating from a nationally recognized rating agency. In the event one of our lenders is downgraded, the approval of our Board of Directors will have to be obtained before entering into additional repurchase agreements with that lender. We seek to diversify our exposure by entering into repurchase agreements with separate lenders so that no one lender constitutes more than 35% of all of our outstanding repurchase agreements. If, during the term of a repurchase agreement, a lender were to file for bankruptcy, we might experience difficulty recovering the pledged security and might have only an unsecured claim against the lender s assets for the difference between the amount we borrowed and the estimated fair value of the collateral we pledged to such lender (if any).

We may also use derivative transactions and other hedging strategies, such as interest rate swaps and caps, options to purchase swaps and caps, financial futures contracts and options on futures, to help mitigate prepayment and interest rate risks if we determine that the cost of these transactions is justified by their potential benefit. We would use hedging to mitigate declines in the market value of our MBS during periods of increasing or decreasing interest rates or to limit or cap the interest rates on our borrowings. We expect that the extent and type of our hedging activity will vary based on the level and volatility of interest rates and mortgage principal prepayments, the type of MBS we acquire and other changing market conditions. We will not enter into hedging transactions for speculative purposes.

DISPOSITION OF WIRELESS AND MOBILE DATA BUSINESSES

In 2004, we sold our mobile and wireless data businesses, which were organized into three operating segments. In January 2004, we sold our Enterprise Mobility Solutions (EMS) segment for $18.0 million in cash and a $1.0 million note (which was paid in full in August 2004). In September 2004 we sold our Transportation and Mobile Government businesses for $25.0 million in cash and $10.0 million in cash, respectively. For detailed information on these dispositions and certain contingent obligations associated with the transactions, see Notes 14, 15 and 17 of the notes to our Consolidated Financial Statements included in Item 8 of this Report.

TAX CONSIDERATIONS

An important aspect of our business strategy is to realize value, in the form of tax savings, from our accumulated tax loss carryforwards. We have work extensively with outside legal and accounting professionals to validate the underlying assumptions relating to our tax carryforwards. Under federal and state tax laws, we may use these carryforwards to substantially reduce the income taxes we otherwise would have to pay on future taxable income. As a result, we could have little or no income tax liability for a period of time. Our ability to realize value from these tax loss carryforwards is subject to various risks and uncertainties, including regulations that, under certain circumstances, may limit our ability to use these carryforwards to reduce future taxes that we might otherwise owe.

The Internal Revenue Code and applicable Internal Revenue Service (IRS) regulations, contain limitations on certain changes in ownership of our stock by certain stockholders (generally persons who hold, or who acquire, at least 5% of our outstanding shares, calculated in accordance with IRS regulations) which, if exceeded, could reduce or eliminate our ability to use our accumulated tax loss carryforwards in the future (if those changes resulted in a change of ownership as that term is defined in Section 382 of the Internal Revenue Code and applicable IRS regulations). These same tax rules and the need to avoid an ownership change also limit the amount of additional shares we can issue to raise new capital for investment in our business. In an effort to mitigate these risks, we proposed, and our stockholders approved on July 12, 2005, a holding company reorganization in which Aether Systems, Inc. became a wholly owned subsidiary of the Company. In the reorganization, each share of Aether Systems common stock was exchanged for one share of common stock of the Company. The stock of the Company is now traded on the Nasdaq National Market under the symbol AETH, and the stock is subject to transfer restrictions that generally restrict any direct or indirect transfer (such as transfers of stock of the Company that result from the transfer of interests in other entities that own stock of the Company) if the effect would be to: (i) increase the direct or indirect ownership of Company stock by any person (or public group) from less than 5% to 5% or more; (ii) increase the percentage of Company stock owned directly or indirectly by a person (or public group) owning or deemed to own 5% or more of the stock of the Company; or (iii) create a new public group. These transfer restrictions are intended to guard against the possibility that public trading of our stock would result in a change of ownership under the Internal Revenue Code and applicable IRS regulations and to protect the long-term value of our substantial net operating loss and capital loss carryforwards.

In an effort to seek to accelerate the realization of the value from our accumulated net operating loss and capital loss carryforwards, we may seek additional capital, from time to time, through periodic offerings of shares of our stock as market conditions allow. Such additional capital would then be used to expand our business in pursuit of additional taxable income. In general, we would expect to seek to sell shares only when such sales would not be dilutive to the value of our outstanding shares at the time of any such offering. This means we generally would not expect to sell shares at any time when the offering price is below the per share book value of our assets. Because we cannot predict the future trading price of our stock, we cannot predict when or whether we would be able to sell shares of stock to raise additional capital under the desired conditions. In addition, as noted above, provisions of the Internal Revenue Code and certain applicable IRS regulations will limit the number of additional shares of stock we can sell from time to time without causing a limitation on our ability to use our accumulated tax loss carryforwards to reduce our future tax obligations.

Although we may choose to pay dividends in the future, we do not currently anticipate paying dividends to our stockholders in the near term as we seek to realize value from our loss carryforwards by increasing our earnings as quickly as possible. Instead, we expect to re-invest earnings in our business to promote its expansion. We expect that our tax loss carryforwards will allow us to reinvest earnings without reduction for income tax payments for as long as those carryforwards remain available to us.

If we were to pay dividends to stockholders from current earnings, these dividends would, generally speaking, be eligible to be treated as qualified dividends for federal income tax purposes, currently taxed at a maximum federal rate of 15%, assuming that the recipient stockholder meets the various requirements under the Internal Revenue Code for such treatment. The maximum rate for qualified dividends is currently projected to increase to the maximum federal income tax rate applicable to ordinary income (currently 35%) for tax years beginning after December 31, 2008 in accordance with the Jobs and Growth Tax Relief Reconciliation Act of 2003.

