INVESTOOLS INC
Form 10-Q
May 09, 2008

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

# Form 10-Q

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

**FOR QUARTER ENDED March 31, 2008**

**Commission File Number: 000-52012**

# INVESTOOLS INC.

(Exact name of Registrant as specified in its charter)

| **Delaware** | **76-0685039** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| **45 Rockefeller Plaza, Suite 2012, New York, New York** | **10111** |
| (Address of principal executive offices) | (Zip Code) |

Registrant s telephone number, including area code:
**(801) 816-6918**

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 and 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 x No o

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 definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o Accelerated filer x

Non-accelerated filer o<br>(Do not check if a smaller reporting company) Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes o No x

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date:

Common Stock: 66,300,451 as of May 02, 2008

**INVESTOOLS INC. AND SUBSIDIARIES**

**Report on Form 10-Q**

**Quarter Ended March 31, 2008**

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**PART I - FINANCIAL INFORMATION**

**Item 1. Condensed Consolidated Financial Statements**

**INVESTOOLS INC. AND SUBSIDIARIES**

**Condensed Consolidated Balance Sheets**

**(in thousands)**
**(unaudited)**

| | March 31, 2008 | December 31, 2007 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 58,257 | $ 61,579 |
| Marketable securities | | 1,501 |
| Accounts receivable, net of allowance ($198 and $198, respectively) | 8,135 | 11,131 |
| Receivable from clearing brokers | 7,793 | 5,503 |
| Deferred tax asset | 14,288 | 13,496 |
| Other current assets | 9,915 | 9,622 |
| **Total current assets** | 98,388 | 102,832 |
| | | |
| Long-term restricted cash | 391 | 389 |
| Goodwill | 209,215 | 208,776 |
| Intangible assets, net of accumulated amortization ($21,074 and $17,330, respectively) | 128,842 | 132,587 |
| Software development cost, net of accumulated depreciation ($4,515 and $3,363, respectively) | 27,087 | 26,939 |
| Furniture and equipment, net of accumulated depreciation ($9,736 and $8,726, respectively) | 7,754 | 8,007 |
| Other long-term assets | 28,268 | 29,800 |
| | | |
| **Total assets** | $ 499,945 | $ 509,330 |
| | | |
| **LIABILITIES AND STOCKHOLDERS EQUITY** | | |
| Current liabilities: | | |
| Current portion of deferred revenue | $ 117,608 | $ 124,486 |
| Other current liabilities | 18,468 | 17,825 |
| Accounts payable | 11,111 | 8,896 |
| Accrued payroll | 4,932 | 13,278 |
| Accrued tax liabilities | 7,395 | 7,544 |
| Current portion of capitalized lease obligations | 216 | 212 |
| Current portion of notes payable | 17,500 | 17,500 |
| **Total current liabilities** | 177,230 | 189,741 |
| | | |
| Long-term portion of deferred revenue | 33,057 | 37,384 |
| Long-term portion of capitalized lease obligations | 275 | 330 |
| Long-term portion of notes payable | 90,000 | 100,000 |
| Deferred tax liabilities | 20,945 | 18,487 |
| Other long-term accrued liabilities | 2,940 | 1,493 |
| **Total liabilities** | 324,447 | 347,435 |
| | | |
| Stockholders equity: | | |
| Common stock, $0.01 par value (65,990 and 65,655 shares issued and outstanding, respectively) | 659 | 656 |
| Additional paid-in capital | 333,094 | 331,006 |
| Accumulated other comprehensive income | 5 | 20 |
| Accumulated deficit | (158,260) | (169,787) |
| **Total stockholders equity** | 175,498 | 161,895 |
| | | |
| **Total liabilities and stockholders equity** | $ 499,945 | $ 509,330 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**INVESTOOLS INC. AND SUBSIDIARIES**

