

OVERSTOCK.COM, INC
Form 10-Q/A
March 31, 2010
Table of Contents

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q/A

Amendment No. 1

(Mark One)

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

For the quarterly period ended March 31, 2009

Or

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

For the transition period from to

Commission file number: 000-49799

OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

87-0634302
(I.R.S. Employer
Identification Number)

6350 South 3000 East

Salt Lake City, Utah 84121

(Address, including zip code, of Registrant's principal executive offices)

Registrant's telephone number, including area code: **(801) 947-3100**

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), (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

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

There were 22,814,053 shares of the Registrant's common stock, par value \$0.0001, outstanding on April 29, 2009.

Table of Contents

EXPLANATORY NOTE

On January 29, 2010, the Audit Committee of the Board of Directors of Overstock.com, Inc. concluded, based on the recommendation of management, that we would restate (1) our consolidated financial statements as of and for the year ended December 31, 2008 (however, only the restatement of the balance sheet is presented herein) and (2) our consolidated financial statements as of and for the three months ended March 31, 2008 and 2009 contained in this Quarterly Report on Form 10-Q/A to correct the following errors:

- Accounting for amounts that we pay our drop ship fulfillment partners and an amount due from a vendor that went undiscovered for a period of time. Specifically, these errors related to (1) amounts we paid to partners or deducted from partner payments related to return processing services and product costs and (2) amounts we paid to a freight vendor based on incorrect invoices from the vendor. Once discovered, we applied gain contingency accounting for the recovery of such amounts, which was an inappropriate accounting treatment.
- Amortization of the expense related to restricted stock units. Previously the expense was based on the actual three year vesting schedule, which incorrectly understated the expense as compared to a three year straight line amortization. We also corrected for the use of an outdated forfeiture rate in calculating share-based compensation expense under the plans.

The following additional adjustments were also included in this restatement:

- Correction of certain amounts related to customer refunds and credits.
- Recognition of co-branded credit card bounty revenue and promotion expense over the estimated term of the credit card relationships. Previously the revenue was incorrectly recognized when the card was issued.
- Reduction in the restructuring accrual and correction of the related expense due to a 2008 sublease benefit which was previously excluded from the accrual calculation and the accretion of interest expense related to the restructuring accrual, which was not previously recorded.
- Change in our accounting for external audit fees to the as incurred method instead of the ratable method.
- Other miscellaneous adjustments, none of which were material either individually or in the aggregate. Certain of these adjustments were related to a reduction in revenue and cost of goods sold in equal amounts for certain consideration we received from vendors, an increase in inventory, accounts payable and accrued liabilities to record our sales return allowance on a gross basis, an adjustment to our cash and restricted cash balances due to compensating balance arrangements and an adjustment to record redeemable common stock for certain shares previously

issued to employees.

The (increase) decrease to net loss attributable to common shares of the above adjustments is as follows (in thousands):

2

Table of Contents

	Three months ended March 31, 2008	Three months ended March 31, 2009
The effect of the adjustments related to (1) amounts the Company paid to partners or deducted from payments to partners related to return processing services and product costs and (2) amounts the Company paid to a freight vendor based on incorrect invoices from the vendor.	\$ 927	\$ (1,606)
The effect of the adjustments related to accounting for certain of the Company's share-based compensation plans.	(71)	(340)
The effect of the adjustments related to customer refunds and credits.		9
The effect of the adjustments related to the co-branded credit card bounty revenue and promotion expense.	221	48
The effect of the adjustments related to restructuring expense and interest expense related to the accretion of the restructuring accrual.		(17)
The effect of the adjustments related to external audit fees.	(316)	(221)
The effect of other miscellaneous adjustments	53	271
Total impact of the effect of the adjustments	\$ 814	\$ (1,856)

A more complete discussion of the restatement can be found in Note 3 to the consolidated financial statements contained in Item 1 of this Form 10-Q/A.