REGULATION

We operate under an exception from the definition of an investment company set forth in Section 3(c)(5) of the Investment Company Act for companies that are primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Absent such exception or another applicable exception, we would be required to register as an investment company under the Investment Company Act and would be required to comply with the various regulations adopted by the SEC for application to registered investment companies. The staff of the Securities and Exchange Commission (the SEC) has expressed the view that, in order to be considered to be primarily engaged in the real estate business, a company must have at least 55% of its assets in qualifying real estate interests, which the SEC staff has said, through no-action positions, include whole pool mortgage interests issued by FHLMC, FNMA or GNMA, and at least 25% of its assets in other real estate related assets. This 25% minimum is reduced to the extent a company invests more than 55% of its assets in qualifying real estate interests. Neither the SEC nor its staff has defined the term real estate related assets for purposes of the 25% requirement set forth above. The staff has indicated, however, that a loan will qualify as a real estate related asset if at least 55% of the fair market value of the loan is secured by real estate at the time the company acquires the loan. The staff has also indicated that agency partial pool certificates and certain interests in companies that invest in mortgages or other interests in real estate are real estate related assets. We conduct our business in such a manner as to be exempted from the definition of an investment company under Section 3(c) (5) of the Investment Company Act. The MBS investments we have purchased qualify as qualifying real estate assets, based on the current views of the SEC staff. If we failed to remain exempt from the regulations applicable to investment companies, our business could be adversely affected, as discussed in Item 1A under the heading Risk Factors Loss of Investment Company Act exemption would adversely affect us.

To the extent we explore alternative or additional business strategies we may be limited by the rules and regulations of the Investment Company Act. We will not pursue any strategy which would interfere with our exemption from registration under the Investment Company Act.

COMPETITION

Our ability to generate income from our MBS business depends, in large part, on our ability to acquire and sell MBS in the marketplace on favorable terms. In acquiring MBS, we compete with real estate investment trusts (REITs), financial institutions, such as banks, life insurance companies, savings and loan associations, and institutional investors, such as mutual funds and pension funds, other lenders and other entities that purchase MBS, many of which have greater financial resources than we do. We and other companies that invest in MBS may look to sell such investments at the most favorable prices when market conditions dictate in order to reduce our leverage or reduce the overall amount we have invested in MBS. In addition, our outside investment advisor also acquires and sells MBS for an $11 billion portfolio that it manages for an affiliate. As we sell a portion of our MBS portfolio in order to repay all of our outstanding short-term borrowings, we likely will be competing with other sellers to obtain the best available sale prices for our MBS. Such other sellers may include FBR, as it repositions its affiliate s portfolio. FBR s obligations to its affiliate may conflict with its obligations to us.

GENERAL CORPORATE MATTERS

Aether was originally formed as Aeros, L.L.C. in January 1996. We changed our name to Aether Technologies International, L.L.C. in August 1996 and to Aether Systems L.L.C. in September 1999. Immediately prior to completing our initial public offering of common stock on October 20, 1999, we converted from a limited liability company to a Delaware corporation and changed our name to Aether Systems, Inc. On July 12, 2005, the stockholders of Aether Systems approved a holding company reorganization of Aether Systems in which each share of Aether Systems common stock was exchanged for one share of common stock of the Company and Aether Systems became a wholly-owned subsidiary of the Company. The sole activity of the Company is to hold 100% of the stock of Aether Systems. Immediately after the reorganization, the consolidated assets, liabilities and stockholders equity of the Company were the same as the consolidated assets, liabilities and stockholders equity of Aether Systems immediately prior to the reorganization. On July 13, 2005, the stock of Aether Systems ceased to trade on the Nasdaq National Market, and the stock of the Company began trading under the symbol AETH. The reorganization was designed to help to protect the long-term value to the Company of its substantial net operating loss and capital loss carryforwards.

Our executive offices are located at 621 E. Pratt St., Suite 601, Baltimore, MD 21202. Our telephone number is (443) 573-9400 and our fax number is (443) 573-0383.

Our Internet address is www.aetherholdings.com. We make available free of charge, on or through our website, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished to the SEC pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. We are providing the address of our internet website solely for the information of investors. We do not intend the internet address to be an active link, and the contents of the website are not a part of this Report.

We have adopted a general code of ethics for our business. We have also adopted a code of ethical conduct that applies solely to our principal executive officer, principal financial officer, principal accounting officer, controller and persons performing similar functions. The Board of Directors is responsible for reviewing and authorizing any waivers from both the code of ethics and code of ethical conduct for senior financial officers and we will file any waivers from, or amendments to, these codes on our website www.aetherholdings.com. Both the general code of ethics and the code of ethical conduct for senior financial officers, as well as the charters for our audit committee, nominating committee, corporate governance committee and compensation committee, are available on Aether s website, www.aetherholdings.com. This information is also available in print upon written request to our secretary at the address set forth above.

We have also adopted procedures for our stockholders to communicate with our Board of Directors. Stockholders who wish to contact the Board of Directors, or an individual director, should contact the Board of Directors or individual director at investor_relations@aetherholdings.com or in writing at 621 E. Pratt St., Suite 601, Baltimore, MD 21202. The Secretary will compile all communications and submit them to the Board of Directors, or individual directors, on a periodic basis.

EMPLOYEES

As of December 31, 2005, we employed a total of 7 persons. None of our employees is covered by a collective bargaining agreement. We believe that our relations with our employees are good.

ITEM 1A. RISK FACTORS

Our business activities are subject to various important risks and uncertainties, including the following:

Risks of our Current Business

1. Increases in prepayment rate adversely affect us.

The MBS we acquire are backed by pools of underlying mortgage loans. The payments we receive from our MBS are generally, payments by the mortgagors on the underlying mortgage loans. When borrowers prepay their mortgage loans at rates that are faster than expected, the result is that our MBS are prepaid faster than expected. These accelerated prepayments may adversely affect the performance of our business.

Prepayment rates generally increase when interest rates fall and decrease when interest rates rise, but changes in prepayment rates are difficult to predict. Prepayment rates also may be affected by conditions in the housing and financial markets, general economic conditions and the relative interest rates on fixed-rate and adjustable-rate mortgage loans.

When they were purchased, our MBS had a higher interest rate than the market interest rate at the time. In exchange for this higher interest rate, we paid a premium over the market value to acquire the security. In accordance with accounting rules, we amortize this premium on a level yield over the term of the MBS. If the MBS is prepaid in whole or in part prior to its maturity date, however, we would be required to amortize all (or a corresponding portion, in the case of a partial prepayment) of the remaining unamortized premium. This accelerated amortization negatively impacts the yield on our MBS.

