

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

EXPRESSJET HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware	1600 Smith Street, Dept. HQSCE Houston, Texas 77002	76-0517977
(State or other jurisdiction of incorporation or organization)	(Address of principal executive offices) (Zip Code)	(I.R.S. Employer Identification No.)

EXPRESSJET HOLDINGS, INC.
2003 EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

John F. Wombwell
Vice President, General Counsel and Secretary
ExpressJet Holdings, Inc.
1600 Smith Street, Dept. HQSCE
Houston, Texas 77002
(Name and address of agent for service)

(713) 324-2639
(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share ⁽³⁾	Proposed maximum aggregate offering price ⁽³⁾	Amount of registration fee
Common Stock, par value \$.01 per share ⁽¹⁾	1,000,000 ⁽²⁾	\$11.83	\$11,830,000	\$957.05

⁽¹⁾ Includes ExpressJet Holdings, Inc. Preferred Stock Purchase Rights. Prior to the occurrence of certain events, purchase rights for Junior Participating Preferred Stock of ExpressJet Holdings, Inc. will not be evidenced separately from the Common Stock of ExpressJet Holdings, Inc.

⁽²⁾ If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 under the Securities Act of 1933, as amended, shall apply to this registration statement, and this registration statement shall be deemed to cover the additional securities resulting from the split of, or the dividend on, the securities covered by this registration statement.

⁽³⁾ Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(h) under the Securities Act of 1933, as amended, on the basis of the average of the high and low prices of the shares of Common Stock of ExpressJet Holdings, Inc. as reported on the New York Stock Exchange on May 7, 2003.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE.

The following documents filed by ExpressJet Holdings, Inc. (the "Registrant") (File No. 1-31300) with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

- (a) The annual report on Form 10-K, for its fiscal year ended December 31, 2002;
- (b) The quarterly report on Form 10-Q for the quarter ended March 31, 2003;
- (c) Current reports on Form 8-K filed January 3 and 15, February 4 and 12, 2003, March 4, 2003, April 2 and 15, 2003 and May 2, 2003; and
- (d) The descriptions of the Registrant's common stock, par value \$.01 per share ("Common Stock"), and the related Preferred Stock Purchase Rights contained in the registration statement on Form 8-A, filed with the Commission on April 15, 2002 pursuant to which the Registrant's shares of common stock were registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"), and any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (excluding any information furnished in Item 9 thereof, which is not deemed filed and is not deemed incorporated by reference herein), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents.

Item 4. DESCRIPTION OF SECURITIES.

Not applicable.

Item 5. INTEREST OF NAMED EXPERTS AND COUNSEL.

John F. Wombwell, Vice President, General Counsel and Secretary of the Company will opine as to certain legal matters in connection with this offering.

Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Registrant is incorporated under the laws of the State of Delaware. Section 145 ("Section 145") of Title 8 of the Delaware Code gives a corporation power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Section 145 also gives a corporation power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper. Section 145 further provides that, to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any such action, suit or proceeding, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145 also authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, arising out of his status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

The Registrant's amended and restated certificate of incorporation and amended and restated bylaws provide for the indemnification of officers and directors to the fullest extent permitted by the Delaware Code. The underwriting agreement executed by the Registrant in connection with the initial public offering of the Common Stock also provides for the indemnification of the directors and officers in certain circumstances.

All of the Registrant's directors and officers will be covered by insurance policies maintained by the Registrant or Continental Airlines, Inc. against certain liabilities for actions taken in their capacities as such, including liabilities under the Securities Act.

The Initial Public Offering Agreement dated April 17, 2002, by and between the Registrant and Continental Airlines, Inc. (the "IPO Agreement"), contains indemnification provisions under which the Registrant and Continental Airlines, Inc. each indemnify the other with respect to breaches by the indemnifying party of the IPO Agreement and against liabilities arising from misstatements or omissions by the indemnifying party in the prospectus dated April 17, 2002 or the registration statement on Form S-1 (Registration No. 333-64808) of which it is a part. For this purpose the Registrant is considered to have provided the information in that prospectus and that registration statement about its assets and businesses.

Item 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

Item 8. EXHIBITS.

Unless otherwise indicated below as being incorporated by reference to another filing of the Registrant with the Commission, each of the following exhibits is filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
4.1	Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant's registration statement on Form S-1 (Registration No. 333-64808)).
4.2	Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 of the Registrant's annual report on Form 10-K for the year ended December 31, 2002).
4.3	Rights Agreement among the Registrant, Continental Airlines, Inc. and Mellon Investor Services LLC, as Rights Agent, including form of Rights Certificate, updated as of April 1, 2002 (incorporated by reference as Exhibit 4.2 to the Registrant's Form 10-Q for the quarter ended March 31, 2002).
4.4*	ExpressJet Holdings, Inc. 2003 Employee Stock Purchase Plan.
5.1*	Opinion of Counsel.
23.1*	Consent of Ernst & Young LLP.
23.2*	Consent of Counsel (included in Exhibit 5.1).
24.1*	Powers of Attorney.