**Condensed Consolidated Statements of Operations**

**(in thousands, except per share amounts)**
(unaudited)

| | Three Months Ended March 31, 2008 | 2007 |
|---|---|---|
| **Revenue** | $ 90,990 | $ 54,857 |
| **Costs and expenses** | | |
| Cost of revenue | 34,500 | 32,605 |
| Selling expense | 19,117 | 19,470 |
| General and administrative expense | 19,264 | 21,650 |
| Special charges | 393 | 127 |
| Total costs and expenses | 73,274 | 73,852 |
| Income (loss) from operations | 17,716 | (18,995) |
| **Other (expense) income** | | |
| Interest expense | (4,190) | (1,468) |
| Interest income | 455 | 652 |
| Other | 14 | (1) |
| Other expense | (3,721) | (817) |
| **Net income (loss) before income taxes** | 13,995 | (19,812) |
| Income tax provision | 2,468 | 33 |
| **Net income (loss)** | $ 11,527 | $ (19,845) |
| **Net income (loss) per common share:** | | |
| Basic | $ 0.18 | $ (0.36) |
| Diluted | $ 0.17 | $ (0.36) |
| Weighted average common shares outstanding basic | 65,846 | 55,444 |
| Weighted average common shares outstanding diluted | 68,860 | 55,444 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**INVESTOOLS INC. AND SUBSIDIARIES**

**Condensed Consolidated Statements of Cash Flows**

**(in thousands)**
(unaudited)

| | Three months ended March 31, 2008 | | Three months ended March 31, 2007 | |
|---|---|---|---|---|
| **Cash flows from operating activities:** | | | | |
| Net income (loss) | $ | 11,527 | $ | (19,845) |
| Reconciling adjustments: | | | | |
| Depreciation and amortization | | 5,908 | | 3,003 |
| Deferred taxes | | 2,075 | | 33 |
| Stock compensation expense | | 2,108 | | 9,767 |
| Amortization of exclusivity rights | | 302 | | 293 |
| Contingent shares in connection with exclusivity rights and intellectual property acquired | | 299 | | 828 |
| Amortization of debt issuance costs | | 374 | | 148 |
| Decrease in fair value of interest rate swap, included in interest expense | | 1,448 | | |
| Provision for (recovery of) sales return reserve | | 381 | | (6) |
| Provision for bad debt expense | | | | 100 |
| (Gain) loss on marketable securities | | (7) | | 4 |
| Changes in operating assets and liabilities, net of effect of acquired businesses: | | | | |
| Accounts receivable | | 2,996 | | (7,782) |
| Receivable from clearing brokers | | (2,290) | | (3,119) |
| Income tax receivable | | | | (339) |
| Other assets | | (268) | | 724 |
| Accounts payable | | 1,974 | | (6,538) |
| Deferred revenue | | (11,205) | | 14,714 |
| Accrued payroll | | (8,346) | | (1,118) |
| Other liabilities | | 775 | | 1,551 |
| Accrued tax liabilities | | (149) | | 20 |
| Net cash provided by (used in) operating activities | | 7,902 | | (7,562) |
| | | | | |
| **Cash flows from investing activities:** | | | | |
| Proceeds from the sale or maturity of marketable securities | | 1,501 | | 15,313 |
| Payments for capitalized software development costs | | (1,911) | | (2,160) |
| Purchases of furniture and equipment | | (540) | | (775) |
| Cash held in escrow | | 831 | | (8,500) |
| Cash paid in business acquisitions, net of cash received | | (831) | | (149,401) |
| Net cash used in investing activities | | (950) | | (145,523) |
| | | | | |
| **Cash flows from financing activities:** | | | | |
| Payment on capital leases | | (51) | | (43) |
| Payments on note payable | | (10,000) | | |
| Changes in restricted cash | | (2) | | (3) |
| Proceeds from note payable | | | | 125,000 |
| Payment of debt issuance costs | | | | (4,508) |
| Minimum tax withholding on restricted stock awards | | (402) | | |
| Proceeds from exercise of stock options | | 189 | | 230 |
| Net cash (used in) provided by financing activities | | (10,266) | | 120,676 |
| | | | | |
| **Effect of exchange rates on cash and cash equivalents** | | (8) | | |
| | | | | |
| **Decrease in cash and cash equivalents:** | | (3,322) | | (32,409) |
| **Cash and cash equivalents:** | | | | |
| Beginning of period | | 61,579 | | 52,923 |
| End of period | $ | 58,257 | $ | 20,514 |
| | | | | |
| **Supplemental cash flow information:** | | | | |
| Cash paid for interest, net | $ | 2,432 | $ | 1,247 |
| Cash paid for taxes | | 61 | | |
| | | | | |
| **Supplemental non-cash investing and financing disclosures:** | | | | |
| Exclusivity rights and intellectual property financed through stock | $ | | $ | 10,710 |
| Litigation settled with stock | | | | 2,762 |

