UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

Amendment No. 1

(Mark One)

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

For the quarterly period ended September 30, 2009

Or

o 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 x Noo

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 o No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See 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 o	Accelerated filer x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

There were 22,836,264 shares of the Registrant s common stock, par value $0.0001, outstanding on November 9, 2009.

Table of Contents

TABLE OF CONTENTS

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 our consolidated financial statements as of the three and nine months ended September 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 loss attributable to common shares of the above adjustments is as follows (in thousands):

Table of Contents

	Three months ended September 30, 2008	Three months ended September 30, 2009	Nine months ended September 30, 2008	Nine months ended September 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.	$ 1,248	$ (394)	$ 3,130	$ (1,703)
The effect of the adjustments related to accounting for certain of the Company s share-based compensation plans.	(97)	(254)	(255)	(884)
The effect of the adjustments related to customer refunds and credits.		(9)		(3)
The effect of the adjustments related to the co-branded credit card bounty revenue and promotion expense.	51	55	346	198
The effect of the adjustments related restructuring to expense and interest expense related to the accretion of the restructuring accrual.	(60)	(13)	191	(209)
The effect of the adjustments related to external audit fees.	29	32	(183)	(175)
The effect of other miscellaneous adjustments	(2)	(9)	65	258
Total impact of the effect of the adjustments	$ 1,169	$ (592)	$ 3,294	$ (2,518)

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 September 30, 2009 (this Form 10-Q/A) to reflect the restatement of the Company s consolidated financial statements for the three and nine months ended September 30, 2008 and 2009 and related financial information contained in the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2009 as filed with the Securities and Exchange Commission on November 16, 2009 (the Original Filing). This Form 10-Q/A amends and restates Items 1, 2 and 4 of Part 1 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 and nine months ended September 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.

Table of Contents

PART 1. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

Overstock.com, Inc.

Consolidated Balance Sheets

(in thousands)

		December 31, 2008 (1) (Restated)		September 30, 2009 (unaudited) (Restated)
Assets				
Current assets:				
Cash and cash equivalents	$	96,457	$	74,991
Restricted cash		4,262		4,285
Marketable securities		8,989		
Accounts receivable, net		7,100		8,400
Notes receivable (Note 5)		1,250		
Inventories, net		24,719		22,035
Prepaid inventory, net		761		3,616
Prepaids and other assets		9,552		10,027
Total current assets		153,090		123,354
Fixed assets, net		24,724		22,187
Goodwill		2,784		2,784
Other long-term assets, net		538		2,015
Total assets	$	181,136	$	150,340
Liabilities and Stockholders Deficit				
Current liabilities:				
Accounts payable	$	57,981	$	33,730
Accrued liabilities		34,097		35,576
Deferred revenue		19,232		19,200
Capital lease obligations, current				491
Total current liabilities		111,310		88,997
Capital lease obligations, non-current				892
Other long-term liabilities		4,251		3,746
Convertible senior notes, net		66,558		59,398
Total liabilities		182,119		153,033
Commitments and contingencies (Note 9)				
Redeemable common stock, $0.0001 par value, 98 and 63 shares outstanding as of December 31, 2008 and September 30, 2009, respectively (Note 11)		1,263		731
Stockholders deficit:				
Preferred stock, $0.0001 par value, 5,000 shares authorized, no shares issued and outstanding as of December 31, 2008 and September 30, 2009				
Common stock, $0.0001 par value, 100,000 shares authorized, 25,438 and 25,582 shares issued and 22,645 and 22,765 shares outstanding as of December 31, 2008 and September 30, 2009, respectively		2		2

Additional paid-in capital		337,707		341,705
Accumulated deficit		(263,333)		(268,565)
Treasury stock, 2,793 and 2,817 shares at cost as of December 31, 2008 and September 30, 2009, respectively		(76,670)		(76,566)
Accumulated other comprehensive income		48		
Total stockholders deficit		(2,246)		(3,424)
Total liabilities and stockholders deficit	$	181,136	$	150,340