* Filed herewith.

Item 9. UNDERTAKINGS.

- (a) The undersigned Registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
- (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;
- provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the

offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for the purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Signature

Title

*

Thomas E. Schick

Director

*

L.E. Simmons

Director

*

Jeffrey A. Smisek

Director

*By: /s/ John F. Wombwell
John F. Wombwell
Pursuant to Power of Attorney

EXHIBIT INDEX

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EXPRESSJET HOLDINGS, INC.
2003 EMPLOYEE STOCK PURCHASE PLAN

1. **Purpose.** The ExpressJet Holdings, Inc. 2003 Employee Stock Purchase Plan (the “Plan”) is intended to provide an incentive for employees of ExpressJet Holdings, Inc. (the “Company”) and any Participating Company (as defined in paragraph 3) to acquire or increase a proprietary interest in the Company through the purchase of shares of the Company’s common stock, par value \$.01 per share (the “Stock”). The Plan is intended to qualify as an “Employee Stock Purchase Plan” under Section 423 of the Internal Revenue Code of 1986, as amended (the “Code”). The provisions of the Plan shall be construed in a manner consistent with the requirements of that section of the Code.

2. **Administration of the Plan.** The Plan shall be administered by the Human Resources Committee (the “Committee”) of the Board of Directors of the Company (the “Board”). Subject to the provisions of the Plan, the Committee shall interpret the Plan and all options granted under the Plan, make such rules as it deems necessary for the proper administration of the Plan and make all other determinations necessary or advisable for the administration of the Plan. In addition, the Committee shall correct any defect, supply any omission or reconcile any inconsistency in the Plan, or in any option granted under the Plan, in the manner and to the extent that the Committee deems desirable to carry the Plan or any option into effect. The Committee shall, in its sole discretion, make such decisions or determinations and take such actions, and all such decisions, determinations and actions taken or made by the Committee pursuant to this and the other paragraphs of the Plan shall be conclusive on all parties. The Committee shall not be liable for any decision, determination or action taken in good faith in connection with the administration of the Plan. The Committee shall have the authority to delegate routine day-to-day administration of the Plan to such officers and employees of the Company as the Committee deems appropriate.

3. **Participating Companies.** The Committee may designate any present or future parent or subsidiary corporation of the Company that is eligible by law to participate in the Plan as a “Participating Company” by written instrument delivered to the designated Participating Company. Such written instrument shall specify the effective date of such designation and shall become, as to such designated Participating Company and persons in its employment, a part of the Plan. The terms of the Plan may be modified as applied to the Participating Company only to the extent permitted under Section 423 of the Code. Transfer of employment among the Company and Participating Companies (and among any other parent or subsidiary corporation of the Company) shall not be considered a termination of employment hereunder. Any Participating Company may, by appropriate action of its Board of Directors, terminate its participation in the Plan. Moreover, the Committee may, in its discretion, terminate a Participating Company’s Plan participation at any time.

4. **Eligibility.** Subject to the provisions hereof, all employees of the Company and the Participating Companies who are employed by the Company or any Participating Company as of a Date of Grant (as defined in subparagraph 6(a)) shall be eligible to participate in the Plan; provided, however, that no option shall be granted to an employee if such employee, immediately after the option is granted, owns stock possessing five percent or more of the total combined voting power or value of all classes of stock of the Company or of its parent or subsidiary corporations (within the meaning of Sections 423(b)(3) and 424(d) of the Code).

5. **Stock Subject to the Plan.** Subject to the provisions of paragraph 12, the aggregate number of shares that may be sold pursuant to options granted under the Plan shall not exceed one million shares of the authorized Stock, which shares may be unissued or reacquired shares, including shares bought on the market or otherwise for purposes of the Plan. Should any option granted under the Plan expire or terminate prior to its exercise in full, the shares theretofore subject to such option may again be

subject to an option granted under the Plan. Any shares that are not subject to outstanding options upon the termination of the Plan shall cease to be subject to the Plan.