| | | |
|---|---|---|
| Software development costs financed with stock | (120) | 22 |
| Software development and furniture and equipment financed through accounts payable and other liabilities | 1,630 | 2,691 |
| Reversal of deferred tax valuation allowance through goodwill | 392 | |

***See Note 3 for additional non-cash disclosures related to acquisitions.***

The accompanying notes are an integral part of these condensed consolidated financial statements.

**INVESTOOLS INC. AND SUBSIDIARIES**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(unaudited)**

## 1. Basis of Presentation

The Condensed Consolidated Financial Statements include the accounts of Investools Inc. and its wholly-owned subsidiaries (the Company or Investools ). All intercompany balances and transactions have been eliminated in consolidation.

The accompanying Condensed Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements for the year ended December 31, 2007 included in the Company s Annual Report on Form 10-K.

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with Rule 10-01 of Regulation S-X for interim financial statements required to be filed with the Securities and Exchange Commission ( SEC ) and do not include all the information and footnotes required by accounting principles generally accepted in the United States. However, in the opinion of management, the information furnished reflects all adjustments, consisting of normal recurring adjustments, which are necessary to make a fair presentation of financial position and operating results for the interim periods. The results of operations for the three month period ended March 31, 2008 are not necessarily indicative of the results to be expected for the full year.

## 2. Summary of Significant Accounting Policies

**Use of Estimates**

Preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosed amounts of contingent assets and liabilities and the reported amounts of revenues and expenses. Management believes the most significant estimates and assumptions are associated with the valuation of intangibles, goodwill, income taxes and revenue recognition. If the underlying estimates and assumptions, upon which the financial statements are based, change in future periods, actual amounts may differ from those included in the accompanying Condensed Consolidated Financial Statements.

**Reclassifications**

Certain prior period amounts in the Condensed Consolidated Financial Statements have been reclassified to conform to the current period s presentation. In the Condensed Consolidated Statements of Operations for the three months ended March 31, 2007, certain payroll related costs were reclassified from General and administrative expense to Selling expense and Cost of revenue to conform to the current period s

presentation. These reclasses resulted in a decrease of approximately $0.8 million in General and administrative expense and increases of $0.5 million and $0.3 million to Cost of revenue and Selling expense, respectively. In the Condensed Consolidated Statement of Cash Flows for the three months ended March 31, 2007 approximately $4.5 million of debt issuance costs were reclassified from Cash flows from operating activities to Cash flows from financing activities. Additionally, in the Condensed Consolidated Statement of Cash Flows for the three months ended March 31, 2007, $0.1 million of cash Payments for capitalized software development costs and $0.6 million of Cash paid in business acquisitions were reclassified from Cash flows from investing activities to Cash flows from operating activities to conform to the current period s presentation.

Except as described in the following paragraphs, there have been no changes in significant accounting policies from those included in the Company s Annual Report filed on Form 10-K for the year ended December 31, 2007.