(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 September 30, 2008 (Restated)	Three months ended September 30, 2009 (Restated)	Nine months ended September 30, 2008 (Restated)	Nine months ended September 30, 2009 (Restated)
Revenue, net				
Direct	$ 34,079	$ 32,281	$ 125,447	$ 95,848
Fulfillment partner	151,928	161,502	450,562	458,562
Total net revenue	186,007	193,783	576,009	554,410
Cost of goods sold				
Direct(1)	30,541	28,471	109,994	82,401
Fulfillment partner	122,053	128,000	363,756	362,279
Total cost of goods sold	152,594	156,471	473,750	444,680
Gross profit	33,413	37,312	102,259	109,730
Operating expenses:				
Sales and marketing(1)	11,944	12,222	41,221	36,971
Technology(1)	13,784	12,499	43,322	38,798
General and administrative(1)	10,691	13,288	31,151	39,448
Restructuring			(299)	(66)
Total operating expenses	36,419	38,009	115,395	115,151
Operating loss	(3,006)	(697)	(13,136)	(5,421)
Interest income	664	11	2,708	161
Interest expense	(907)	(977)	(2,744)	(2,707)
Other income, net	2,849	297	2,851	2,987
Net loss	(400)	(1,366)	(10,321)	(4,980)
Deemed dividend related to redeemable common stock	(20)	(13)	(57)	(35)
Net loss attributable to common shares	$ (420)	$ (1,379)	$ (10,378)	$ (5,015)
Net loss attributable to common shares basic and diluted:	$ (0.02)	$ (0.06)	$ (0.45)	$ (0.22)
Weighted average common shares outstanding basic and diluted	22,768	22,824	22,954	22,815

(1) Includes stock-based compensation as follows (Note 13):

Cost of goods sold direct	$	49	$	39	$	155	$	123
Sales and marketing		86		155		270		458
Technology		216		232		682		703
General and administrative		602		673		2,542		2,179

See accompanying notes to consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Consolidated Statement of Stockholders Deficit

and Comprehensive Loss (unaudited Restated)

(in thousands)

	Common stock Shares	Common stock Amount	Additional Paid-in Capital	Accumulated Deficit	Treasury stock Shares	Treasury stock Amount	Accumulated Other Comprehensive Income (loss)	Total
Balances 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			3,453					3,453
Stock-based compensation to consultants in exchange for services			10					10
Restricted stock units issued upon vesting	110							
Exercise of stock options	1		3					3
Purchase of treasury stock					36	(333)		(333)
Treasury stock issued for corporate purposes				(252)	(12)	437		185
Issuance of redeemable common stock (Restated) (Note 11)	(39)		(400)					(400)
Lapse of recission rights of redeemable common stock (Restated) (Note 11)	72		967					967
Deemed dividend related to redeemable common stock			(35)					(35)
Comprehensive loss :								
Net loss (Restated)				(4,980)				(4,980)
Reclassification adjustment							(48)	(48)
Total comprehensive loss								(5,028)
Balances at September 30, 2009 (Restated)	25,582	$ 2	$ 341,705	$ (268,565)	2,817	$ (76,566)	$	**$ (3,424)**

See accompanying notes to consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Consolidated Statements of Cash Flows (unaudited)

(in thousands)

	Three months ended September 30, 2008 (Restated)	Three months ended September 30, 2009 (Restated)	Nine months ended September 30, 2008 (Restated)	Nine months ended September 30, 2009 (Restated)
Cash flows from operating activities:				
Net loss	$ (400)	$ (1,366)	$ (10,321)	$ (4,980)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:				
Depreciation and amortization, inluding internal-use software and website development	5,607	3,009	18,198	10,042
Realized loss on marketable securities				39
Loss on disposition of fixed assets				184
Stock-based compensation to employees and directors	1,087	1,099	3,497	3,453
Stock-based compensation to consultants for services	(134)		181	10
Stock-based compensation relating to performance share plan			300	
Amortization of debt discount	85	125	257	270
Gain from early extinguishment of debt	(2,849)		(2,849)	(2,810)
Restructuring charges			(299)	(66)
Notes receivable accretion	(136)		(408)	
Changes in operating assets and liabilities:				
Restricted cash	(47)		(160)	(23)
Accounts receivable, net	(104)	(487)	1,127	(2,300)
Inventories, net	(2,217)	(5,866)	3,892	2,684
Prepaid inventory, net	(1,904)	(1,710)	(980)	(2,855)
Prepaids and other assets	(454)	1,661	(3,363)	(928)
Other long-term assets, net		377		(80)
Accounts payable	4,168	9,307	(38,233)	(24,251)
Accrued liabilities	(2,107)	4,252	(8,400)	1,384
Deferred revenue	(584)	1,867	(3,077)	(32)
Other long-term liabilities	(333)	(242)	(392)	
Net cash provided by (used in) operating activities	(322)	12,026	(41,030)	(20,259)
Cash flows from investing activities:				
Purchases of marketable securities	(10,186)		(35,548)	
Maturities of marketable securities			54,637	
Sale of marketable securities prior to maturity	13,298			8,902
Expenditures for fixed assets, including internal-use software and website development	(8,809)	(2,486)	(15,258)	(6,009)
Collection of notes receivable	250		1,506	1,250
Net cash provided by (used in) investing activities	(5,447)	(2,486)	5,337	4,143
Cash flows from financing activities:				
Payments on capital lease obligations		(144)	(3,796)	(298)
Drawdowns on line of credit	1,326		7,722	1,612