6. Grant of Options.

(a) **General Statement; “Date of Grant”; “Option Period”; “Date of Exercise”.** Following the effective date of the Plan and continuing while the Plan remains in force, the Company shall offer options under the Plan to purchase shares of Stock to all eligible employees who elect to participate in the Plan. Except as otherwise determined by the Committee, these options shall be granted on July 1, 2003 and, thereafter, on the first day of each successive January and July (each of which dates is herein referred to as a “Date of Grant”). Except as provided in paragraph 12, the term of each option shall be for six months (each such six-month period is herein referred to as an “Option Period”), which shall begin on a Date of Grant and end on the last day of each Option Period (herein referred to as a “Date of Exercise”). Subject to subparagraph 6(e), the number of shares subject to an option for a participant shall be equal to the quotient of (i) the aggregate payroll deductions withheld on behalf of such participant during the Option Period in accordance with subparagraph 6(b), divided by (ii) the Option Price (as defined in subparagraph 7(b)) of the Stock applicable to the Option Period, including fractions; provided, however, that the maximum number of shares that may be subject to any option for a participant may not exceed 2,500 (subject to adjustment as provided in paragraph 12).

(b) **Election to Participate; Payroll Deduction Authorization.** An eligible employee may participate in the Plan only by means of payroll deduction. Except as provided in subparagraph 6(g), each eligible employee who elects to participate in the Plan shall deliver to the Company, within the time period prescribed by the Committee, a written payroll deduction authorization in a form prepared by the Company whereby he gives notice of his election to participate in the Plan as of the next following Date of Grant, and whereby he designates an integral percentage of his Eligible Compensation (as defined in subparagraph 6(d)) to be deducted from his compensation for each pay period and paid into the Plan for his account. The designated percentage may not be less than 1% nor exceed 10%.

(c) **Changes in Payroll Authorization.** A participant may withdraw from the Plan as provided in paragraph 8. In addition, a participant may decrease the percentage rate of his payroll deduction authorization referred to in subparagraph 6(b) or suspend or resume payroll deductions during the relevant Option Period by delivering to the Company a new payroll deduction authorization in a form prepared by the Company. Such decrease, suspension or resumption will be effective as soon as administratively feasible after receipt of the participant’s new payroll deduction authorization form.

(d) **“Eligible Compensation” Defined.** The term “Eligible Compensation” means regular straight-time earnings or base salary, except that such term shall not include payments for overtime, incentive compensation, bonuses or other special payments.

(e) **\$25,000 Limitation.** No employee shall be granted an option under the Plan which permits his rights to purchase Stock under the Plan and under all other employee stock purchase plans of the Company and its parent and subsidiary corporations to accrue at a rate which exceeds \$25,000 of fair market value of such Stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time (within the meaning of Section 423(b)(8) of the Code). Any payroll deductions in excess of the amount specified in the foregoing sentence shall be returned to the participant as soon as administratively feasible after the next following Date of Exercise.

(f) **Leaves of Absence.** During a paid leave of absence approved by the Company and meeting the requirements of Treasury Regulation Section 1.421-7(h)(2), a participant's elected payroll deductions shall continue. A participant may not contribute to the Plan during an unpaid leave of absence. If a participant takes an unpaid leave of absence that is approved by the Company and meets the requirements of Treasury Regulation Section 1.421-7(h)(2), then such participant's payroll deductions for such Option Period that were made prior to such leave may remain in the Plan and be used to purchase Stock under the Plan on the Date of Exercise relating to such Option Period. If a participant takes a leave of absence that is not described in the first or third sentence of this subparagraph 6(f), then he shall be considered to have terminated his employment and withdrawn from the Plan pursuant to the provisions of paragraph 8 hereof. Further, notwithstanding the preceding provisions of this subparagraph 6(f), if a participant takes a leave of absence that is described in the first or third sentence of this subparagraph 6(f) and such leave of absence exceeds the Maximum Period, then he shall be considered to have withdrawn from the Plan pursuant to the provisions of paragraph 8 hereof and terminated his employment for purposes of the Plan on the day immediately following the last day of the Maximum Period. For purposes of the preceding sentence, the term "Maximum Period" shall mean, with respect to a participant, the 90-day period beginning on the first day of the participant's leave of absence; provided, however, that if the participant's right to reemployment by the Company (or a parent or subsidiary corporation of the Company) is guaranteed either by statute or contract, then such 90-day period shall be extended until the last day upon which such reemployment rights are so guaranteed.

(g) **Continuing Election.** Subject to the limitation set forth in subparagraph 6(e), a participant (i) who has elected to participate in the Plan pursuant to subparagraph 6(b) as of a Date of Grant and (ii) who takes no action to change or revoke such election as of the next following Date of Grant and/or as of any subsequent Date of Grant prior to any such respective Date of Grant shall be deemed to have made the same election, including the same attendant payroll deduction authorization, for such next following and/or subsequent Date(s) of Grant as was in effect immediately prior to such respective Date of Grant. Payroll deductions that are limited by subparagraph 6(e) shall re-commence at the rate provided in such participant's payroll deduction authorization at the beginning of the first Option Period that is scheduled to end in the following calendar year, unless the participant changes the amount of his payroll deduction authorization pursuant to paragraph 6, withdraws from the Plan as provided in paragraph 8 or is terminated from the Plan as provided in paragraph 9.