**Fair Value Measurements**

On January 1, 2008, the Company adopted certain provisions of Financial Accounting Standards Board ( FASB ) Statement of Financial Accounting Standards ( Statement ) No. 157, *Fair Value Measurements* ( FAS 157 ), which establishes a single authoritative definition of fair value, sets out a framework for measuring fair value and expands on required disclosures about fair value measurement. The provisions of FAS 157 adopted on January 1, 2008 relate to financial assets and liabilities as well as other assets and liabilities carried at fair value on a recurring basis and did not have a material impact on the Company s Condensed Consolidated Financial Statements. The provisions of FAS 157 related to other nonfinancial assets and liabilities will be effective for the Company on January 1, 2009, and will be applied prospectively. The Company

is currently evaluating the impact that these additional FAS 157 provisions will have on the Company s Condensed Consolidated Financial Statements. See Note 4 for further discussion.

In February 2007, the FASB issued Statement No. 159, *Fair Value Option for Financial Assets and Financial Liabilities Including an amendment of FASB Statement No. 115* ( FAS 159 ). This Statement permits entities to choose to measure selected financial assets and liabilities at fair value and report unrealized gains and losses on these instruments in earnings. FAS 159 was effective January 1, 2008. The Company did not elect the fair value option. The Company s adoption of FAS 159 did not have a material impact on its results of operations or financial position.

**Income Taxes**

The Company accounts for income taxes using the asset and liability method. Deferred income taxes are recognized by applying enacted statutory tax rates applicable to future years to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance for any tax benefits for which future realization is uncertain. The Company recognizes interest and penalties related to uncertain tax positions in income tax expense.

The Company has utilized the effective annual tax rate for interim reporting for the three month period ended March 31, 2008. Under this method generally accepted accounting principles require that the interim period tax provision be determined as follows:

- At the end of each quarter, the Company estimates the tax that will be provided for the fiscal year stated as a percent of estimated ordinary income for the fiscal year. The term ordinary income refers to income from continuing operations before income taxes, excluding significant unusual or infrequently occurring items.
- The estimated annual effective tax rate is applied to the year-to-date ordinary income at the end of each quarter to compute the year-to-date tax applicable to ordinary income. The tax expense or benefit related to ordinary income in each quarter is the difference between the most recent year-to-date and the prior quarter year-to-date computations.
- The tax effects of significant unusual or infrequently occurring items are recognized as discrete items in the interim period in which the events occur.

The determination of the annual effective tax rate is based upon a number of significant estimates and judgments, including the estimated annual pretax income of the Company in each tax jurisdiction in which it operates and the development of tax planning strategies during the year. In addition, the Company s tax expense can be impacted by changes in tax rates or laws, the finalization of tax audits and reviews, as well as other factors that cannot be predicted with certainty. As such, there can be significant volatility in interim tax provisions.

**Accounting Pronouncements Issued Not Yet Adopted**

In December 2007, the FASB issued SFAS No. 141 (Revised 2007), *Business Combinations*. This standard establishes that an acquiring entity will be required to recognize all the assets acquired and liabilities assumed in a transaction at the acquisition-date fair value with limited exceptions. This standard also defines how goodwill acquired in a business combination or a gain from a bargain purchase should be recognized and updates certain disclosure requirements for business combinations. This standard applies prospectively to business combinations for which the acquisition date is on or after December 15, 2008.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements an Amendment of ARB No. 51*. This standard establishes new accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This standard is effective for fiscal years beginning on or after December 15, 2008. The Company does not expect this guidance to have a material impact on its results of operations or financial position.

## 3. Acquisitions

**thinkorswim Group, Inc.**

In September 2006, the Company and thinkorswim, a Delaware corporation, entered into an Agreement and Plan of Merger pursuant to which Investools would acquire 100% of the outstanding stock of thinkorswim. The combination of Investools and thinkorswim represents an opportunity to create a market leader in investor education and online brokerage industries. On February 15, 2007, the Company s wholly-owned subsidiary, Atomic Acquisition Corp., merged with and into thinkorswim, and the results of thinkorswim s operations have been included in the Condensed Consolidated Financial Statements since that date. The total purchase price of $360.7 million included cash of $182.6 million, shares of common stock worth $167.1 million (19.1 million shares of common stock), and $11.0 million in direct acquisition costs. In connection with the merger, JPMorgan Chase Bank, N.A. and J.P. Morgan Securities Inc. provided the Company a senior secured term loan of $125.0 million to fund a portion of the cash purchase price.

