

GEN PROBE INC
Form 10-Q
May 06, 2009

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q**

(Mark One)

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended March 31, 2009
OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
Commission File Number 001-31279
GEN-PROBE INCORPORATED
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

33-0044608
(I.R.S. Employer
Identification Number)

10210 Genetic Center Drive
San Diego, CA
(Address of Principal Executive
Offices)

92121
(Zip Code)

(858) 410-8000

(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller Reporting Company
(Do not check if a smaller reporting company)

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

As of April 30, 2009, there were 52,073,804 shares of the registrant's common stock, par value \$0.0001 per share, outstanding.

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GEN-PROBE INCORPORATED
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	March 31, 2009 (unaudited)	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 286,195	\$ 60,122
Marketable securities - current	366,395	371,276
Trade accounts receivable, net of allowance for doubtful accounts of \$600 and \$700 at March 31, 2009 and December 31, 2008, respectively	35,206	33,397
Accounts receivable - other	1,886	2,900
Inventories	52,175	54,406
Deferred income tax - short term	5,965	7,269
Prepaid income tax		2,306
Prepaid expenses	14,144	15,094
Other current assets	5,699	6,135
Total current assets	767,665	552,905
Marketable securities - non-current	32,677	73,780
Property, plant and equipment, net	142,799	141,922
Capitalized software, net	12,780	13,409
Goodwill	18,621	18,621
Deferred income tax - long term	12,286	12,286
Licenses, manufacturing access fees and other assets, net	56,483	56,608
Total assets	\$ 1,043,311	\$ 869,531
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	\$ 15,788	\$ 16,050
Accrued salaries and employee benefits	19,434	25,093
Other accrued expenses	6,239	4,027
Income tax payable	8,491	
Short-term borrowings	170,000	
Deferred revenue - short term	1,592	1,278
Total current liabilities	221,544	46,448
Non-current income tax payable	4,671	4,773
Deferred income tax - long term	54	55
Deferred revenue - long term	2,167	2,333
Deferred compensation plan liabilities	2,244	2,162
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.0001 par value per share; 20,000,000 shares authorized, none issued and outstanding		

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Common stock, \$0.0001 par value per share; 200,000,000 shares authorized, 52,068,633 and 52,920,971 shares issued and outstanding at March 31, 2009 and December 31, 2008, respectively	5	5
Additional paid-in capital	353,304	382,544
Accumulated other comprehensive income	5,419	3,055
Retained earnings	453,903	428,156
Total stockholders' equity	812,631	813,760
Total liabilities and stockholders' equity	\$ 1,043,311	\$ 869,531

See accompanying notes to consolidated financial statements.

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CONSOLIDATED STATEMENTS OF INCOME**

(In thousands, except per share data)

(Unaudited)

	Three Months Ended March 31,	
	2009	2008
Revenues:		
Product sales	\$ 112,522	\$ 101,507
Collaborative research revenue	1,675	2,459
Royalty and license revenue	1,986	18,597
Total revenues	116,183	122,563
Operating expenses:		
Cost of product sales	33,314	32,636
Research and development	24,998	23,066
Marketing and sales	11,055	11,908
General and administrative	13,846	11,937
Total operating expenses	83,213	79,547
Income from operations	32,970	43,016
Other income/(expense):		
Interest income	4,882	4,207
Interest expense	(151)	
Other income/(expense)	(142)	1,473
Total other income, net	4,589	5,680
Income before income tax	37,559	48,696
Income tax expense	11,812	16,751
Net income	\$ 25,747	\$ 31,945
Net income per share:		
Basic	\$ 0.49	\$ 0.59
Diluted	\$ 0.48	\$ 0.58
Weighted average shares outstanding:		
Basic	52,407	53,796
Diluted	53,126	55,023

See accompanying notes to consolidated financial statements.

