

Edgar Filing: IONICS INC - Form 10-K/A

IONICS INC  
Form 10-K/A  
October 02, 2003

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 02549

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FORM 10-K/A

Amendment No. 3 to Form 10-K

FOR ANNUAL AND TRANSITION REPORTS  
PURSUANT TO SECTIONS 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

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

For the fiscal year ended: December 31, 2002

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 1-7211

IONICS, INCORPORATED  
(Exact name of registrant as specified in its charter)

Massachusetts  
(State of incorporation) 04-2068530  
(IRS Employer Identification Number)

65 Grove Street  
Watertown, Massachusetts 02472-2882  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (617) 926-2500

Securities registered pursuant to Section 12(b) of the Act:  
Common Stock, \$1.00 par value

Name of each exchange on which registered: New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

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 X No \_\_\_\_

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

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best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).

Yes  No

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The aggregate market value of the Common Stock of the registrant held by non-affiliates as of June 28, 2002 was \$415,244,560 (17,123,487 shares at \$24.25 per share) (includes shares owned by a trust for the indirect benefit of a non-employee director, and by a trust for the indirect benefit of a spouse of a non-employee director).

As of March 21, 2003, 17,555,046 shares of Common Stock, \$1.00 par value, were issued and outstanding.

### DOCUMENTS INCORPORATED BY REFERENCE

On April 9, 2003 the Registrant filed a definitive proxy statement pursuant to Regulation 14A. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

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### EXPLANATORY NOTE

Ionics, Incorporated (the "Company") is filing this Amendment No. 3 to Form 10-K to amend its Annual Report on Form 10-K for the year ended December 31, 2002, originally filed on March 31, 2003 and amended on April 1, 2003 and June 26, 2003, to clarify the disclosure previously made with respect to Item 14 of Part III, "Controls and Procedures."

The Company hereby amends in its entirety Item 14 of Part III to read as follows:

#### ITEM 14. CONTROLS AND PROCEDURES

As part of the Company's continuing efforts to ensure that information required to be disclosed by the Company in its Securities and Exchange Commission filings is appropriately accumulated and disseminated to allow timely decisions regarding required disclosure, the Company has been taking various actions to strengthen its system of internal controls and disclosure controls and procedures. Such actions were also taken to enhance the processes by which the Company manages its various divisions and subsidiaries, because managing a large number of relatively small, locally managed businesses around the world presents significant challenges.

Prior to the evaluation of the Company's disclosure controls and procedures made in connection with the filing of its Quarterly Report on Form 10-Q for the periods ended September 30, 2002, the Company made changes in its internal controls and took other actions designed to enhance the Company's internal

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controls, which consisted of the following:

- o the hiring of new personnel including, two new segment controllers in April and July of 2002, three new divisional controllers in May and September of 2002, a corporate director of accounting in July 2002, and a new consolidation accountant in September 2002, to enhance the quality of its accounting capabilities;
- o the replacement of the senior operating executive at the Company's French subsidiary and the reassignment of much of the operational responsibility for that subsidiary to the Company's Italian subsidiary;
- o the implementation of a new financial consolidation software package (which became operational in September 2002);
- o the implementation of a centralized bid and proposal review and approval process at the beginning of 2002;
- o the expansion of the internal audit function through the use of outside resources beginning in March 2002;
- o the formalization of certain accounting and information technology policies and procedures at various times throughout the year;
- o the hiring of a Director of Project Management in October 2002 to oversee project-related procedures and to train project managers at locations to enable them to better comply with Company goals, policies and procedures; and
- o the institution of procedures requiring written quarterly certifications and representations from the head of each business group and the local controller of each business location.

Since that evaluation in November 2002, the Company has made additional changes in its internal controls and taken other actions designed to enhance the Company's internal controls, which consisted of the following:

- o the formation of a disclosure committee to oversee the effectiveness of the Company's disclosure controls and procedures;
- o in furtherance of the centralized bid and proposal review and approval process, the establishment of formal, systematic procedures for reviewing all major commercial projects being undertaken by the Company, including monthly participation by senior management;
- o the finalization of a project database to facilitate the tracking and analysis of project performance throughout the Company in December 2002;
- o the hiring of a senior financial manager into a newly created position as European Controller in December 2002, who is responsible for providing financial oversight and control for the Equipment Business Group's European operations; and
- o the conduct of a conference, and other educational activities, for the Company's segment and divisional controllers and corporate accounting staff, which included programs regarding, among other topics, inter-company transactions, key policies under U.S. generally accepted accounting principles (e.g., SAB 101, SOP 81-1), the Sarbanes-Oxley Act of 2002, internal controls, U.S. regulation of international transactions, and key responsibilities of the local controllers.