As part of the Merger Agreement, Investools agreed to issue up to a maximum of 728,608 additional shares of common stock to thinkorswim shareholders in the event the stock s average trading price fell below $8.75 per share during the twenty-day period prior to certain dates subsequent to the Merger (with an $8.00 floor on such share price). The various dates are those on which specific groups of thinkorswim shareholders are first permitted to sell Investools shares, or portions thereof, that they received as merger consideration. The potential dates specified fall between six months and three years after the Merger closed, with the first such date having been August 15, 2007. No shares were required to be issued on such date and no such additional shares have been issued as of March 31, 2008. Of the remaining additional shares that may be issuable under the Merger Agreement, up to a maximum of 117,586 and 100,788 shares could be issuable as of February 15, 2009 and February 15, 2010, respectively (or in each case such later date when a shelf registration statement is first effective for the shares that become freely transferable as of such date) if the trading price falls below $8.75 as described above prior to such dates. At the time the Merger was announced, the fair market value of Investools stock was $8.59. Because the additional shares are contingently issuable if the price falls below $8.75 per share, the value of the portion of the purchase price attributable to the issuance of common stock has been increased to $8.75 per share in accordance with EITF No. 97-15, *Accounting for Contingency Arrangements Based on Security Prices in a Purchase Business Combination*.

The purchase price has been allocated to tangible and intangible assets acquired and liabilities assumed based on their respective fair values. The excess purchase price over the fair value of tangible and intangible assets and liabilities assumed was recorded as goodwill. The fair values of intangible assets were based upon cash flow analysis and other market considerations of identifiable intangible assets acquired, including useful lives. The following table summarizes the allocation of the purchase consideration (in thousands) and the estimated amortization period for the acquired intangibles:

| | | |
|---|---|---|
| Current assets (including cash of $40.9 million) | $ | 57,280 |
| Property and equipment | | 2,411 |
| Intangible assets: | | |
| Customer relationships (13 years) | | 93,400 |
| Trade name (indefinite) | | 16,100 |
| Non-compete agreements (3 years) | | 2,500 |
| Technology (7 years) | | 28,950 |
| Goodwill | | 191,316 |
| Deferred tax assets | | 48,533 |
| Total assets acquired | | 440,490 |
| | | |
| Current liabilities | | (25,392) |
| Deferred tax liability related to value assigned to intangibles | | (54,385) |
| Total liabilities assumed | | (79,777) |

| | | |
|---|---|---|
| Net assets acquired | $ | 360,713 |

The goodwill that was recorded in this acquisition is associated with the Brokerage Services segment. None of the recorded goodwill is tax deductible. Of the total value assigned to intangible assets, $16.1 million was allocated to trade names, which are not subject to amortization.

In connection with the merger with thinkorswim, certain employees and consultants of thinkorswim have the opportunity to participate in a retention bonus pool which equals, in the aggregate, $20 million conditioned upon continued employment. The bonus pool does not extend to Messrs. Sosnoff, President, thinkorswim Group, Inc. and Sheridan, Executive Vice President, thinkorswim Group, Inc. The bonuses will be paid in equal annual installments over the three-year period following the closing of the Merger. Such amounts are being expensed on a straight-line basis over the retention period of three years. The first payments, totaling approximately $6.5 million were made in the quarter ending March 31, 2008. The accrual for retention bonuses is included in the Condensed Consolidated Balance Sheets within accrued payroll.

In addition, the Company granted certain employees and consultants of thinkorswim options to purchase 2,255,563 shares of Common Stock which vest over four years, under the Company s 2001 Stock Option Plan, half with an exercise price equal to the fair market value of the underlying Common Stock at the time of grant, and half with an exercise price equal to 150% of such fair market value. Approximately 125,000 of these stock options were granted to consultants to thinkorswim. We have accounted for these in accordance with EITF No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring or in Conjunction with Selling Goods or Services*.