We could, however, reduce the potential negative impact of increased prepayments by acquiring MBS at a discount. In accordance with GAAP, we would recognize this discount on a level yield over the term of the MBS. If a discounted security is prepaid in whole or in part prior to its maturity date, we will recognize income equal to the amount of the discount not previously recognized (or a portion of such remaining discount, in the case of a partial prepayment). Consequently, the reported performance of our business would be enhanced if discounted securities are prepaid faster than expected.

While we seek to minimize prepayment risk to the extent practical, in selecting investments we manage the prepayment risk against other risks and the potential returns of each investment. No strategy, however, can completely insulate us from prepayment risk.

2. An increase in interest rates adversely affects the book value of our MBS.

Increases in the general level of interest rates may cause the fair market value of our assets to decline. Generally, hybrid adjustable-rate MBS (during the fixed-rate component of the mortgages underlying such securities), which comprised 100% of our MBS at December 31, 2005, will be more negatively affected by such increases than traditional one-year adjustable-rate mortgage securities. In accordance with GAAP, we are required to reduce the carrying value of our MBS by the amount of any decrease in the fair value of our MBS compared to their respective amortized costs. If decreases in fair value occur, we are required by GAAP to either reduce current earnings or reduce stockholders equity without immediately affecting current earnings, depending on the accounting classification of the MBS and whether or not we believe the losses are temporary. In either case, our net book value decreases to the extent of any decreases in fair value.

3. If we are unable to renew or obtain additional sufficient funding on favorable terms or at all, we could incur losses.

We depend on borrowings, which to date have been short-term borrowings under repurchase agreements, to fund purchases of MBS in excess of our available cash. Our ability to satisfy commitments to purchase additional MBS depends on our ability to enter into repurchase agreements in sufficient amounts and on favorable terms. In addition, because repurchase agreements are short-term arrangements and MBS are long-term securities, we must be able to continually renew or replace outstanding repurchase agreements as they mature. We currently have repurchase arrangements with five lenders to provide financing for our purchases of MBS. These arrangements are not commitments to lend money to us. If we are unable to obtain funds to satisfy our MBS purchase commitments, or if we are unable to renew or replace maturing borrowings on favorable terms or at all, our financial condition and results could be materially and adversely affected. We could be required to sell our MBS (or to sell forward purchase commitments prior to their settlement, or sell the underlying MBS at the time of settlement) under adverse market conditions, or for prices and on terms that are less favorable than those we might otherwise be able to secure. In such situations, we would be forced to sell investments at a loss.

4. Our cash balances and cash flows may become limited relative to our cash needs and our borrowings could force us to sell assets under adverse market conditions.

Our primary liquidity risk arises from financing long-maturity MBS with short-term borrowings. Because we have purchased certain of our MBS with borrowed funds, a decline in the market value of our investment securities, caused by rising interest rates or prepayments, may result in our lenders initiating margin calls. A margin call means that the lender requires us to pledge additional collateral to re-establish the ratio of the market value of the collateral to the amount of the borrowing. If we are unable to satisfy margin calls, our lenders may foreclose on our collateral. This could force sales of our MBS under adverse market conditions where the value of the collateral securing our borrowing is less than the amount owed to our lenders. In this case, we would be responsible for any deficiency between the value of the collateral and the amounts we borrowed. This would increase our liquidity needs.

Additionally, repurchase agreements may qualify for special treatment under the Bankruptcy Code. This special treatment would allow the lenders under these agreements to avoid the automatic stay provisions of the Bankruptcy Code and to liquidate the collateral under these agreements without delay.

5. Limitations on our ability to raise additional capital through sales of shares of our capital stock may restrict our ability to address liquidity needs through stock issuances and may limit our ability to expand our MBS portfolio by raising additional capital through such stock offerings.

Because of limitations imposed by sections 382 and 383 of the Internal Revenue Code, which regulate our ability to use our accumulated net operating loss carryforwards and capital loss carryforwards in the future (as discussed below), there are limits on the number of additional shares of stock we can sell to raise additional capital. Accordingly, assuming market conditions would otherwise permit us to sell additional shares of our stock, this legal limit may prevent us from raising as much additional capital through sales of our stock as we might want or need at any particular time. As a result, we may be unable to address a specific liquidity needs through a sale of our stock. We also may not be able to increase the size of our MBS portfolio as much or as rapidly as we would otherwise like, because of limits on our ability to raise additional cash through stock offerings.

6. We may change our investment policies and guidelines without stockholder approval.

Our Board of Directors, with the advice of our management and FinPro, determine all of our investment policies and guidelines. The Board of Directors may amend or revise these investment policies and guidelines at any time without notice to stockholders. Changes to the leverage ratio, types of securities included in our portfolio and changes to our risk management policies could adversely affect our financial condition, results of operations, or the market price of our common stock.

7. Competition may increase and negatively impact our business.

The success of our business depends, in large part, on our ability to acquire MBS at favorable spreads over borrowing costs, as well as our ability to sell MBS at favorable prices when necessary in response to changing market conditions. In acquiring and selling MBS, we compete against REITs, financial institutions, such as banks, savings and loans, life insurance companies and institutional investors such as mutual funds and pension funds. Many of these entities have greater financial resources than us and as a result, we may not be able to acquire sufficient MBS at favorable spreads over our borrowing costs. In addition, we may face competition for a limited number of buyers at a time when we are seeking to sell MBS, which could result in us receiving less favorable prices for MBS that we sell. Our investment advisor (FBR) may be one of these competitors, to the extent it seeks to sell MBS for its affiliate, which has a very large MBS portfolio and has committed to repositioning a portion of that portfolio. See the discussion below under The manager of our MBS portfolio, FBR, may have a conflict of interest. Existing competitors may grow, and new competition may enter the market over time, all of which can increase competition and could result in less favorable pricing and lower yields on assets.

8. Defaults on the mortgage loans underlying our MBS may reduce the value of our investment portfolio and harm our results of operations.