7. **Exercise of Options.**

(a) **General Statement.** Subject to the limitation set forth in subparagraph 6(e), each participant in the Plan automatically and without any act on his part shall be deemed to have exercised his option on each Date of Exercise to the extent of his unused payroll deductions under the Plan and to the extent the issuance of Stock to such participant upon such exercise is lawful.

(b) **"Option Price" Defined.** The term "Option Price" shall mean the per share price of Stock to be paid by each participant on each exercise of his option, which price shall be equal to 85% of the fair market value of the Stock on the Date of Exercise or on the Date of Grant, whichever amount is lesser. For all purposes under the Plan, the fair market value of a share of Stock on a particular date shall be equal to the closing price of the Stock on the New York Stock Exchange, Inc. on that date as reported by *The Wall Street Journal* in the New York Stock Exchange Composite Transactions (or, if no shares of Stock have been traded on that date, on the next regular business date on which shares of the Stock are so traded).

(c) **Delivery of Shares; Restrictions on Transfer.** As soon as practicable after each Date of Exercise, the Company shall deliver to a custodian selected by the Committee one or more certificates representing (or shall otherwise cause to be credited to the account of such custodian) the total number of whole shares of Stock respecting options exercised on such Date of Exercise in the aggregate (for both whole and fractional shares) of all of the participating eligible employees hereunder. Any remaining amount representing a fractional share shall not be certificated (or otherwise so credited) and shall be carried forward to the next Date of Exercise for certification (or credit) as part of a whole share. Such custodian shall keep accurate records of the beneficial interests of each participating employee in such shares by means of participant accounts under the Plan, and shall provide each eligible employee with quarterly or such other periodic statements with respect thereto as may be directed by the Committee. If the Company is required to obtain from any U.S. commission or agency authority to issue any such shares, the Company shall seek to obtain such authority. Inability of the Company to obtain from any commission or agency (whether U.S. or foreign) authority which the Company's General Counsel or his designee deems necessary for the lawful issuance of any such shares shall relieve the Company from liability to any participant in the Plan except to return to him the amount of his payroll deductions under the Plan which would have otherwise been used upon exercise of the relevant option. Except as hereinafter provided, for a period of six months (or such other period as the Committee may from time to time specify with respect to a particular grant of options) after the Date of Exercise of an option (the "Restriction Period"), the shares of Stock issued in connection with such exercise may not be sold, assigned, pledged, exchanged, hypothecated or otherwise transferred, encumbered or disposed of by the optionee who has purchased such shares; provided, however, that such restriction shall not apply to the transfer, exchange or conversion of such shares of Stock pursuant to a merger, consolidation or other plan of reorganization of the Company, but the stock, securities or other property (other than cash) received upon any such transfer, exchange or conversion shall also become subject to the same transfer restrictions applicable to the original shares of Stock, and shall be held by the custodian, pursuant to the provisions hereof. Upon the expiration of such Restriction Period, the transfer restrictions set forth in this subparagraph 7(c) shall cease to apply and the optionee may, pursuant to procedures established by the Committee and the custodian, direct the sale of some or all of the whole shares of Stock in his Company stock account that are not then subject to transfer restrictions and request payment of the net proceeds from such sale. **Unless sold by the custodian, the shares of Stock in an optionee's Company stock account shall be held by the custodian for a period of two years following the date of grant.** Upon expiration of a two-year period following the date of grant, optionee may direct distribution of some or all of the whole shares of Stock in his Company stock account.— Further, upon the termination of the optionee's employment with the Company and its parent or subsidiary corporations by reason of death or permanent and total disability (within the meaning of Section 22(e)(3) of the Code) the transfer restrictions set forth in this subparagraph 7(c) shall cease to apply and the custodian shall, upon the request of such optionee (or as applicable, such optionee's personal representative), deliver to such optionee a certificate issued in his name representing (or otherwise credit to an account of such optionee) the aggregate whole number of shares of Stock in his Company stock account under the Plan. At the time of distribution of such shares, any fractional share in such Company stock account shall be converted to cash based on the fair market value of the Stock on the date of distribution and such cash shall be paid to the optionee. The Committee may cause the Stock issued in connection with the exercise of options under the Plan to bear such legends or other appropriate restrictions, and the Committee may take such other actions, as it deems appropriate in order to reflect the transfer restrictions set forth in this subparagraph 7(c) and to assure compliance with applicable laws.