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GEN-PROBE INCORPORATED
CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(Unaudited)

	Three Months Ended	
	March 31,	
	2009	2008
Operating activities		
Net income	\$ 25,747	\$ 31,945
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	8,748	8,608
Amortization of premiums on investments, net of accretion of discounts	1,523	1,735
Stock-based compensation charges	5,758	5,192
Stock-based compensation income tax benefits	126	369
Excess tax benefit from stock-based compensation	(127)	(145)
Gain on sale of investment in MPI		(1,600)
Changes in assets and liabilities:		
Trade and other accounts receivable	(784)	3,842
Inventories	2,223	(1,796)
Prepaid expenses	945	3,447
Other current assets	436	(1,161)
Other long term assets	(1,161)	(743)
Accounts payable	(219)	3,181
Accrued salaries and employee benefits	(5,657)	(3,069)
Other accrued expenses	2,217	965
Income tax payable	10,709	15,663
Deferred revenue	147	(45)
Deferred income tax	1,305	688
Deferred rent		(10)
Deferred compensation plan liabilities	82	454
Net cash provided by operating activities	52,018	67,520
Investing activities		
Proceeds from sales and maturities of marketable securities	84,008	97,290
Purchases of marketable securities	(37,124)	(181,546)
Purchases of property, plant and equipment	(7,525)	(20,033)
Purchase of intangible assets, including licenses and manufacturing access fees	(205)	(194)
Proceeds from sale of investment in MPI		4,100
Other assets	(13)	75
Net cash provided by (used in) investing activities	39,141	(100,308)
Financing activities		
Excess tax benefit from stock-based compensation	127	145
Repurchase and retirement of restricted stock for payment of taxes	(34)	(41)
Repurchases of common stock	(35,627)	
Proceeds from issuance of common stock	534	3,027

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Borrowings under credit facility	170,000	
Net cash provided by financing activities	135,000	3,131
Effect of exchange rate changes on cash and cash equivalents	(86)	(7)
Net increase (decrease) in cash and cash equivalents	226,073	(29,664)
Cash and cash equivalents at the beginning of period	60,122	75,963
Cash and cash equivalents at the end of period	\$ 286,195	\$ 46,299

See accompanying notes to consolidated financial statements.

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Table of Contents**Notes to the Consolidated Financial Statements (unaudited)****Note 1 Summary of significant accounting policies*****Basis of presentation***

The accompanying interim consolidated financial statements of Gen-Probe Incorporated (Gen-Probe or the Company) at March 31, 2009, and for the three month periods ended March 31, 2009 and 2008, are unaudited and have been prepared in accordance with United States generally accepted accounting principles (U.S. GAAP) for interim financial information. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In management 's opinion, the unaudited consolidated financial statements include all adjustments, consisting only of normal recurring accruals, necessary to state fairly the financial information therein, in accordance with U.S. GAAP. Interim results are not necessarily indicative of the results that may be reported for any other interim period or for the year ending December 31, 2009.

Certain prior year amounts have been reclassified to conform with the current year presentation. In the first quarter of 2009, the Company began reporting those investments with a contractual maturity of greater than 12 months and that are in an unrealized loss position deemed to be temporary as non-current marketable securities. This reclassification resulted in \$73.8 million in non-current marketable securities at December 31, 2008.

These unaudited consolidated financial statements and footnotes thereto should be read in conjunction with the audited consolidated financial statements and footnotes thereto contained in the Company 's Annual Report on Form 10-K for the year ended December 31, 2008.

Principles of consolidation

The consolidated financial statements of the Company include the accounts of the Company and its subsidiaries, Gen-Probe Sales & Service, Inc., Gen-Probe International, Inc., Gen-Probe UK Limited (GP UK Limited), Gen-Probe Italia S.r.l., Gen-Probe Deutschland GmbH and Molecular Light Technology Limited (MLT) and MLT 's subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

Use of estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements. These estimates include assessing the collectability of accounts receivable, recognition of revenues, and the valuation of the following: stock-based compensation, marketable securities, equity investments in privately held companies, income tax, liabilities associated with employee benefit costs, inventories, goodwill and long-lived assets, including patent costs, capitalized software and licenses and manufacturing access fees. Actual results could differ from those estimates.

Foreign currencies

The functional currency of the Company 's wholly owned subsidiaries GP UK Limited and MLT and its subsidiaries is the British pound. The functional currency of Gen-Probe Italia S.r.l. and Gen-Probe Deutschland GmbH is the Euro. Accordingly, balance sheet accounts of these subsidiaries are translated into United States dollars using the exchange rate in effect at the balance sheet date, and revenues and expenses are translated using the average exchange rates in effect during the period. The gains and losses from foreign currency translation of the financial statements of these subsidiaries are recorded directly as a separate component of stockholders ' equity under the caption Accumulated other comprehensive income.