We bear the risk of any losses resulting from any defaults on the mortgage loans underlying the MBS in our investment portfolio. The MBS that we purchased are subject to guarantees of the payment of principal and interest on mortgage loans underlying such MBS, either by federal government agencies, including Ginnie Mae, or by federally-chartered corporations, including Fannie Mae and Freddie Mac. While Ginnie Mae s obligations are backed by the full faith and credit of the United States, the obligations of Fannie Mae and Freddie Mac are solely their own. As a result, a substantial deterioration in the financial strength of Fannie Mae, Freddie Mac could increase our exposure to future delinquencies, defaults or credit losses on our holdings of Fannie Mae or Freddie Mac-backed MBS, and could harm our results of operations. In addition, while Freddie Mac guarantees the eventual payment of principal, it does not guarantee the timely payment thereof, and our results of operations may be harmed if borrowers are late or delinquent in their payments on mortgages underlying Freddie Mac-backed MBS. Moreover, Fannie Mae, Freddie Mac, Ginnie Mae guarantees relate only to payments on the mortgages underlying such agency-backed or corporate-backed securities, and do not guarantee the market value of such MBS or the yields on such MBS. As a result, we remain subject to interest rate risks; prepayment risks, extension risks and other risks associated with our investment in such MBS and may experience losses in our investment portfolio.

9. A prolonged economic slow-down, a lengthy or severe recession or declining real estate values could harm our operations.

The residential mortgage market has experienced considerable growth during the past ten years, with total outstanding U.S. mortgage debt growing from approximately $4.4 trillion at the end of 1993 to approximately $8.2 trillion as of December 2005, according to the Bond Market Association and the Federal Reserve. If this growth cannot be sustained or we suffer an economic recession, the market for MBS may be adversely affected.

10. Differences in timing of interest rate adjustments on our acquired securities and on our borrowings adversely affect our MBS business and the returns on the portion of our cash we invest in MBS.

We have relied primarily on short-term borrowings under repurchase agreements to acquire MBS with longer-term maturities. The interest rates on our short-term borrowings fluctuate monthly and carry interest rates that are based on prevailing short-term interest rates. Conversely, all of the MBS we have acquired are hybrid, adjustable-rate securities. This means that the interest rates on our MBS are initially fixed for a period of time, generally three years, subsequent to which they vary over time based upon changes in an objective index such as one year LIBOR or the one year Constant Maturity Treasury Rate, which generally reflect longer term interest rates. Accordingly, as short-term interest rates increase, it adversely affects our investment strategy and the returns on our capital.

As interest rates increased during 2005, we experienced a negative interest spread which adversely affected our net interest income because the interest rates on our borrowings adjusted upward faster than the interest rates on our adjustable-rate securities.

11. Interest rate caps could reduce the returns from our business.

Adjustable-rate and hybrid adjustable-rate MBS are typically subject to periodic and lifetime interest rate caps. Periodic interest rate caps limit the amount an interest rate can increase during any given adjustment period. Lifetime interest rate caps limit the amount an interest rate can increase over the life of the security. Our borrowings are not subject to similar restrictions. Accordingly, in a period of rapidly increasing interest rates (such as over the last three quarters), we would experience a decrease in net income or experience a net loss from our MBS portfolio because increases in the interest rates on our borrowings will not be limited, while increases in the interest rates on our adjustable-rate securities would be capped.

12. Hedging against interest rate exposure could adversely affect performance of our portfolio of MBS.

We may enter into derivative transactions and other hedging strategies, such as interest rate swaps and caps, options to purchase swaps and caps, financial futures contracts and options on futures that are intended to hedge our exposure to rising rates on funds borrowed to finance our investment securities. Interest rate hedging may fail to reduce exposure to interest rate and prepayment risks discussed in this Risk Factors section because, among other things:

interest rate hedging can be expensive, particularly during periods of rising and volatile interest rates, and the cost of implementing the hedge may offset its potential benefit;

available interest rate hedging may not correspond directly with the interest rate risk for which protection is sought;

the duration of the hedge may not match the duration of the related liability; and

the credit quality of the party owing money on the hedge may be downgraded to such an extent that it impairs its ability to sell or assign its side of the hedging transaction.

13. We are dependent on FBR to assist us in managing the portfolio of MBS.

Because we do not have experience in managing a leveraged portfolio of MBS, we are heavily dependent on the efforts and expertise of FBR. If we were to lose FBR s services, our ability to fulfill our objectives and continue our MBS business could be adversely affected. As of July 1, 2005, the initial one-year term of our agreement with FBR expired, and this agreement is now continuing on a month-to-month basis without a fixed term, subject to the right of either party to terminate the agreement with ninety days prior notice. During the term of the agreement, unanticipated changes in circumstances to us or FBR could result in FBR ceasing to provide services to us. Accordingly, we cannot assure you that FBR will continue to work with us. FBR has not indicated that it plans to terminate its contract with us or that the repositioning of FBR s portfolio will have any impact on its ability to continue to manage our portfolio. If FBR were to terminate its agreement with us, however, it may be difficult for us, within a reasonable period of time, to replace FBR with another firm having comparable expertise and offering comparable financial terms.

14. The manager of our MBS portfolio, FBR, may have a conflict of interest.

FBR manages a multi-billion dollar portfolio of MBS for an affiliate using a strategy very similar ours. On December 21, 2005, an affiliate of FBR announced that it will reposition its MBS portfolio and sell some portion of its existing portfolio beginning in the first quarter of 2006. FBR may face potential conflicts of interest, including the allocation of opportunities to sell MBS at favorable prices. We may seek to sell MBS in response to unfavorable market conditions at a time when many other MBS investors (including FBR) are seeking to sell. FBR has no obligation to resolve in our favor conflicts of interest that may arise in connection with competing portfolios. Employees of FBR will only devote the time and attention to our MBS that they deem necessary in their discretion, and there may be conflicts in allocating time, services and functions between our portfolio and other portfolios that FBR manages. The failure of employees of FBR to devote adequate time and attention to our MBS strategy could adversely affect the performance of our business.

15. FBR s past performance or the performance of other companies that invest in MBS may not be indicative of how our MBS portfolio will perform.

The operations and results of any business with which FBR or its related companies have been or are associated or of any other company that follows a strategy similar to the one we are involved in are not intended to be, and should not be considered as, any indication of the likely future performance of our leveraged portfolio of MBS. The performance of our MBS portfolio may be affected by changes in market conditions, prepayment rates, availability of financing and interest rates, which are outside of our control or the control of FBR. In addition, other companies employing a strategy similar to the one we are pursuing may have different investment policies or greater financial resources than we have. Therefore, the past performance of FBR or other companies that use a strategy similar to ours is no guarantee, and may not be indicative, of the future performance of our portfolio of MBS.