8. **Withdrawal from the Plan.**

(a) **General Statement.** Any participant may withdraw in whole from the Plan at any time prior to the Date of Exercise relating to a particular Option Period. Partial withdrawals shall not be permitted. A participant who wishes to withdraw from the Plan must timely deliver to the Company a notice of withdrawal in a form prepared by the Company. The Company, promptly following the time when the notice of withdrawal is delivered, shall refund to the participant the amount of his payroll deductions under the Plan which have not yet been otherwise returned to him or used upon exercise of options; and thereupon, automatically and without any further act on his part, his payroll deduction authorization and his interest in unexercised options under the Plan shall terminate.

(b) **Eligibility Following Withdrawal.** A participant who withdraws from the Plan shall be eligible to participate again in the Plan upon expiration of the Option Period during which he withdrew (provided that he is otherwise eligible to participate in the Plan at such time).

9. **Termination of Employment.**

(a) **General Statement.** Except as provided in subparagraph 9(b), if the employment of a participant terminates for any reason whatsoever, then his participation in the Plan automatically and without any act on his part shall terminate as of the date of the termination of his employment. The Company shall promptly refund to him the amount of his payroll deductions under the Plan which have not yet been otherwise returned to him or used upon exercise of options, and thereupon his interest in unexercised options under the Plan shall terminate.

(b) **Termination by Death or Disability.** If the employment of a participant terminates due to (i) death or (ii) permanent and total disability (within the meaning of Section 22(e)(3) of the Code), the participant, or (in the event of the participant's death) the participant's designated beneficiary, as applicable, will have the right to elect, no later than 10 days prior to the last day of the Option Period during which such death or disability occurred, either to:

(1) withdraw all of the accumulated unused payroll deductions and shares of Stock credited to the participant's account under the Plan (whether or not the Restriction Period with respect to such shares has expired); or

(2) exercise the participant's option for the purchase of Stock on the last day of the Option Period during which termination of employment occurs for the purchase of the number of full shares of Stock which the accumulated payroll deductions at the date of the participant's termination of employment will purchase at the applicable Option Price (subject to subparagraph 6(e)), with any excess cash in such account to be returned to the participant or such designated beneficiary.

The participant or, if applicable, such designated beneficiary, must make such election by giving written notice to the Committee in such manner as the Committee prescribes. In the event that no such written notice of election is timely received by the Committee, the participant or designated beneficiary will automatically be deemed to have elected as set forth in clause (2) above, and promptly after the exercise so described in clause (2) above, all shares of Stock in such participant's account under the Plan will be distributed to the participant or such designated beneficiary.

(c) **Beneficiary Designation.** Each participant shall have the right to designate a beneficiary to exercise the rights specified in subparagraph 9(b) in the event of such participant's death. Any designation (or change in designation) of a beneficiary must be filed with the

Committee in a time and manner designated by the Committee in order to be effective. Any such designation of a beneficiary may be revoked by the participant by filing a later valid designation or an instrument of revocation with the Committee in a time and manner designated by the Committee. If no beneficiary is designated, the designated beneficiary will be deemed to be the participant's personal representative.

10. **Restriction Upon Assignment of Option.** An option granted under the Plan shall not be transferable otherwise than by will or the laws of descent and distribution. Subject to subparagraph 9(b), each option shall be exercisable, during his lifetime, only by the employee to whom granted. The Company shall not recognize and shall be under no duty to recognize any assignment or purported assignment by an employee of his option or of any rights under his option or under the Plan.

11. **No Rights of Stockholder Until Exercise of Option.** With respect to shares of Stock subject to an option, an optionee shall not be deemed to be a stockholder, and he shall not have any of the rights or privileges of a stockholder, until such option has been exercised. With respect to an individual's Stock held by the custodian pursuant to subparagraph 7(c), the custodian shall, as soon as practicable, pay the individual any cash dividends attributable thereto and shall, in accordance with procedures adopted by the custodian, facilitate the individual's voting rights attributable thereto.

12. **Changes in Stock; Adjustments.** Whenever any change is made in the Stock, by reason of a stock dividend or by reason of subdivision, stock split, reverse stock split, recapitalization, reorganization, combination, reclassification of shares or other similar change, appropriate action will be taken by the Committee to adjust accordingly the number of shares subject to the Plan, the maximum number of shares that may be subject to any option, and the number and Option Price of shares subject to options outstanding under the Plan.