At the time of the acquisition, approximately $8.5 million was placed in escrow pending the resolution of various contingencies and tax-related matters. When the resolution of these contingencies is determinable beyond a reasonable doubt, this amount will be recorded as goodwill. Subsequent to the merger date cash payments made from funds held in escrow totaled $1.0 million as of March 31, 2008 and are included in the total purchase price. The remaining escrow balance related to these contingencies was $7.5 million as of March 31, 2008.

Additionally, in November 2007, the Company received a refund of approximately $8.5 million related to carryback claims generated by stock option exercises of pre-merger thinkorswim shareholders. This amount was recorded as an income tax receivable and as a corresponding payable at the time of the merger representing the funds due to former premerger thinkorswim shareholders. The refund was placed in escrow upon receipt. The refund is currently under audit by the Internal Revenue Service ( IRS ). Upon completion of the IRS audit the escrow funds will be paid to the pre-merger thinkorswim shareholders less any claims paid to the IRS, if any. The escrow amounts are included in the Condensed Consolidated Balance Sheets within other long-term assets.

The following table contains unaudited and pro forma results of operations for the three-month period ended March 31, 2007. The pro forma results of operations give pro forma effect as if the thinkorswim merger had occurred on January 1, 2007, after giving effect to certain adjustments including the amortization of the intangible assets, interest expense, tax adjustments, and assumes the purchase price has been allocated to the assets purchased and the liabilities assumed based on their values at the date of purchase. The effect of the change in fair value of the interest rate swap (See Note 4) has not been included in the following pro forma results of operations. The following unaudited pro forma results of operations are presented for illustrative purposes only, and are not necessarily indicative of the operating results that would have occurred had the transaction been consummated for the dates indicated. Furthermore, such unaudited pro forma results of operations are not necessarily indicative of future operating results of the combined companies, due to changes in operating activities following the purchase, and should not be construed as representative of the operating results of the combined companies for any future dates or periods.

| **(in thousands, except per share data)** | | **Three Months Ended March 31, 2007 (unaudited)** |
|---|---|---|
| Revenue | $ | 65,243 |
| Net loss | $ | (20,461) |
| Basic and diluted loss per share | $ | (0.27) |

## 4. Fair Value Measurements

Effective January 1, 2008, the Company adopted FAS 157, *Fair Value Measurements*, for all financial instruments and non-financial instruments accounted for at fair value on a recurring basis. FAS 157 establishes a new framework for measuring fair value and expands related disclosures. Broadly, the FAS 157 framework requires fair value to be determined based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. FAS 157 establishes market or observable inputs as the preferred source of values, followed by assumptions based on hypothetical transactions in the absence of market inputs.

The valuation techniques required by FAS 157 are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our market assumptions. These two types of inputs create the following fair value hierarchy:

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 whose inputs are observable or whose significant value drivers are observable.

Level 3 Significant inputs to the valuation model are unobservable.

The following table presents information about assets and liabilities required to be carried at fair value on a recurring basis as of March 31, 2008 (in thousands):

| Description | Fair Value as of 3/31/08 | (Level 1) | (Level 2) | (Level 3) |
|---|---|---|---|---|
| Assets | | | | |
| Securities Owned (1) | $ 1,225 | $ 1,225 | $ | $ |
| Liabilities | | | | |
| Securities Sold, Not Yet Purchased (2) | (582) | (582) | | |
| Interest Rate Swap (3) | (2,926) | | (2,926) | |
| Total | $ (2,283) | $ 643 | $ (2,926) | $ |

---

(1) Securities owned are included in Other current assets on the Condensed Consolidated Balance Sheet.

(2) Securities sold, not yet purchased are included in Other current liabilities on the Condensed Consolidated Balance Sheet.

(3) Interest Rate Swap is included in Other long-term accrued liabilities on the Condensed Consolidated Balance Sheet.

The Company primarily applies the market approach for recurring fair value measurements. In addition, the Company uses the income approach with significant observable market inputs to value the Company s interest rate swap.