16. Changes in our business strategy may adversely affect out MBS portfolio and near term earnings.

We have used borrowed funds to purchase a portion of the securities in our MBS portfolio. If we change our overall business strategy at a time when we have outstanding borrowings, our current lenders may cease to renew such borrowings at maturity. This could force us to sell our MBS under adverse market conditions, which could result in additional losses.

A new business strategy would be subject to new and additional risks. We also may experience transition expenses and the increase in operating costs as we implement a new strategy.

Regulatory and Tax Risks of Our MBS Business

1. Loss of Investment Company Act exemption would adversely affect us.

In managing a leveraged portfolio of MBS, we rely on an exemption from the Investment Company Act of 1940 for companies that are engaged primarily in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Under the SEC staff s current interpretation of that exemption, in order to meet the criteria for such exemption, we have to maintain at least 55% of our assets in qualifying real estate interests, such as whole pool mortgage interests issued by FHLMC, FNMA or GNMA, and at least 25% of our assets in other real estate related assets, such as non-whole pool MBS. This 25% minimum is reduced to the extent we invest more than 55% of our assets in qualifying real estate interests. These requirements could limit our ability to purchase certain types of MBS that might otherwise be attractive, and these restrictions could result in a lower level of income from our portfolio.

Changes in the Investment Company Act of 1940 or the rules there under, or in the SEC staff s interpretation of the statute and rules, could force us to sell a substantial portion of our portfolio under potentially adverse market conditions. In addition, the use of leverage is a fundamental part of our MBS business. In the event we were required to register as an investment company under the Investment Company Act of 1940, our ability to use leverage and the returns on our equity capital would be substantially reduced, we would suffer additional regulatory costs and expenses and we would not be able to pursue our MBS business as described in this Report.

2. We may not be able to realize value from our tax loss carryforwards.

As of December 31, 2005, we had federal net operating loss carryforwards of approximately $777.8 million that expire between 2016 and 2025. In addition, we had capital loss carryforwards of approximately $272.2 million that expire between 2006 and 2010. In the event were to undergo an ownership change as defined in section 382 of the Internal Revenue Code, our net operating loss carryforwards and capital loss carryforwards generated prior to the ownership change would be subject to annual limitations, which could reduce, eliminate, or defer the utilization of these losses. Based upon a review of past changes in our ownership, as of December 31, 2005, we do not believe that we have experienced an ownership change (as defined under section 382) that would result in any limitation on our future ability to use these net operating loss and capital loss carryforwards. However, we can not assure you that the IRS or some other taxing authority may not disagree with our position and contend that we have already experienced such an ownership change, which would severely limit our ability to use our net operating loss carryforwards and capital loss carryforwards to offset future taxable income.

Generally, an ownership change occurs if one or more stockholders, each of whom owns 5% or more in value of a corporation s stock, increase their aggregate percentage ownership by more than 50% over the lowest percentage of stock owned by such stockholders at any time during the preceding three-year period. For example, if a single stockholder owning 10% of our stock acquired an additional 50.1% of our stock in a three-year period, a change of ownership would occur. Similarly, if ten persons, none of whom owned our stock, each acquired slightly over 5% of our stock within a three-year period (so that such persons own, in the aggregate more than 50%) an ownership change would occur. Ownership of stock is determined by certain constructive ownership rules which can attribute ownership of stock owned by entities (such as estates, trusts, corporations, and partnerships) to the ultimate indirect owner.

For purposes of this rule, all holders who each own less than 5% of a corporation s stock are generally treated together as one (or, in certain cases, more than one) 5% stockholder. Transactions in the public markets among stockholders owning less than 5% of the equity securities generally are not included in the calculation. Special rules can result in the treatment of options (including warrants) or other similar interests as having been exercised if such treatment would result in an ownership change.

Due to the importance of avoiding a future ownership change under the tax laws, we will be limited in our ability to issue additional stock in the future to provide capital for our business. We would only be able to issue such additional stock in a manner that would not cause an ownership change, for purposes of these rules, and thus, as discussed above, our ability to access the equity markets could be restricted, to some extent.

3. We may not be able to use our tax loss carryforwards because we may not generate taxable income.

The use of our net operating loss carryforwards is subject to uncertainty because it is dependent upon the amount of taxable income we generate. Similarly, the extent of our actual use of our capital loss carryforwards is also subject to uncertainty because their use depends on the amount of capital gains we generate. There can be no assurance that we will have sufficient taxable income (or capital gains) in future years to use the net operating loss carryforwards or capital loss carryfowards before they expire. This is especially true for our capital loss carryfowards, because they expire over a shorter period of time than our net operating loss carryforwards.

4. The IRS could challenge the amount of our tax loss carryforwards.

The amount of our net operating loss carryforwards and capital loss carryforwards has not been audited or otherwise validated by the IRS. The IRS could challenge the amount of our net operating loss carryforwards and capital loss carryforwards, which could result in an increase in our liability for income taxes. In addition, calculating whether an ownership change has occurred is subject to uncertainty, both because of the complexity and ambiguity of section 382 and because of limitations on a publicly traded company s knowledge as to the ownership of, and transactions in, its securities. Therefore, we cannot assure you that the calculation of the amount of our net loss carryforwards may not be changed as a result of a challenge by a governmental authority or our learning of new information about the ownership of, and transactions in, our securities.

5. We expect to be subject to the alternative minimum tax and our net loss carryforwards would not offset that tax in its entirety.

We do not plan to seek to qualify as a REIT under the Internal Revenue Code and we will therefore continue to be subject to state and federal income tax. However, as a result of our capital loss carryforwards and net operating loss carryforwards, we anticipate our federal income tax liability for the current fiscal year as well as for several years into the future to be substantially reduced. We do expect to be subject to the alternative minimum tax provisions of the Internal Revenue Code which limits the use of net operating loss carryforwards. These provisions would result, in effect, in 10% of our alternative minimum taxable income being subject to the 20% alternative minimum tax assessed on corporations. This amounts to a 2% effective tax rate on our alternative minimum taxable income.