Payments on line of credit		(1,326)				(7,722)		(1,612)
Paydown on direct financing arrangement				(53)				(159)
Payments to retire convertible senior notes		(6,550)				(6,550)		(4,563)
Purchase of treasury stock		(1,452)				(13,452)		(333)
Exercise of stock options		547		3		1,471		3
Net cash used in financing activities		(7,455)		(194)		(22,327)		(5,350)
Effect of exchange rate changes on cash		23				(9)		
Net increase (decrease) in cash and cash equivalents		(13,201)		9,346		(58,029)		(21,466)
Cash and cash equivalents, beginning of period		47,979		65,645		92,807		96,457
Cash and cash equivalents, end of period	$	34,778	$	74,991	$	34,778	$	74,991
Supplemental disclosures of cash flow information:								
Cash paid during the year:								
Interest paid	$	847	$	196	$	3,010	$	1,706
Non-cash investing and financing activities:								
Equipment and software acquired under capital lease obligations	$		$	276	$		$	2,047
Issuance of common stock from treasury	$		$	185	$	19	$	185
Issuance of redeemable common stock	$	182	$		$	1,074	$	400
Lapse of recission rights for redeemable stock	$	297	$		$	1,046	$	967

See accompanying notes to consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Notes to Unaudited Consolidated Financial Statements

1. BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements have been prepared by Overstock.com, Inc. (the Company) pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) regarding interim financial reporting. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with Management s Discussion and Analysis of Financial Condition and Results of Operations and the restated audited annual consolidated financial statements and related notes thereto as of and for the year ended December 31, 2008 included in the Annual Report on Form 10-K for the year ended December 31, 2009. The accompanying unaudited and consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, which are, in the opinion of management, necessary for a fair statement of results for the interim periods presented. Preparing financial statements requires management to make estimates and assumptions that affect the amounts that are reported in the consolidated financial statements and accompanying disclosures. Although these estimates are based on management s best knowledge of current events and actions that the Company may undertake in the future, actual results may be different from the estimates. The results of operations for the three and nine month periods ended September 30, 2009 are not necessarily indicative of the results to be expected for any future period or the full fiscal year.

2. ACCOUNTING POLICIES

Principles of consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany account balances and transactions have been eliminated in consolidation.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in the consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, valuation of investments, receivables valuation, revenue recognition, sales returns, incentive discount offers, inventory valuation, depreciable lives of fixed assets and internally-developed software, valuation of acquired intangibles, income taxes, stock-based compensation, restructuring liabilities and contingencies. Actual results could differ materially from those estimates.

Fair value of financial instruments

The Company s financial instruments, including cash, restricted cash, cash equivalents, notes receivable, accounts receivable, accounts payable and accrued liabilities are carried at cost, which approximates their fair value because of the short-term maturity of these instruments.

The Financial Accounting Standards Board (FASB) issued Codification of Accounting Standards (ASC) 820, *Fair Value Measurements,* (ASC Topic 820), which defines fair value, establishes guidelines for measuring fair value and expands disclosures regarding fair value measurements. ASC Topic 820 does not require any new fair value measurements but rather eliminates inconsistencies in guidance found in various prior accounting pronouncements. The Company adopted ASC Topic 820 on January 1, 2008, except as it applies to those non-financial assets and non-financial liabilities as described in ASC Topic 820-10-15, and it did not have a material impact on the Company s consolidated financial position, results of operations or cash flows.

On a quarterly basis, the Company measures at fair value certain financial assets and liabilities, including restricted cash, cash equivalents and available-for-sale securities, if any. ASC Topic 820 specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company s market assumptions. These two types of inputs have created the following fair-value hierarchy:

- Level 1 Quoted prices for identical instruments in active markets;

- Level 2 Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and

- Level 3 Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Table of Contents

This hierarchy requires the Company to minimize the use of unobservable inputs and to use observable market data, if available, when determining fair value.