In connection with the audit of its financial statements for 2002, the Company was advised by its independent auditors that certain of its internal controls had deficiencies and material control weaknesses. Throughout the first quarter of 2003 (including both during the period in which the audit was being conducted and after it had been completed but prior to the evaluation referred to below), the Company had been addressing the issues cited by its independent auditors. As discussed above, during this period, the Company's disclosure committee was functioning, the procedures requiring written quarterly certifications and representations from the head of each business group and the local controller of each business location had been instituted, and the Company had implemented the review procedures for major commercial projects, conducted numerous educational activities for its segment and divisional controllers and corporate accounting

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staff, and continued updating its accounting policies and procedures. During the first quarter of 2003 (but prior to the evaluation referred to below), the Company's senior management conducted detailed and intensive reviews of the Company's financial statements and related disclosures and matters identified by the independent auditors and internal auditors during their respective audit processes.

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With the goal of further improving the quality and timeliness of the information available to management, the Company is continuing to implement measures designed to address the deficiencies and weaknesses cited by its independent auditors as follows:

- o to evaluate and strengthen its financial and accounting staff and their knowledge and understanding of key policies under U.S. generally accepted accounting principles and of their responsibilities;
- o to improve monitoring controls to assure the prevention or detection of material accounting errors on a timely basis;
- o to reduce the time necessary to collect and report financial and operating data by improving the timing and accuracy of forecasting and emphasizing more frequent reviews of the Company's balance sheets and reconciliation of intercompany balances;
- o to continue to update its accounting policies and procedures.

In March 2003, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's "disclosure controls and procedures." The SEC defines "disclosure controls and procedures" as a company's controls and other procedures that are designed to ensure that information required to be disclosed by the company in the reports it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Based on their evaluation of the Company's disclosure controls and procedures, the Company's then Chief Executive Officer (principal executive officer) and Chief Financial Officer (principal financial officer) concluded that the Company's disclosure controls and procedures were substantially effective for these purposes as of the date of the evaluation. This conclusion reflected the certifying officers' determination, based on their evaluation as of the evaluation date, that these procedures were effective in recording, processing, summarizing and reporting the substantive information necessary for the Company to meet its reporting obligations on a timely basis but that the process could function more efficiently. The certifying officers believed that the efficiency of the process would benefit from the actions described above that were implemented prior to their evaluation. In addition, the certifying officers believe that implementation of additional measures designed to address the deficiencies and material control weaknesses cited by the Company's independent auditors as described in the preceding paragraph will further improve the efficiency of this process.

There were no significant changes in the Company's internal controls or in other factors that could significantly affect the Company's internal controls between March 27, 2003 (the date of the above-referenced evaluation of such controls) and March 31, 2003 (the date of the filing of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2002).

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Item 15. Exhibits, Financial Statement Schedules and Reports on Form 10-K

Exhibit No.	Description
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31.0	Rule 13a-14(a)/15d-14(a) Certifications
31.1	Rule 13a-14(a) Certification of Chief Executive Officer.
31.2	Rule 13a-14(a) Certification of Chief Financial Officer.
32.0	Section 1350 Certifications
32.1	Section 1350 Certification of Chief Executive Officer.
32.2	Section 1350 Certification of Chief Financial Officer.

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SIGNATURES

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

IONICS, INCORPORATED  
(Registrant)

Date: October 2, 2003

By: /s/ Stephen Korn  
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Stephen Korn  
Vice President and  
General Counsel

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EXHIBIT INDEX

Exhibit No.	Description
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31.0	Rule 13a-14(a)/15d-14(a) Certifications
31.1	Rule 13a-14(a) Certification of Chief Executive Officer.

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- 31.2 Rule 13a-14(a) Certification of Chief Financial Officer.
- 32.0 Section 1350 Certifications
  - 32.1 Section 1350 Certification of Chief Executive Officer.
  - 32.2 Section 1350 Certification of Chief Financial Officer.

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EXHIBIT 31.1

CERTIFICATIONS

I, Douglas R. Brown, certify that:

1. I have reviewed this Annual Report on Form 10-K, as amended, of Ionics, Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [Paragraph omitted in accordance with SEC transition instructions contained in SEC Release 34-47986];
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal

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control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information;

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 2, 2003

/s/ Douglas R. Brown

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Douglas R. Brown  
Chief Executive Officer

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### EXHIBIT 31.2

#### CERTIFICATIONS

I, Daniel M. Kuzmak, certify that:

1. I have reviewed this Annual Report on Form 10-K, as amended, of Ionics, Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [Paragraph omitted in accordance with SEC transition instructions

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contained in SEC Release 34-47986];

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information;

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 2, 2003

/s/ Daniel M. Kuzmak

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Daniel M. Kuzmak  
Vice President, Finance and  
Chief Financial Officer

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### EXHIBIT 32.1

#### CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Ionics, Incorporated (the "Company") on Form 10-K, as amended, for the period ending December 31, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Douglas R. Brown, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.



/s/ Douglas R. Brown  
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Douglas R. Brown  
Chief Executive Officer  
October 2, 2003

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EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Ionics, Incorporated (the "Company") on Form 10-K, as amended, for the period ending December 31, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Daniel M. Kuzmak, Vice President, Finance and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Daniel M. Kuzmak  
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Daniel M. Kuzmak  
Vice President, Finance and  
Chief Financial Officer  
October 2, 2003