6. The IRS may seek to impose the accumulated earnings tax on some or all of the taxable income we retain.

As a component of our MBS investment strategy, we expect to retain all or a substantial portion of future earnings over the next several years to finance the development and growth of our business. As a result, we may not declare or pay any significant dividends on shares of our common stock for an extended period. If the IRS were to believe we were accumulating earnings beyond our reasonable business needs, the IRS could seek to impose an accumulated earnings tax, or AET, of 15% on our accumulated taxable income. We do not believe that we will be subject to the AET due to various reasons, including the existence of our large deficit in accumulated earnings and profits. However, the IRS may disagree with us on this point, and the IRS may attempt to impose the AET on all or a portion of our taxable income. In such event, we would expect to challenge any attempt by the IRS to impose the AET on our business, but the outcome of such a challenge is uncertain.

If we were to distribute our accumulated taxable income for each year to our stockholders as dividends, we would not be subject to the AET for the amounts so distributed, but would only be subject to the AET for the amount of earnings retained. If we were to pay dividends to stockholders out of current earnings, these dividends would, generally speaking, be eligible to be treated as qualified dividends for federal income tax purposes, taxed at the current maximum federal rate of 15%, assuming that the recipient stockholder meets the various requirements under the Internal Revenue Code for such treatment. The maximum rate for qualified dividends is currently projected to increase to the maximum federal income tax rate applicable to ordinary income (currently 35%) for tax years beginning after December 31, 2008 in accordance with the Jobs and Growth Tax Relief Reconciliation Act of 2003.

7. Possible changes in legislation could negatively affect our investments.

Prospective investors should recognize that the present U.S. federal income tax treatment of an investment in our stock may be modified by legislative, judicial or administrative action at any time, and that any such action may affect investments and commitments previously made. The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the Internal Revenue Service and the U.S. Treasury Department, resulting in revisions of regulations and revised interpretations of established concepts as well as statutory changes. Revisions in U.S. federal tax laws and interpretations thereof could adversely affect the tax consequences of an investment in our stock and could impair our ability to use the tax benefits associated with our tax loss carryforwards. However, we are not aware of any proposed changes in the tax laws or regulations that would materially impact our ability to use our tax loss carryforwards.

8. Limits on ownership of our common stock could have an adverse consequence to you and could limit your opportunity to receive a premium on our stock.

As noted above, it is important that we avoid an ownership change under section 382 of the Internal Revenue Code, in order to retain the ability to use our net operating loss carryforwards and capital loss carryforwards to offset future income. This means that a potential buyer of our stock might be deterred from acquiring our common stock while we still have significant tax losses being carried forward, because such an acquisition might trigger an ownership change and severely impair our ability to use our tax losses against future income. Thus, this potential tax situation could have the effect of delaying, deferring or preventing a change in control and, therefore, could adversely affect our shareholders ability to realize a premium over the then prevailing market price for our common stock in connection with a change in control.

On July 12, 2005, the stockholders of Aether Systems approved a holding company reorganization of Aether Systems in which each share of Aether Systems common stock was exchanged for one share of common stock of the Company and Aether Systems became a wholly-owned subsidiary of the Company. Shares of the Company contain certain transfer restrictions on the ownership of our common stock. Although these transfer restrictions are designed as a protective measure to avoid an ownership change, they may have the effect of impeding or discouraging a merger, tender offer or proxy contest, even if such a transaction may be favorable to the interests of some or all of our shareholders. This effect might prevent stockholders from realizing an opportunity to sell all or a portion of their common stock of the Company at a premium to the prevailing market price.

Risks Associated With Our Historic Mobile and Wireless Data Businesses

1. We may be required to indemnify the purchasers of our EMS, Transportation and Mobile Government businesses.

We may be required to indemnify Telecommunication System, Inc. (TCS), Geologic Solutions, Inc. (f/k/a Slingshot Acquisition Corporation) (Geologic) and/or BIO-key International Inc. (BIO-key) for certain breaches of representations and warranties and other covenants that we gave to TCS, Geologic and BIO-key with respect to the sales of the EMS, Transportation and Mobile Government businesses, respectively.

Our indemnification liability to Geologic under the asset purchase agreement is limited to $10.0 million, other than in the case of fraud and with respect to a small number of specific representations, such as those relating to taxes owed for periods prior to the closing of the sale of the Transportation segment. In addition, we remain fully liable for any claims that may arise relating to our operation of the Transportation business prior to the date on which Geologic acquired that business from us. As previously disclosed, in the third quarter of 2005, Geologic notified us of, and we responded to, various indemnification claims for alleged breaches of representations and warranties under the asset purchase agreement pursuant to which we sold our Transportation business to Geologic. The parties have been unable to resolve their disagreement over Geologic s claim for indemnification and on March 13, 2006, Geologic filed a lawsuit against the Company in the Supreme Court of the State of New York. Geologic s claims primarily involve allegations that we did not fully disclose certain aspects of our Transportation business relationships with one of its major customers and two of its major suppliers that allegedly resulted in the devaluation of inventory and other adverse effects to the Transportation business after the sale. Geologic contends that it has suffered damages in excess of $30 million as a result of these alleged breaches. We believe that Geologic s claims are without merit and intend to vigorously defend against them. However, we cannot predict the outcome of this litigation, and an adverse resolution of such claims could require us to make a significant cash payment to Geologic. In such event, we would record a charge against earnings, further increasing the loss on the sale of the Transportation segment.

Most of the indemnification provisions relating to the sale of our EMS segment have now expired. Most of the indemnification provisions relating to the other two businesses will continue through the first quarter of 2006.

Our indemnification liability to BIO-key under the asset purchase agreement is limited to $2.0 million, other than in the case of fraud and with respect to a small number of specific representations, such as those relating to taxes owed for periods prior to the closing of the sale of the Mobile Government segment. We also remain fully liable for any claims that may arise relating to our operation of the Mobile Government business prior to the date on which BIO-key acquired that business from us. We have agreed to maintain certain credit support and performance assurance arrangements on behalf of BIO-key. Under a sales agreement with Hamilton County, Ohio, our potential liability is secured by a $7.9 million letter of credit to assure performance under the terms of that sales agreement. We also have been required to sublease (rather than assign) to BIO-key the Mobile Government leased facility in Marlborough, Massachusetts, and to keep in place a $749,000 letter of credit in favor of the landlord under the lease. On January 23, 2006, we entered into two agreements that amend the collateral security and credit arrangements originally entered into with BIO-key. In the agreements, if certain conditions are met, we agreed to release to BIO-key up to $1 million of cash collateral currently held by us and will have expanded rights relating to BIO-key s $749,000 security deposit for the sublease by BIO-key of Massachusetts office space. For a further discussion of these matters involving Geologic and BIO-key, see Notes 14 and 17 of the notes to the Consolidated Financial Statements included in Item 8 of this Report.