Marketable securities

The primary objectives for the Company 's marketable security investment portfolio are liquidity and safety of principal. Investments are made with the objective of achieving the highest rate of return consistent with these two objectives. The Company 's investment policy limits investments to certain types of debt and money market instruments issued by institutions primarily with investment grade credit ratings and places restrictions on maturities and concentration by type and issuer.

The Company reviews its available-for-sale securities for other than temporary declines in fair value below the cost basis periodically and whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When assessing marketable securities for other-than-temporary declines in value, the Company considers factors including: the significance of the decline in value compared to the cost basis, the underlying factors contributing to a decline in the prices of securities in a single asset class, how long the market value of the investment

has been less than its cost basis, any market conditions that impact liquidity, the views of external investment managers, any news or financial information that has been released specific to the investee and the outlook for the overall industry in which the investee operates.

The Company does not consider its investments in municipal securities with a current unrealized loss position to be other-than-temporarily impaired at March 31, 2009 since the Company does not intend to sell the investments and it is not more likely than not that the Company will be required to sell the investments before recovery of their amortized cost. However, those investments with a contractual maturity of greater than 12 months and that are in an unrealized loss position deemed to be temporary at March 31, 2009 have been classified as non-current marketable securities.

Table of Contents***Revenue recognition***

The Company records shipments of its clinical diagnostic products as product sales when the product is shipped and title and risk of loss has passed and when collection of the resulting receivable is reasonably assured.

The Company manufactures blood screening products according to demand specifications of its collaboration partner, Novartis Vaccines and Diagnostics, Inc. (Novartis). Upon shipment to Novartis, the Company recognizes blood screening product sales at an agreed upon transfer price and records the related cost of products sold. Based on the terms of the Company's collaboration agreement with Novartis, the Company's ultimate share of the net revenue from sales to the end user is not known until reported to the Company by Novartis. The Company then adjusts blood screening product sales upon receipt of customer revenue reports and a net payment from Novartis of amounts reflecting its ultimate share of net sales by Novartis of these products, less the transfer price revenues previously recognized. The Company amended its agreement with Novartis effective as of January 1, 2009 to decrease the time between product sales and payment of the Company's share of blood screening assay revenue from 45 days to 30 days.

Also included in product sales is the rental revenue associated with the delivery of the Company's proprietary integrated instrument platforms that perform its diagnostic assays. Generally, the Company provides its instrumentation to reference laboratories, public health institutions and hospitals without requiring them to purchase the equipment or enter into an equipment lease. Instead, the Company recovers the cost of providing the instrumentation in the amount it charges for its diagnostic assays. The depreciation costs associated with an instrument are charged to cost of product sales on a straight-line basis over the estimated life of the instrument. The costs to maintain these instruments in the field are charged to cost of product sales as incurred.

The Company sells its instruments to Novartis for use in blood screening and records these instrument sales upon delivery since Novartis is responsible for the placement, maintenance and repair of the units with its customers. The Company also sells instruments to its clinical diagnostics customers and records sales of these instruments upon delivery and receipt of customer acceptance. Prior to delivery, each instrument is tested to meet Company and United States Food and Drug Administration (FDA) specifications, and is shipped fully assembled. Customer acceptance of the Company's clinical diagnostic instrument systems requires installation and training by the Company's technical service personnel. Generally, installation is a standard process consisting principally of uncrating, calibrating, and testing the instrumentation.

The Company records as collaborative research revenue shipments of its blood screening products in the United States and other countries in which the products have not received regulatory approval. This is done because price restrictions apply to these products prior to FDA marketing approval in the United States and similar approvals in foreign countries. Upon shipment of FDA-approved and labeled products following commercial approval, the Company classifies sales of these products as product sales in its consolidated financial statements.

The Company follows the provisions of Emerging Issues Task Force (EITF) Issue No. 00-21, Revenue Arrangements with Multiple Deliverables, for multiple element revenue arrangements. EITF Issue No. 00-21 provides guidance on how to determine when an arrangement that involves multiple revenue-generating activities or deliverables should be divided into separate units of accounting for revenue recognition purposes, and if this division is required, how the arrangement consideration should be allocated among the separate units of accounting. If the deliverables in a revenue arrangement constitute separate units of accounting according to the EITF Issue No. 00-21 separation criteria, the revenue-recognition policy must be determined for each identified unit. If the arrangement is a single unit of accounting, the revenue-recognition policy must be determined for the entire arrangement, and all non-refundable upfront license fees are deferred and recognized as revenues on a straight-line basis over the expected term of the Company's continued involvement in the collaboration.