The fair value of these financial instruments was determined using the following levels of inputs as of December 31, 2008 (in thousands):

	Fair Value Measurements at December 31, 2008			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents and restricted cash - money market mutual funds	$ 101,678	$ 101,678	$	$
Available-for-sale securities	8,989	8,989		
Total Assets	$ 110,667	$ 110,667	$	$

The fair value of these financial instruments was determined using the following levels of inputs as of September 30, 2009 (in thousands):

	Fair Value Measurements at September 30, 2009			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents and restricted cash - money market mutual funds	$ 70,963	$ 70,963	$	$
Liabilities:				
Restructuring accrual (1)	$ 2,749	$	$	$ 2,749

The fair value was determined based on the income approach, in which the Company used internal cash flow projections over the life of the underlying lease agreements discounted based on a credit adjusted risk-free rate. See the Level 3 roll forward related to the restructuring accrual at Note 4 Restructuring Expense.

The estimated fair value of the Company s 3.75% Convertible Senior Notes due 2011 (Senior Notes) outstanding at December 31, 2008 and September 30, 2009 was $38.1 million on a carrying value of $66.6 million and $50.8 million on a carrying value of $59.4 million, respectively. The fair value of the Senior Notes was derived using a convertible debt pricing model with observable market inputs, which include stock price, dividend payments, borrowing costs, equity volatility, interest rates and interest spread.

Allowance for doubtful accounts

From time to time, the Company grants credit to some of its business customers on normal credit terms (typically 30 days). The Company performs credit evaluations of its customers financial condition and payment history and maintains an allowance for doubtful accounts receivable based upon its historical collection experience and expected collectability of all accounts receivable. The allowance for doubtful accounts receivable was $1.6 million at December 31, 2008 and $1.7 million at September 30, 2009.

Valuation of inventories

The Company writes down its inventory for estimated obsolescence and to lower of cost or market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required. Once established, the original cost of the inventory less the related inventory allowance represents the new cost basis of such products. Reversal of the allowance is recognized only when the related inventory has been sold or scrapped.

Fixed assets

Fixed assets, which include assets such as furniture and fixtures, technology infrastructure, internal-use software and website development, are recorded at cost and depreciated or amortized using the straight-line method over the estimated useful lives of the related assets or the term of the related capital lease, whichever is shorter, as follows:

Table of Contents

	Life (years)
Computer software	2-3
Computer hardware	3
Furniture and equipment	3-5

Leasehold improvements are amortized over the shorter of the term of the related leases or estimated service lives. Depreciation and amortization expense is classified within the corresponding operating expense categories on the consolidated statements of operations as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2008 (Restated)	2009 (Restated)	2008 (Restated)	2009 (Restated)
Cost of goods sold - direct	$ 337	$ 313	$ 1,347	$ 960
Sales and marketing				
Technology	5,253	2,529	16,809	8,577
General and administrative	17	167	42	505
Total depreciation and amortization, including internal-use software and website development	$ 5,607	$ 3,009	$ 18,198	$ 10,042

Upon sale or retirement of assets, cost and related accumulated depreciation and amortization are removed from the balance sheet and the resulting gain or loss is reflected in the consolidated statements of operations.

Internal-use software and website development

The Company includes in fixed assets the capitalized cost of internal-use software and website development, including software used to upgrade and enhance its Website and processes supporting the Company s business. As required by ASC Topic 350-40, *Internal Use Software,* the Company capitalizes costs incurred during the application development stage of internal-use software and amortizes these costs over the estimated useful life of two to three years. The Company expenses costs incurred related to design or maintenance of internal-use software as incurred.

During the three month periods ended September 30, 2008 and 2009, the Company capitalized $5.1 million and $1.8 million, respectively, of costs associated with internal-use software and website development, both developed internally and acquired externally, in each period. Amortization of costs associated with internal-use software and website development was $2.9 million and $1.4 million for those respective periods. During the nine month periods ended September 30, 2008 and 2009, the Company capitalized $7.7 million and $4.3 million, respectively, of costs associated with internal-use software and website development, both developed internally and acquired externally. Amortization of costs associated with internal-use software and website development was $9.1 million and $4.5 million for those respective periods.

Revenue recognition

The Company derives revenue primarily from two sources: direct revenue and fulfillment partner revenue, including listing fees and commissions collected from products being listed and sold through the Auctions tab of its Website as well as advertisement revenue derived from its cars and real estate listing businesses. The Company has organized its operations into two principal segments based on the primary source of revenue: Direct revenue and fulfillment partner revenue (see Note 14 Business Segments).

Revenue is recognized when the following revenue recognition criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or the service has been provided; (3) the selling price or fee revenue earned is fixed or determinable; and (4) collection of the resulting receivable is reasonably assured. Revenue related to merchandise sales is recognized upon delivery to the Company s customers. As the Company ships high volumes of packages through multiple carriers, it is not practical for the Company to track the actual delivery date of each shipment. Therefore, the Company uses estimates to determine which shipments are delivered and therefore recognized as revenue at the end of the period. The delivery date estimates are based on average shipping transit times, which are calculated using the following factors: (i) the shipping carrier (as carriers differ in transit times); (ii) the fulfillment source (either the Company s warehouses or those of its fulfillment partners); (iii) the delivery destination; and (iv) actual transit time experience, which shows that delivery date is typically one to eight business days from the date of shipment.