We may also be required to indemnify TCS under the asset purchase agreement for certain breaches of representations and warranties and other covenants that we gave to TCS with respect to the sale of our EMS segment. This liability is limited to $7.6 million, other than in the case of fraud and with respect to a small number of specific representations, such as those relating to taxes owed for periods prior to the closing of the sale of the EMS segment. In addition, we remain fully liable for any claims that may arise relating to our operation of the EMS business prior to the date on which TCS acquired that business from us, including any liability arising from our past sales of the blackberry devices manufactured by Research In Motion (RIM). Recently, the U.S. Court of Appeals ruled that RIM violated 16 patents owned by intellectual property holding company NTP, Inc. (NTP). The case was remanded on February 24, 2006 to the District Court to determine whether or not RIM should be enjoined selling the violating products. It has been reported that the parties have since reached a settlement agreement.

Other than our dispute with Geologic, we are not currently aware of any potential claims that we would expect to be significant. However, claims may arise in the future that could impose substantial liabilities on us.

Other Risks of Our Business

1. Our success in identifying and implementing strategic alternatives may impact our business.

We may incur additional costs and expenses in evaluating and pursuing potential new business opportunities. As a result, our expenses may increase above current levels. There can be no assurance that we will locate a suitable business opportunity or that any transition of our business will be successful or enable us to utilize our loss carryforwards.

2. Compliance with changing regulation of corporate governance and public disclosure may result in additional expenses.

Because we have a relatively small corporate staff, we rely heavily on outside professional advisers to assist us with the various governance and compliance obligations we have as a public company. As a result, our operating expenses in 2003, 2004, and 2005 include significant outside professional fees, and we expect to continue to incur such expenses in the future. These costs have included increased accounting related fees associated with preparing the attestation report on our internal control over financial reporting as required under Section 404 of the Sarbanes-Oxley Act of 2002. These costs have offset a portion of the savings we realized through our expense reduction program. In addition, more recent, regulations and standards are subject to varying interpretations, as well as modifications by the SEC and the Nasdaq. The way in which these laws, regulations and standards are applied and implemented may change over time, which could result in even higher costs to address and implement revisions to compliance (including disclosure) and governance practices.

We are committed to maintaining high standards of corporate governance and public disclosure. As a result, we intend to invest resources to comply with evolving laws, regulations and standards, and in addition to increased general and administrative expenses, this investment will require management to devote time and attention that will not be available for other matters. If our efforts to comply with new or changed laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, our reputation may be harmed and we could be exposed to potential liabilities.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our principal offices total 3,955 square feet and are located in Baltimore, Maryland. In addition, we maintain a lease for space in Marlborough, Massachusetts that we used as the headquarters for our Mobile Government business. We have sublet this office space to BIO-Key International, Inc., the company that purchased our Mobile Government business. We believe that our retained facilities are adequate for the purposes for which they are presently used and that replacement facilities are available at comparable cost, should the need arise.

ITEM 3. LEGAL PROCEEDINGS

Aether is among the hundreds of defendants named in nine class action lawsuits seeking damages on account of alleged violations of securities law. The case is being heard in the United States District Court for the Southern District of New York. The court has consolidated the actions by all of the named defendants that actually issued the securities in question and there are now approximately 310 consolidated cases before Judge Scheindlin, including the Aether action, under the caption In Re Initial Public Offerings Litigation, Master File 21 MC 92 (SAS).

These actions were filed on behalf of persons and entities that acquired the Company s stock after its initial public offering in October 20, 1999. Among other things, the complaints claim that prospectuses, dated October 20, 1999 and September 27, 2000 and issued by Aether in connection with the public offerings of common stock, allegedly contained untrue statements of material fact or

omissions of material fact in violation of securities laws because the prospectuses allegedly failed to disclose that the offerings underwriters had solicited and received additional and excessive fees, commissions and benefits beyond those listed in the arrangements with certain of their customers which were designed to maintain, distort and/or inflate the market price of the Company s common stock in the aftermarket. The actions seek unspecified monetary damages and rescission. Aether believes the claims are without merit and is vigorously contesting these actions.

Initial motions to dismiss the case were filed and the court held oral argument on the motions to dismiss on November 1, 2002. On February 19, 2003, the court issued an Opinion and Order on defendants motions to dismiss, which granted the motions in part and denied the motions in part. As to Aether, the motion to dismiss the claims against it was denied in its entirety. Discovery has now commenced. The plaintiffs voluntarily dismissed without prejudice the officer and director defendants of Aether. On June 26, 2003, the Plaintiff s Executive Committee in this case announced a proposed settlement with the issuers. The proposed settlement is a settlement among the plaintiffs, the issuer-defendants, including Aether, and the officer and director defendants of the issuers. The plaintiffs will continue litigating their claims against the underwriter-defendants. Under terms of the proposed settlement, Aether would not incur any material financial or other liability. On June 14, 2004, the plaintiffs and issuer defendants presented the executed settlement agreement to Judge Scheindlin during a court conference. Subsequently, plaintiffs and issuers made a motion for preliminary approval of the settlement agreement. On July 14, 2004, the underwriter defendants filed a memorandum of law in opposition to plaintiffs motion for preliminary approval of the settlement agreement. Reply briefs in support of the settlement were submitted to the court. In December 2004, the court ordered additional briefing on the motion. All of the additional briefs were submitted to the court. On February 15, 2005, Judge Scheindlin issued an Opinion and Order granting preliminary approval to the settlement agreement. The process of communicating formal notice of the proposed settlement to the plaintiff classes has been initiated. The court has scheduled a fairness hearing on the proposed settlement for April 24, 2006, and subsequently will decide whether to grant final approval to the settlement agreement.   There can be no assurance such approval will be granted.