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The Company recognizes collaborative research revenue over the term of various collaboration agreements, as negotiated monthly contracted amounts are earned or reimbursable costs are incurred related to those agreements. Negotiated monthly contracted amounts are earned in relative proportion to the performance required under the contracts. Non-refundable license fees are recognized over the related performance period or at the time that the Company has satisfied all performance obligations. Milestone payments are recognized as revenue upon the achievement of specified milestones when (i) the Company has earned the milestone payment, (ii) the milestone is substantive in nature and the achievement of the milestone is not reasonably assured at the inception of the agreement, (iii) the fees are non-refundable, and (iv) performance obligations after the milestone achievement will continue to be funded by the collaborator at a level comparable to the level before the milestone achievement. Any amounts received prior to satisfying the Company's revenue recognition criteria are recorded as deferred revenue on the consolidated balance sheet.

Royalty revenue is recognized related to the sale or use of the Company's products or technologies under license agreements with third parties. For those arrangements where royalties are reasonably estimable, the Company recognizes revenue based on estimates of royalties earned during the applicable period and adjusts for differences between the estimated and actual royalties in the following period. Historically, these adjustments have not been material. For those arrangements where royalties are not reasonably estimable, the Company recognizes revenue upon receipt of royalty statements from the applicable licensee. Non-refundable license fees are recognized over the related performance period or at the time the Company has satisfied all performance obligations.

Adoption of recent accounting pronouncements***EITF Issue No. 07-1***

In November 2007, the FASB ratified EITF Issue No. 07-1, Accounting for Collaborative Agreements Related to the Development and Commercialization of Intellectual Property. EITF Issue No. 07-1 defines collaborative agreements as a contractual arrangement in which the parties are active participants to the arrangement and are exposed to the significant risks and rewards that are dependent on the ultimate commercial success of the endeavor. Additionally, it requires that revenue generated and costs incurred on sales to third parties as it relates to a collaborative agreement be recognized as gross or net based on EITF Issue No. 99-19, Reporting Revenue Gross as a Principal versus Net as an Agent. Essentially, this requires the party that is identified as the principal participant in a transaction to record the transaction on a gross basis in its financial statements. It also requires payments between participants to be accounted for in accordance with already existing generally accepted accounting principles, unless none exist, in which case a reasonable, rational, consistent method should be used. The Company adopted this guidance effective January 1, 2009 for all collaboration agreements existing as of that date. The adoption did not have a material impact on the Company's financial statements.

SFAS No. 141(R)

In December 2007, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 141(R), Business Combinations. SFAS No. 141(R) changes the requirements for an acquirer's recognition and measurement of the assets acquired and liabilities assumed in a business combination, including the treatment of contingent consideration, pre-acquisition contingencies, transaction costs, in-process research and development and restructuring costs. In addition, under SFAS No. 141(R), changes in an acquired entity's deferred tax assets and uncertain tax positions after the measurement period will impact income tax expense. This statement is effective with respect to business combination transactions occurring after December 31, 2008. The Company is currently evaluating the impact of this statement on future operations, changes in estimates and unrecognized tax benefits and liabilities as a result of recent business combination transactions.

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In December 2007, the FASB issued SFAS No. 160, Non-controlling Interests in Consolidated Financial Statements (an amendment of Accounting Research Bulletin No. 51). SFAS No. 160 requires that non-controlling (minority) interests be reported as a component of equity, that net income attributable to the parent and to the non-controlling interest be separately identified in the income statement, that changes in a parent's ownership interest while the parent retains its controlling interest be accounted for as equity transactions, and that any retained non-controlling equity investment upon the deconsolidation of a subsidiary be initially measured at fair value. This statement is effective for fiscal years beginning after December 31, 2008, and shall be applied prospectively. However, the presentation and disclosure requirements of SFAS No. 160 are required to be applied retrospectively for all periods presented. The retrospective presentation and disclosure requirements of this statement will be applied to any prior periods presented in financial statements for the fiscal year ending December 31, 2009, and later periods during which the Company has a consolidated subsidiary with a non-controlling interest. As of March 31, 2009, the Company does not have any consolidated subsidiaries in which there is a non-controlling interest, and therefore adoption of this statement did not have a material impact on the Company's consolidated financial statements.