If the Company shall not be the surviving corporation in any merger or consolidation (or survives only as a subsidiary of another entity), or if the Company is to be dissolved or liquidated, then, unless a surviving corporation assumes or substitutes new options (within the meaning of Section 424(a) of the Code) for all options then outstanding, (i) the Date of Exercise for all options then outstanding shall be accelerated to a date fixed by the Committee prior to the effective date of such merger or consolidation or such dissolution or liquidation and (ii) upon such effective date any unexercised options shall expire and the Company promptly shall refund to each participant the amount of such participant's payroll deductions under the Plan which have not yet been otherwise returned to him or used upon exercise of options.

13. **Use of Funds; No Interest Paid.** All funds received or held by the Company under the Plan shall be included in the general funds of the Company free of any trust or other restriction, and may be used for any corporate purpose. No interest shall be paid or credited to any participant.

14. **Term of the Plan.** The Plan shall be effective upon the date of its adoption by the Board, provided the Plan is approved by the stockholders of the Company within 12 months thereafter. Notwithstanding any provision in the Plan, no option granted under the Plan shall be exercisable prior to such stockholder approval, and, if the stockholders of the Company do not approve the Plan by the Date of Exercise of the first option granted hereunder, then the Plan shall automatically terminate, no options may be exercised thereunder and the Company promptly shall refund to each participant the amount of such participant's payroll deductions under the Plan; and thereupon, automatically and without any further act on his part, his payroll deduction authorization and his interest in unexercised options under the Plan shall terminate. Except with respect to options then outstanding, if not sooner terminated under the provisions of paragraph 15, the Plan shall terminate upon and no further payroll deductions shall be made and no further options shall be granted after December 31, 2013.

15. **Amendment or Termination of the Plan.** The Board in its discretion may terminate the Plan at any time with respect to any Stock for which options have not theretofore been granted. The Board and the Committee shall each have the right to alter or amend the Plan or any part thereof from time to time; provided, however, that no change in any option theretofore granted may be made that would impair the rights of the optionee without the consent of such optionee.

16. **Securities Laws.** The Company shall not be obligated to issue any Stock pursuant to any option granted under the Plan at any time when the offer, issuance or sale of shares covered by such option has not been registered under the Securities Act of 1933, as amended, or does not comply with such other state, federal or foreign laws, rules or regulations, or the requirements of any stock exchange upon which the Stock may then be listed, as the Company or the Committee deems applicable and, in the opinion of legal counsel for the Company, there is no exemption from the requirements of such laws, rules, regulations or requirements available for the offer, issuance and sale of such shares. Further, all Stock acquired pursuant to the Plan shall be subject to the Company's policies concerning compliance with securities laws and regulations, as such policies may be amended from time to time. The terms and conditions of options granted hereunder to, and the purchase of shares by, persons subject to Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), shall comply with any applicable provisions of Rule 16b-3. As to such persons, this Plan shall be deemed to contain, and such options shall contain, and the shares issued upon exercise thereof shall be subject to, such additional conditions and restrictions as may be required from time to time by Rule 16b-3 to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

17. **No Restriction on Corporate Action.** Nothing contained in the Plan shall be construed to prevent the Company or any subsidiary from taking any corporate action that is deemed by the Company or such subsidiary to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Plan or any option granted under the Plan. No employee, beneficiary or other person shall have any claim against the Company or any subsidiary as a result of any such action.

18. **Miscellaneous Provisions.**

(a) **Parent and Subsidiary Corporations.** For all purposes of the Plan, a corporation shall be considered to be a parent or subsidiary corporation of the Company only if such corporation is a parent or subsidiary corporation of the Company within the meaning of Sections 424(e) or (f) of the Code.

(b) **Number and Gender.** Wherever appropriate herein, words used in the singular shall be considered to include the plural and words used in the plural shall be considered to include the singular. The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender.

(c) **Headings.** The headings and subheadings in the Plan are included solely for convenience, and if there is any conflict between such headings or subheadings and the text of the Plan, the text shall control.

(d) **Not a Contract of Employment; No Acquired Rights.** The adoption and maintenance of the Plan shall not be deemed to be a contract between the Company or any Participating Company and any person or to be consideration for the employment of any person. Participation in the Plan at any given time shall not be deemed to create the right to participate in the Plan, or any other arrangement permitting an employee of the Company or any Participating Company to purchase Stock at a discount, in the future. The rights and obligations under any participant's terms of employment with the Company or any Participating Company shall not be affected by participation in the Plan. Nothing herein contained shall be deemed to give any person

the right to be retained in the employ of the Company or any Participating Company or to restrict the right of the Company or any Participating Company to discharge any person at any time, nor shall the Plan be deemed to give the Company or any Participating Company the right to require any person to remain in the employ of the Company or such Participating Company or to restrict any person's right to terminate his employment at any time. The Plan shall not afford any participant any additional right to compensation as a result of the termination of such participant's employment for any reason whatsoever.