The Company is filing this Amendment to its Quarterly Report on Form 10-Q/A for the quarter ended March 31, 2009 (this Form 10-Q/A) to reflect the restatement of the Company's consolidated financial statements for the three months ended March 31, 2008 and 2009 and related financial information contained in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 as filed with the Securities and Exchange Commission on May 1, 2009 (the Original Filing). This Form 10-Q/A amends and restates Items 1, 2 and 4 of Part I and Item 6 of Part II of the Original Filing. Except as required to reflect the effects of the restatement for the items above, no additional modifications or updates to the consolidated financial statements or data in this Form 10-Q/A have been made to the consolidated financial statements or data for the three months ended March 31, 2008 and 2009. This filing should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2009 and other filings made with the SEC subsequent to the filing of the Original Filing, as those filings may have been amended, as information in such reports and documents may update or supersede certain information contained in this filing.

Table of Contents

TABLE OF CONTENTS

<u>PART I. FINANCIAL INFORMATION</u>	5
<u>Item 1. Financial Statements (Unaudited) (Restated)</u>	5
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	32
<u>Item 3. Quantitative and Qualitative Disclosures about Market Risk</u>	50
<u>Item 4. Controls and Procedures</u>	50
<u>PART II. OTHER INFORMATION</u>	52
<u>Item 1. Legal Proceedings</u>	52
<u>Item 1A. Risk Factors</u>	52
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	52
<u>Item 3. Defaults upon Senior Securities</u>	53
Item 4. Reserved	53
<u>Item 5. Other Information</u>	53
<u>Item 6. Exhibits</u>	53
<u>Signature</u>	54

Table of Contents**PART 1. FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS****Overstock.com, Inc.****Consolidated Balance Sheets****(in thousands)**

	December 31, 2008 (Restated)	March 31, 2009 (Unaudited) (Restated)
Assets		
Current assets:		
Cash and cash equivalents	\$ 96,457	\$ 74,487
Restricted cash	4,262	4,285
Marketable securities	8,989	
Accounts receivable, net	7,100	9,493
Notes receivable (Note 5)	1,250	
Inventories, net	24,719	16,072
Prepaid inventories, net	761	1,401
Prepays and other assets	9,552	8,568
Total current assets	153,090	114,306
Fixed assets, net	24,724	22,291
Goodwill	2,784	2,784
Other long-term assets, net	538	2,920
Total assets	\$ 181,136	\$ 142,301
Liabilities and Stockholders Equity (Deficit)		
Current liabilities:		
Accounts payable	\$ 57,981	\$ 28,788
Accrued liabilities	34,097	33,596
Deferred revenue	19,232	17,841
Total current liabilities	111,310	80,225
Other long-term liabilities	4,251	4,449
Convertible senior notes, net	66,558	61,730
Total liabilities	182,119	146,404
Commitments and contingencies (Note 9)		
Redeemable common stock, \$0.0001 par value, 98 and 55 shares outstanding as of December 31, 2008 and March 31, 2009 (Note 13)	1,263	687
Stockholders' equity (deficit):		
Preferred stock, \$0.0001 par value, 5,000 shares authorized, no shares issued and outstanding as of December 31, 2008 and March 31, 2009		
Common stock, \$0.0001 par value, 100,000 shares authorized, 25,438 and 25,586 shares issued as of December 31, 2008 and March 31, 2009, respectively, and 22,645 and 22,758 shares outstanding as of December 31, 2008 and March 31, 2009, respectively	2	2

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Additional paid-in capital	337,707	339,482
Accumulated deficit	(263,333)	(267,277)
Treasury stock, 2,793 and 2,828 shares at cost as of December 31, 2008 and March 31, 2009, respectively	(76,670)	(76,997)
Accumulated other comprehensive income	48	
Total stockholders' deficit	(2,246)	(4,790)
Total liabilities and stockholders' deficit	\$ 181,136	\$ 142,301

See accompanying notes to consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Consolidated Statements of Operations (unaudited)

(in thousands, except per share data)

	Three months ended March 31,	
	2008 (Restated)	2009 (Restated)
Revenue, net		
Direct	\$ 51,655	\$ 34,882
Fulfillment partner	150,145	150,847
Total net revenue	201,800	185,729
Cost of goods sold		
Direct(1)	44,697	30,397
Fulfillment partner	122,491	119,201
Total cost of goods sold	167,188	149,598
Gross profit	34,612	36,131
Operating expenses:		
Sales and marketing(1)	15,023	13,587
Technology(1)	14,489	13,591
General and administrative(1)	9,392	13,834
Total operating expenses	38,904	41,012
Operating loss	(4,292)	(4,881)
Interest income	1,304	123
Interest expense	(901)	(922)
Other income (expense), net		1,736
Net loss	(3,889)	(3,944)
Deemed dividend related to redeemable common stock	(21)	(11)
Net loss attributable to common shares	\$ (3,910)	\$ (3,955)
Net loss attributable to common shares basic and diluted:	\$ (0.17)	\$ (0.17)
Weighted average common shares outstanding basic and diluted	23,345	22,803