SFAS No. 161

In March 2008, the FASB issued SFAS No. 161, Disclosures about Derivative Instruments and Hedging Activities an amendment of FASB Statement No. 133. SFAS No. 161 requires enhanced disclosures regarding derivatives and hedging activities, including: (a) the manner in which an entity uses derivative instruments; (b) the manner in which derivative instruments and related hedged items are accounted for under SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities; and (c) the effect of derivative instruments and related hedged items on an entity's financial position, financial performance, and cash flows. The Company adopted this guidance effective January 1, 2009. As this statement relates specifically to disclosures, there was no impact on the Company's consolidated financial statements as a result of adoption.

Note 2 Stock-based compensation

The following table summarizes the stock-based compensation expense that the Company recorded in its consolidated statements of income in accordance with SFAS No. 123(R), Share-Based Payment, for the three month periods ended March 31, 2009 and 2008 (in thousands):

	Three Months Ended March 31,	
	2009	2008
Cost of product sales	\$ 798	\$ 595
Research and development	1,702	1,435
Marketing and sales	759	695
General and administrative	2,499	2,467
Total	\$ 5,758	\$ 5,192

The Company used the following weighted average assumptions (annualized percentages) to estimate the fair value of options granted and the shares purchasable under the Company's stock option plans and Employee Stock Purchase Plan (ESPP) for the three month periods ended March 31, 2009 and 2008:

	Stock Option Plans		ESPP	
	2009	2008	2009	2008
Risk-free interest rate	1.6%	2.8%	1.3%	3.3%
Volatility	37%	35%	47%	34%
Dividend yield				
Expected term (years)	4.2	4.2	0.5	0.5
Resulting average fair value	\$ 12.96	\$ 17.55	\$ 12.20	\$ 14.82

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The Company's unrecognized stock-based compensation expense, before income taxes and adjusted for estimated forfeitures, related to outstanding unvested share-based payment awards was approximately as follows (in thousands, except number of years):

Awards	Weighted Average Remaining Expense Life (Years)	Unrecognized Expense as of March 31, 2009
Options	1.3	\$ 34,194
ESPP	0.2	287
Restricted Stock	1.8	11,503
Deferred Issuance Restricted Stock	1.4	2,086
		\$ 48,070

Note 3 Net income per share

The Company computes net income per share in accordance with SFAS No. 128, Earnings Per Share, and SFAS No. 123(R). Basic net income per share is computed by dividing the net income for the period by the weighted average number of common shares outstanding during the period. Diluted net income per share is computed by dividing the net income for the period by the weighted average number of common and common equivalent shares outstanding during the period. The Company excludes stock options from the calculation of diluted net income per share when the combined exercise price, average unamortized fair values and assumed tax benefits upon exercise are greater than the average market price for the Company's common stock because their effect is anti-dilutive.

The following table sets forth the computation of net income per share (in thousands, except per share amounts):

	Three Months Ended March 31,	
	2009	2008
Net income	\$ 25,747	\$ 31,945
Weighted average shares outstanding Basic	52,407	53,796
Effect of dilutive common stock options outstanding	719	1,227
Weighted average shares outstanding Diluted	53,126	55,023
Net income per share:		
Basic	\$ 0.49	\$ 0.59
Diluted	\$ 0.48	\$ 0.58

Dilutive securities include stock options and restricted stock subject to vesting. Potentially dilutive securities totaling approximately 3,595,000 and 1,934,000 shares for the three month periods ended March 31, 2009 and 2008, respectively, were excluded from the calculation of diluted earnings per share because of their anti-dilutive effect.

Note 4 Fair value measurements

SFAS No. 157

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Effective January 1, 2008, the Company adopted SFAS No. 157, Fair Value Measurements, for financial assets and liabilities. SFAS No. 157 defines fair value, expands disclosure requirements around fair value and specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs create the following fair value hierarchy:

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Level 1 Quoted prices for identical instruments in active markets.

Level 2 Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.