During the quarter ended March 31, 2008, the loss resulting from the change in fair value of the swap was $1.4 million and was classified into interest expense as a yield adjustment to that portion of the term loans designated as a hedged debt obligation. The Company s adoption of FAS 157 had no impact on net income or earnings per share.

**5. Capitalized Software Development Costs**

The Company complies with the American Institute of Certified Public Accountants ( AICPA ) Statement of Position ( SOP ) No. 98-1, *Accounting For Cost of Computer Software Developed or Obtained for Internal Use*, and EITF No. 00-2, *Accounting for Website Development Costs* when accounting for internal use software. In accordance with SOP 98-1, software development costs incurred as part of an approved project plan that result in additional functionality to internal use software are capitalized and amortized on a straight-line basis over the estimated useful life of the software. During the three-month periods ended March 31, 2008 and 2007, the Company capitalized $1.3 million and $4.2 million, respectively, of software development costs related to internal use software for the development of the Investor Toolbox website, the implementation of the Company s integrated enterprise resource planning and customer relationship management software solution and software and website assets developed for internal use by the brokerage services segment.

Amortization of software developed for internal use begins when the internal use software is ready for its intended use. The integrated enterprise resource planning software was placed in service in March 2007. The customer relationship management software was placed in service in December 2007, except for certain functionality that will be placed in service when completed in 2008. Internally developed software and website assets developed for internal use by the brokerage services segment have been placed in service on various dates during 2007 and 2008. Amortization expense during the three month periods ended March 31, 2008 and 2007 was approximately $1.2 million and $0.7 million, respectively.

## 6. Securities Owned and Securities Sold, Not Yet Purchased

Securities owned and securities sold, not yet purchased, are carried at market value and recorded on a trade date basis. The Company does not actively trade securities for its own benefit. Securities sold, not yet purchased represent obligations of the Company to make future delivery of specified securities and correspondingly create an obligation to purchase securities at prevailing market prices. Equities and options included in securities owned and securities sold, not yet purchased generally result from trade corrections.

Securities owned and securities sold, not yet purchased, are composed of the following (in thousands):

| | Securities Owned | | Securities Sold, Not Yet Purchased | |
|---|---|---|---|---|
| | March 31, 2008 | December 31, 2007 | March 31, 2008 | December 31, 2007 |
| Options | $ 153 | $ 152 | $ 166 | $ 240 |
| Equities and other | 1,072 | 553 | 416 | 2 |
| Total | $ 1,225 | $ 705 | $ 582 | $ 242 |

**Securities owned and securities sold, not yet purchased are included in Other current assets and Other current liabilities, respectively, within the Condensed Consolidated Balance Sheets.**

## 7. Acquired Intangibles and Goodwill

***Amortizable Intangibles***

Amortizable acquired intangibles with finite lives as of March 31, 2008 and December 31, 2007 were as follows (in thousands):

| | As of March 31, 2008 | | | As of December 31, 2007 | | |
|---|---|---|---|---|---|---|
| | **Gross Carrying Amount** | **Accumulated Amortization** | **Weighted Average Remaining Useful Life** | **Gross Carrying Amount** | **Accumulated Amortization** | **Weighted Average Remaining Useful Life** |
| Customer relationships | $ 93,440 | $ (10,187) | 12.4 years | $ 93,440 | $ (7,927) | 12.6 years |
| Technology and other | 35,920 | (9,045) | 5.9 years | 35,920 | (7,790) | 6.2 years |
| Non competition | 3,630 | (1,842) | 2.2 years | 3,630 | (1,613) | 2.4 years |
| Total amortizable intangibles | $ 132,990 | $ (21,074) | 10.7 years | $ 132,990 | $ (17,330) | 10.9 years |

For the three-month periods ended March 31, 2008 and 2007, amortization expense was $3.7 million and $2.0 million, respectively. Customer relationships are being amortized on an accelerated basis

Estimated future amortization expense is as follows (in thousands):

| | |
|---|---|
| 2008 remaining | $ 11,204 |
| 2009 | 15,348 |
| 2010 | |