(1) Includes stock-based compensation as follows (Note 12):

Cost of goods sold direct	\$ 52	\$ 44
Sales and marketing	88	142
Technology	226	236
General and administrative	1,025	777

See accompanying notes to consolidated financial statements.

Table of Contents**Overstock.com, Inc.****Consolidated Statements of Stockholders Equity (Deficit)****and Comprehensive Loss (Unaudited Restated)****(in thousands)**

	Common stock		Additional	Accumulated	Treasury stock		Accumulated	
	Shares	Amount	Paid-in	Deficit	Shares	Amount	Other	Total
			Capital				Comprehensive	
							Income (loss)	
Balance at December 31, 2008 (Restated)	25,438	\$ 2	\$ 337,707	\$ (263,333)	2,793	\$ (76,670)	\$ 48	\$ (2,246)
Stock-based compensation to employees and directors			1,189					1,189
Stock-based compensation to consultants in exchange for services			10					10
Restricted stock units issued upon vesting	105							
Purchase of treasury stock					35	(327)		(327)
Issuance of redeemable common stock (Restated) (Note 13)	(21)		(198)					(198)
Lapse of rescission rights of redeemable stock (Restated) (Note 13)	64		785					785
Deemed dividend related to redeemable stock (Restated) (Note 13)			(11)					(11)
Comprehensive loss (Restated):								
Net loss (Restated)				(3,944)				(3,944)
Reclassification adjustment							(48)	(48)
Total comprehensive loss								(3,992)
Balance at March 31, 2009 (Restated)	25,586	\$ 2	\$ 339,482	\$ (267,277)	2,828	\$ (76,997)	\$	\$ (4,790)

See accompanying notes to consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Consolidated Statements of Cash Flows (unaudited)

(in thousands)

	Three months ended March 31,	
	2008	2009
	(Restated)	(Restated)
Cash flows from operating activities:		
Net loss	\$ (3,889)	\$ (3,944)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	6,561	3,987
Realized loss on marketable securities		39
Loss on disposition of fixed assets		184
Stock-based compensation to employees and directors	1,255	1,189
Stock-based compensation to consultants for services	(14)	10
Stock-based compensation relating to performance share plan	150	
Amortization of debt discount	87	74
Gain from early extinguishment of debt		(1,926)
Notes receivable accretion	(136)	
Changes in operating assets and liabilities:		
Restricted cash	(67)	(23)
Accounts receivable, net	1,931	(2,393)
Inventories, net	7,673	8,647
Prepaid inventories, net	1,004	(640)
Prepays and other assets	(2,546)	(684)
Other long-term assets, net		(716)
Accounts payable	(37,519)	(29,193)
Accrued liabilities	(13,903)	(501)
Deferred revenue	(1,492)	(1,391)
Other long-term liabilities	(206)	251
Net cash used in operating activities	(41,111)	(27,030)
Cash flows from investing activities:		
Purchases of marketable securities	(6,539)	
Maturities of marketable securities	22,911	
Sale of marketable securities prior to maturity		8,902
Expenditures for fixed assets, including internal-use software and website development	(1,313)	(1,736)
Collection of notes receivable	502	1,250
Net cash provided by investing activities	15,561	8,416
Cash flows from financing activities:		
Payments on capital lease obligations	(3,794)	
Drawdowns on line of credit	5,268	1,612
Payments on line of credit	(5,268)	(1,612)
Paydown on direct financing arrangement		(53)
Payments to retire convertible senior notes		(2,976)
Purchase of treasury stock	(12,000)	(327)
Net cash used in financing activities	(15,794)	(3,356)
Effect of exchange rate changes on cash	(23)	

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Net decrease in cash and cash equivalents	(41,367)	(21,970)
Cash and cash equivalents, beginning of period	92,807	96,457
Cash and cash equivalents, end of period	\$ 51,440	\$ 74,487
