

OVERSTOCK.COM, INC
Form 10-Q/A
March 31, 2010
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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 June 30, 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 <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

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

There were 22,820,528 shares of the Registrant's common stock, par value \$0.0001, outstanding on July 27, 2009.

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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 our consolidated financial statements as of and for the three months and six months ended June 30, 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 income (loss) attributable to common shares of the above adjustments is as follows (in thousands):

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	Three months ended June 30, 2008	Three months ended June 30, 2009	Six months ended June 30, 2008	Six months ended June 30, 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.	\$ 955	\$ 297	\$ 1,882	\$ (1,309)
The effect of the adjustments related to accounting for certain of the Company's share-based compensation plans.	(87)	(290)	(158)	(630)
The effect of the adjustments related to customer refunds and credits.		(3)		6
The effect of the adjustments related to the co-branded credit card bounty revenue and promotion expense.	74	95	295	143
The effect of the adjustments related to restructuring expense and interest expense related to the accretion of the restructuring accrual.	251	(179)	251	(196)
The effect of the adjustments related to external audit fees.	104	14	(212)	(207)
The effect of other miscellaneous adjustments	14	(4)	67	267
Total impact of the effect of the adjustments	\$ 1,311	\$ (70)	\$ 2,125	\$ (1,926)

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 June 30, 2009 (this Form 10-Q/A) to reflect the restatement of the Company's consolidated financial statements for the three and six months ended June 30, 2008 and 2009 and related financial information contained in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 as filed, with the Securities and Exchange Commission on July 31, 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

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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 and six months ended June 30, 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.

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

	December 31, 2008 (1)	June 30, 2009 (unaudited)
	(Restated)	(Restated)
Assets		
Current assets:		
Cash and cash equivalents	\$ 96,457	\$ 65,645
Restricted cash	4,262	4,285
Marketable securities	8,989	
Accounts receivable, net	7,100	8,913
Notes receivable (Note 5)	1,250	
Inventories, net	24,719	16,169
Prepaid inventory, net	761	1,906
Prepays and other assets	9,552	10,415
Total current assets	153,090	107,333
Fixed assets, net	24,724	22,590
Goodwill	2,784	2,784
Other long-term assets, net	538	2,658
Total assets	\$ 181,136	\$ 135,365
Liabilities and Stockholders Deficit		
Current liabilities:		
Accounts payable	\$ 57,981	\$ 24,423
Accrued liabilities	34,097	31,250
Deferred revenue	19,232	17,333
Capital lease obligations, current		520
Total current liabilities	111,310	73,526
Capital lease obligations, non-current		823
Other long-term liabilities	4,251	4,300
Convertible senior notes, net	66,558	59,330
Total liabilities	182,119	137,979
Commitments and contingencies (Note 9)		
Redeemable common stock, \$0.0001 par value, 98 shares outstanding as of December 31, 2008 and 63 shares outstanding as of June 30, 2009 (Note 13)	1,263	718
Stockholders' deficit:		
Preferred stock, \$0.0001 par value, 5,000 shares authorized, no shares issued and outstanding as of December 31, 2008 and June 30, 2009		
Common stock, \$0.0001 par value, 100,000 shares authorized, 25,438 and 25,581 shares issued and 22,645 and 22,752 shares outstanding as of December 31, 2008 and June 30, 2009, respectively	2	2

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Additional paid-in capital	337,707	340,616
Accumulated deficit	(263,333)	(266,947)
Treasury stock, 2,793 and 2,829 shares at cost as of December 31, 2008 and June 30, 2009, respectively	(76,670)	(77,003)
Accumulated other comprehensive income	48	
Total stockholders' deficit	(2,246)	(3,332)
Total liabilities and stockholders' deficit	\$ 181,136	\$ 135,365

(1) See the Company's 2009 Form 10-K filed with the SEC.

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 June 30,		Six months ended June 30,	
	2008 (Restated)	2009 (Restated)	2008 (Restated)	2009 (Restated)
Revenue, net				
Direct	\$ 39,713	\$ 28,685	\$ 91,368	\$ 63,567
Fulfillment partner	148,489	146,213	298,634	297,060
Total net revenue	188,202	174,898	390,002	360,627
Cost of goods sold				
Direct(1)	34,756	23,532	79,453	53,929
Fulfillment partner	119,212	115,079	241,703	234,280
Total cost of goods sold	153,968	138,611	321,156	288,209
Gross profit	34,234	36,287	68,846	72,418
Operating expenses:				
Sales and marketing(1)	14,254	11,162	29,277	24,749
Technology(1)	15,049	12,708	29,538	26,299
General and administrative(1)	11,068	12,326	20,460	26,160
Restructuring	(299)	(66)	(299)	(66)
Total operating expenses	40,072	36,130	78,976	77,142
Operating income (loss)	(5,838)	157	(10,130)	(4,724)
Interest income	740	27	2,044	150
Interest expense	(936)	(808)	(1,837)	(1,730)
Other income, net	2	954	2	2,690
Net income (loss)	(6,032)	330	(9,921)	(3,614)
Deemed dividend related to redeemable common stock	(16)	(11)	(37)	(22)
Net income (loss) attributable to common shares	\$ (6,048)	\$ 319	\$ (9,958)	\$ (3,636)
Net income (loss) attributable to common shares basic	\$ (0.27)	\$ 0.01	\$ (0.43)	\$ (0.16)
Weighted average common shares outstanding basic	22,750	22,817	23,048	22,810
Net income (loss) attributable to common shares diluted	\$ (0.27)	\$ 0.01	\$ (0.43)	\$