(e) **Compliance with Applicable Laws.** The Company's obligation to offer, issue, sell or deliver Stock under the Plan is at all times subject to all approvals of and compliance with any governmental authorities (whether domestic or foreign) required in connection with the authorization, offer, issuance, sale or delivery of Stock as well as all federal, state, local and foreign laws. Without limiting the scope of the preceding sentence, and notwithstanding any other provision in the Plan, the Company shall not be obligated to grant options or to offer, issue, sell or deliver Stock under the Plan to any employee who is a citizen or resident of a jurisdiction the laws of which, for reasons of its public policy, prohibit the Company from taking any such action with respect to such employee.

(f) **Severability.** If any provision of the Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof; instead, each provision shall be fully severable and the Plan shall be construed and enforced as if said illegal or invalid provision had never been included herein.

(g) **Governing Law.** All provisions of the Plan shall be construed in accordance with the laws of Texas except to the extent preempted by federal law.

May 12, 2003

Board of Directors
ExpressJet Holdings, Inc.
1600 Smith Street
Dept. HQSCE
Houston, Texas 77002

Gentlemen:

I am the general counsel of ExpressJet Holdings, Inc., a Delaware corporation (the "Company"). I am delivering this opinion in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), of the registration statement on Form S-8 filed by the Company with the Commission on May 13, 2003 (the "Registration Statement"), relating to the offering from time to time of up to 1,000,000 shares (the "Shares") of the Company's common stock, par value \$0.01 per share, for issuance under the Company's 2003 Employee Stock Purchase Plan (the "Plan").

In arriving at the opinion expressed below, I have examined the Company's Certificate of Incorporation and Bylaws, each as amended to date, the Registration Statement, the corporate proceedings taken by the Company in connection with the establishment and implementation of the Plan and the originals or copies certified or otherwise identified to my satisfaction of such other instruments and other certificates of public officials, officers and representatives of the Company and such other persons, and I have made such investigations of law, as I have deemed appropriate as a basis for the opinion expressed below. In rendering the opinion expressed below, I have assumed and have not verified (i) the genuineness of the signatures on all documents that I have examined, (ii) the conformity to the originals of all documents supplied to me as certified or photostatic or faxed copies, (iii) the authenticity of the originals of such documents and (iv) as to the forms of all documents in respect of which forms were filed with the Commission as exhibits to the Registration Statement, the conformity in all material respects of such documents to the forms thereof that I have examined.

Based on the foregoing, and subject to the limitations and exceptions set forth below, it is my opinion that if, as and when the Shares have been issued and sold (and the consideration therefor received) pursuant to duly authorized stock purchase rights issued under the Plan effected in accordance with the Registration Statement, such Shares will be duly authorized, legally issued, fully paid and nonassessable. For the purposes of the opinion expressed above, I have assumed that the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective. I express no opinion other than as to the federal laws of the United States of America and the Delaware General Corporation Law. I hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to me under the heading "Legal Matters" in the prospectus forming part of the Registration Statement without admitting that I am an "expert" under the Act, or the rules and regulations of the Commission issued thereunder, with respect to any part of the Registration Statement, including this exhibit. This opinion is rendered solely for your benefit in connection with the

above matter and may not be relied upon in any manner by any other person or entity without my express written consent.

Very truly yours,

EXPRESSJET HOLDINGS, INC.

By: /s/ John F. Wombwell
Name: John F. Wombwell
Title: Vice President and General Counsel

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement on Form S-8 to pertaining to the 2003 Employee Stock Purchase Plan of ExpressJet Holdings, Inc. of our report dated January 14, 2003, with respect to the consolidated financial statements and schedule of ExpressJet Holdings, Inc. included in its Annual Report on Form 10-K for the year ended December 31, 2002, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

May 9, 2003

POWER OF ATTORNEY

The undersigned director of ExpressJet Holdings, Inc. hereby constitutes and appoints each of James B. Ream and John F. Wombwell, with full power to act and with full power of substitution and resubstitution, my true and lawful attorney-in-fact and agent with full power to execute in my name and behalf in the capacity indicated below the Registration Statement on Form S-8 to which this Power of Attorney is filed as an exhibit and any and all amendments (including post-effective amendments and amendments thereto) to such Registration Statement and to file the same, with all exhibits and other documents relating thereto, and hereby ratify and confirm all acts that such attorney-in-fact or his substitute shall lawfully do or cause to be done by virtue hereof.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Gordon M. Bethune</u> Gordon M. Bethune	Director	May 9, 2003

POWER OF ATTORNEY

The undersigned director of ExpressJet Holdings, Inc. hereby constitutes and appoints each of James B. Ream and John F. Wombwell, with full power to act and with full power of substitution and resubstitution, my true and lawful attorney-in-fact and agent with full power to execute in my name and behalf in the capacity indicated below the Registration Statement on Form S-8 to which this Power of Attorney is filed as an exhibit and any and all amendments (including post-effective amendments and amendments thereto) to such Registration Statement and to file the same, with all exhibits and other documents relating thereto, and hereby ratify and confirm all acts that such attorney-in-fact or his substitute shall lawfully do or cause to be done by virtue hereof.