On March 13, 2006, a complaint captioned Geologic Solutions, Inc., v. Aether Holdings, Inc., (Index No. 600856/06) was filed against the Company in the Supreme Court for the State of New York, New York County. The complaint generally alleges that plaintiff Geologic was damaged as a result of certain alleged breaches of contract and fraudulent inducement arising out of Aether s alleged misrepresentations and failure to disclose certain information in the asset purchase agreement dated as of July 20, 2004 for the purchase and sale of our Transportation business. The allegations in Geologic s complaint are substantially similar to claims Geologic made in a previous request to the Company for indemnification. The complaint seeks monetary damages in an amount not less than $30 million and other relief. We plan to vigorously defend against this action but cannot predict its outcome.

Aether is also a party to other legal proceedings in the normal course of business. Based on evaluation of these matters and discussions with counsel, the Company believes that any additional liabilities arising from these matters will not have a material adverse effect on the consolidated results of its operations or financial position. See Note 14 of the notes to our Consolidated Financial Statements included in Item 8 of this Report, for additional discussion of claims relating to the sale of the Transportation business.

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

No matters were submitted to Aether s stockholders for consideration during the fourth quarter of the fiscal year ended December 31, 2005.

PART II

ITEM 5. MARKET FOR AETHER S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

PRICE RANGE OF COMMON STOCK

Our common stock has been quoted on the Nasdaq National Market under the symbol AETH since our initial public offering on October 20, 1999. Prior to that time, there was no public market for our common stock. The following table sets forth, for the periods indicated, the high and low prices per share of the common stock as reported on the Nasdaq National Market.

	2005		2004	
QUARTER ENDED	**HIGH**	**LOW**	**HIGH**	**LOW**
March 31	$ 3.51	$ 3.24	$ 5.91	$ 3.92
June 30	$ 3.45	$ 3.04	$ 4.93	$ 3.23
September 30	$ 3.67	$ 3.27	$ 3.45	$ 2.72
December 31	$ 3.57	$ 3.27	$ 4.00	$ 3.27

APPROXIMATE NUMBER OF EQUITY SECURITY HOLDERS

The number of holders of record of Aether s common stock as of February 28, 2006 was 482.

DIVIDENDS

We have never declared or paid any cash dividends on our capital stock nor, when we were organized as a limited liability company, did we make any distributions to our members. As discussed above in Item 1 under the heading Business Introduction, for the period that our accumulated tax loss carryforwards remain available for use, we expect to retain earnings, if any, to support the development of our business, rather than pay periodic cash dividends. Our Board of Directors may reconsider or change this policy in the future. Payment of future dividends, if any, will be at the discretion of our Board of Directors, after taking into account such factors as it considers relevant, including our financial condition, the performance of our business, the perceived benefits to the Company and our stockholders of re-investing earnings, anticipated future cash needs of our business, the tax consequences of retaining earnings and the tax consequences to the Company and its stockholders of making dividend payments.

SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLANS

Plan Category	Plan Name	Number of securities to be issued upon exercise of outstanding options, and restricted stock	Weighted-average exercise price of outstanding options, and restricted stock	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by security holders	1999 Equity Incentive Plan	1,077,334	$ 4.77	3,866,896
Equity compensation plans not approved by security holders	Acquisition Incentive Plan	0	0.00	1,317,877
Total		1,077,334	$ 4.77	5,184,773

The 1999 Equity Incentive Plan provides for the issuance of Aether common stock, pursuant to grants of stock options or restricted stock, in an amount equal to 20% of the Company s outstanding shares. On September 2, 2005, the Company filed a registration statement with the Securities and Exchange Commission on Form S-8 registering an additional 973,866 shares under the 1999 Equity Incentive Plan.

Acquisition Incentive Plan

The Acquisition Incentive Plan was effective December 15, 2000. Grants under the Acquisition Incentive Plan may be made to all employees, consultants and certain other service providers (other than directors and executive officers) of the Company. Under the Acquisition Incentive Plan, Aether s Board of Directors has authorized the issuance of up to 1,900,000 shares of Aether common stock in connection with the grant of stock options or restricted stock. All options granted under the Acquisition Incentive Plan must be nonqualified stock options. Any shares covered by an award that are used to pay the exercise price or any required withholding tax will become available for re-issuance under the plan. In the event of a change of control as such term is defined in the Acquisition Incentive Plan, awards of restricted stock and stock options will become fully vested or exercisable, as applicable, to the extent the award agreement granting such restricted stock or options provides for such acceleration. (Individuals receive an award agreement upon grant of an award under the Acquisition Incentive Plan.) A participant will immediately forfeit any and all unvested options and forfeit all unvested restricted stock at the time of termination from Aether, unless the award agreement provides otherwise. No participant may exercise vested options after the 90th day from the date of termination from Aether, unless the award grant provides otherwise. No awards may be made pursuant to the Acquisition Incentive Plan after December 14, 2010. The Acquisition Incentive Plan is administered by Aether s compensation committee.

UNREGISTERED SALES OF SECURITIES

None

ITEM 6. SELECTED FINANCIAL DATA

The table that follows presents portions of our Consolidated Financial Statements and is not a complete presentation in accordance with accounting principles generally accepted in the United States of America. You should read the following Selected Financial Data together with our Consolidated Financial Statements and related notes and with Management s Discussion and Analysis of Financial Condition and Results of Operations included in Item 7 of this Report. The historical results presented below are not necessarily indicative of the results to be expected for any future fiscal year.

The results of operations in the following Selected Financial Data, as well as in our Consolidated Financial Statements, present the results of our EMS, Transportation and Mobile Government businesses, which we sold during 2004, as discontinued operations. Loss from continuing operations does not include any financial results of the EMS, Transportation or Mobile Government businesses.

	YEAR ENDED DECEMBER 31,				
	2001	**2002**	**2003**	**2004**	**2005**
	(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)				
CONSOLIDATED STATEMENT OF OPERATIONS DATA:					
Interest income from mortgage-backed securities	$	$	$	$ 481	$ 9,775
Interest income from cash and cash equivalents				447	328
Interest expense on repurchase agreements			&#1		