Level 3 Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Following is a description of the Company's valuation methodologies used for instruments measured at fair value, as well as the general classification of such instruments pursuant to the valuation hierarchy. Where appropriate, the description includes details of the valuation models, the key inputs to those models, as well as any significant assumptions.

Assets and liabilities measured at fair value on a recurring basis:

The Company's available-for-sale securities are comprised of tax advantaged municipal securities and money market funds. When available, the Company generally uses quoted market prices to determine fair value, and classifies such items as Level 1. If quoted market prices are not available, prices are determined using prices for recently traded financial instruments with similar underlying terms as well as directly or indirectly observable inputs, such as interest rates and yield curves that are observable at commonly quoted intervals. The Company classifies such items as Level 2.

The following table presents the Company's fair value hierarchy for assets and liabilities measured at fair value on a recurring basis (as described above) as of March 31, 2009 (in thousands):

	Fair Value Measurements at March 31, 2009			
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	Total carrying value in the consolidated balance sheet
Assets:				
Cash equivalents	\$ 6,381	\$ 229,174	\$	\$ 235,555
Marketable securities		399,072		399,072
Derivatives		9		9
Other investments ⁽¹⁾		4,108		4,108
Total assets at fair value	6,381	632,363		638,744
Liabilities:				
Derivatives	\$	\$ 272	\$	\$ 272
Other investments ⁽¹⁾		4,266		4,266

Total liabilities at fair value	\$	\$	4,538	\$	\$	4,538
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- (1) Includes the Company's deferred compensation plan liability and related assets which are invested in corporate owned life insurance policies.

Assets and liabilities measured at fair value on a non-recurring basis:

Certain assets and liabilities are measured at fair value on a non-recurring basis and therefore are not included in the table above. Items valued using such internally generated valuation techniques are classified according to the lowest level input or value driver that is significant to the valuation. Thus, an item may be classified as Level 3 even though there may be some significant inputs that are readily observable. Such instruments are not measured at fair value on an ongoing basis but are subject to fair value adjustments in certain circumstances (for example, when there is evidence of impairment).

Table of Contents*Equity investment in private company*

In 2006, the Company invested in Qualigen, Inc. (Qualigen), a private company. The valuation of investments in non-public companies requires significant management judgment due to the absence of quoted market prices, inherent lack of liquidity and the long-term nature of such assets. The Company's equity investments in private companies are valued initially based upon the transaction price under the cost method of accounting. Equity investments in non-public companies are classified as Level 3 in the fair value hierarchy. The Company's investment in Qualigen, which totaled approximately \$5.4 million as of March 31, 2009, is included in Licenses, manufacturing access fees and other assets, net on the consolidated balance sheets.

The Company records impairment charges when an investment has experienced a decline that is deemed to be other-than-temporary. The determination that a decline is other-than-temporary is, in part, subjective and influenced by many factors. Future adverse changes in market conditions or poor operating results of investees could result in losses or an inability to recover the carrying value of the investments, thereby possibly requiring impairment charges in the future. When assessing investments in private companies for an other-than-temporary decline in value, the Company considers many factors including, but not limited to, the following: the share price from the investee's latest financing round, the performance of the investee in relation to its own operating targets and its business plan, the investee's revenue and cost trends, the investee's liquidity and cash position, including its cash burn rate, and market acceptance of the investee's products and services. From time to time, the Company may consider third party evaluations or valuation reports. The Company also considers new products and/or services that the investee may have forthcoming, any significant news specific to the investee, the investee's competitors and/or industry and the outlook of the overall industry in which the investee operates. In the event the Company's judgments change as to other-than temporary declines in value, the Company may record an impairment loss, which could have an adverse impact on its results of operations. During the third quarter of 2008, the Company recorded an impairment charge of \$1.6 million against its investment in Qualigen.

SFAS No. 159

Effective January 1, 2008, the Company adopted SFAS No. 159, The Fair Value Option for Financial Assets and Financial Liabilities Including an amendment of FASB Statement No. 115.

SFAS No. 159 provides companies the irrevocable option to measure many financial assets and liabilities at fair value with changes in fair value recognized in earnings. The Company has not elected to measure any financial assets or liabilities at fair value that were not previously required to be measured at fair value.

Note 5 Balance sheet information

The following tables provide details of selected balance sheet items (in thousands):

Inventories

	March 31, 2009	December 31, 2008
Raw materials and supplies		