<u>Name</u>	<u>Title</u>	<u>Date</u>
/s/ Janet M. Clarke Janet M. Clarke	Director	May 12, 2003

POWER OF ATTORNEY

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<u>Name</u>	<u>Title</u>	<u>Date</u>
/s/ <u>Kim A. Fadel</u> Kim A Fadel	Director	May 7, 2003

POWER OF ATTORNEY

The undersigned director of ExpressJet Holdings, Inc. hereby constitutes and appoints each of James B. Ream and John F. Wombwell, with full power to act and with full power of substitution and resubstitution, my true and lawful attorney-in-fact and agent with full power to execute in my name and behalf in the capacity indicated below the Registration Statement on Form S-8 to which this Power of Attorney is filed as an exhibit and any and all amendments (including post-effective amendments and amendments thereto) to such Registration Statement and to file the same, with all exhibits and other documents relating thereto, and hereby ratify and confirm all acts that such attorney-in-fact or his substitute shall lawfully do or cause to be done by virtue hereof.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Lawrence W. Kellner</u> Lawrence W. Kellner	Director	May 8, 2003

POWER OF ATTORNEY

The undersigned director of ExpressJet Holdings, Inc. hereby constitutes and appoints each of James B. Ream and John F. Wombwell, with full power to act and with full power of substitution and resubstitution, my true and lawful attorney-in-fact and agent with full power to execute in my name and behalf in the capacity indicated below the Registration Statement on Form S-8 to which this Power of Attorney is filed as an exhibit and any and all amendments (including post-effective amendments and amendments thereto) to such Registration Statement and to file the same, with all exhibits and other documents relating thereto, and hereby ratify and confirm all acts that such attorney-in-fact or his substitute shall lawfully do or cause to be done by virtue hereof.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ C. D. McLean</u> C. D. McLean	Director	May 12, 2003

POWER OF ATTORNEY

The undersigned director of ExpressJet Holdings, Inc. hereby constitutes and appoints each of James B. Ream and John F. Wombwell, with full power to act and with full power of substitution and resubstitution, my true and lawful attorney-in-fact and agent with full power to execute in my name and behalf in the capacity indicated below the Registration Statement on Form S-8 to which this Power of Attorney is filed as an exhibit and any and all amendments (including post-effective amendments and amendments thereto) to such Registration Statement and to file the same, with all exhibits and other documents relating thereto, and hereby ratify and confirm all acts that such attorney-in-fact or his substitute shall lawfully do or cause to be done by virtue hereof.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Thomas E. Schick</u> Thomas E. Schick	Director	May 7, 2003

POWER OF ATTORNEY

The undersigned director of ExpressJet Holdings, Inc. hereby constitutes and appoints each of James B. Ream and John F. Wombwell, with full power to act and with full power of substitution and resubstitution, my true and lawful attorney-in-fact and agent with full power to execute in my name and behalf in the capacity indicated below the Registration Statement on Form S-8 to which this Power of Attorney is filed as an exhibit and any and all amendments (including post-effective amendments and amendments thereto) to such Registration Statement and to file the same, with all exhibits and other documents relating thereto, and hereby ratify and confirm all acts that such attorney-in-fact or his substitute shall lawfully do or cause to be done by virtue hereof.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ L. E. Simmons</u> L. E. Simmons	Director	May 9, 2003

POWER OF ATTORNEY

The undersigned director of ExpressJet Holdings, Inc. hereby constitutes and appoints each of James B. Ream and John F. Wombwell, with full power to act and with full power of substitution and resubstitution, my true and lawful attorney-in-fact and agent with full power to execute in my name and behalf in the capacity indicated below the Registration Statement on Form S-8 to which this Power of Attorney is filed as an exhibit and any and all amendments (including post-effective amendments and amendments thereto) to such Registration Statement and to file the same, with all exhibits and other documents relating thereto, and hereby ratify and confirm all acts that such attorney-in-fact or his substitute shall lawfully do or cause to be done by virtue hereof.

<u>Name</u>	<u>Title</u>	<u>Date</u>
/s/ <u>Jeffery A. Smisek</u> Jeffery A. Smisek	Director	May 12, 2003