Table of Contents

The Company evaluates the criteria outlined in ASC Topic 605-45, *Principal Agent Considerations*, in determining whether it is appropriate to record the gross amount of product sales and related costs or the net amount earned as commissions. When the Company is the primary obligor in a transaction, is subject to inventory risk, has latitude in establishing prices and selecting suppliers, or has several but not all of these indicators, revenue is recorded gross. If the Company is not the primary obligor in the transaction and amounts earned are determined using a fixed percentage, revenue is recorded on a net basis. Currently, the majority of both direct revenue and fulfillment partner revenue is recorded on a gross basis, as the Company is the primary obligor. The Company presents revenue net of sales taxes.

The Company periodically provides incentive offers to its customers to encourage purchases. Such offers include current discount offers, such as percentage discounts off current purchases, and other similar offers. Current discount offers, when used by customers, are treated as a reduction of revenue.

Based upon the Company s historical experience, revenue typically increases during the fourth quarter because of the holiday retail season.

Co-branded Credit Card

The Company had a co-branded credit card agreement with a third-party bank, for the issuance of credit cards bearing the Overstock brand, under which the bank paid the Company fees for new accounts, renewed accounts and for card usage. New and renewed account fees were recognized as revenues on a straight-line basis over the estimated life of the credit card relationship. Credit card usage fees were recognized as revenues as actual credit card usage occurred. The Company s co-branded credit card agreement with the third-party bank terminated effective August 30, 2009.

Direct revenue

Direct revenue consists of merchandise sold through the Company s Website to individual consumers and businesses that is fulfilled from its leased warehouses.

Fulfillment partner revenue

Fulfillment partner revenue is derived from merchandise sales through the Company s Website which fulfillment partners ship directly to consumers and businesses from warehouses maintained by the fulfillment partners.

The Company provides an online auction service on its Website. The Auctions tab allows sellers to list items for sale, buyers to bid on items of interest, and users to browse through listed items online. Except in limited circumstances where the Company auction-lists returned merchandise, the Company is not the seller of auction-listed items and has no control over the pricing of those items. Therefore, the listing fees for items sold at auction by sellers are recorded as revenue during the period these items are listed or sold on a net basis. The revenue for the returned merchandise that the Company sells at auction is recorded on a gross basis. Revenue from the auctions business is included in the fulfillment partner segment.

The Company provides an online site for listing cars for sale as a part of its Website. The cars listing service allows dealers to list vehicles for sale and allows buyers to review vehicle descriptions, post offers to purchase, and provides the means for purchasers to contact sellers for further information and negotiations on the purchase of an advertised vehicle. Revenue from the cars listing business is included in the fulfillment partner segment.

The Company provides an online site for listing real estate for sale as a part of its Website. The real estate listing service allows customers to search active listings across the country. Listing categories include foreclosures, live and on-line auctions, for sale by owner listings, broker/agent listings and numerous aggregated classified ad listings. Revenue from the real estate business is included in the fulfillment partner segment.

Total revenues from Auctions, Cars and Real Estate businesses were $495,000 and $1.5 million for the three and nine month periods ended September 30, 2009, respectively.

The Company began selling products through its website to customers outside the United States in August 2008. As of September 30, 2009, the Company was selling to customers in 39 countries. The Company does not have operations outside the United States, and is using a U.S. based third party to provide logistics and fulfillment for all international orders. Revenue generated from the international business is included in either direct or fulfillment partner revenue, depending on whether the product is shipped from the Company s leased warehouses or from a fulfillment partner.

Total revenues from International sales were $1.4 million and $2.8 million for the three and nine month periods ended

Table of Contents

September 30, 2009.

In September 2009, the Company began offering a consignment service to suppliers where the suppliers merchandise is stored in and shipped from the Company s leased warehouses. The Company pays the consignment supplier upon sale of the consigned merchandise to the consumer.

In October 2009, the Company introduced O.biz, a Website where customers and businesses can shop for bulk and business related items, while offering manufacturers, distributors and other retailers an alternative sales channel for liquidating their inventory.

Credit card chargeback allowance

Revenue is recorded net of credit card chargebacks. The Company records an allowance for credit card chargebacks based on current period revenues and historical chargeback experience. The allowance for chargebacks was $365,000 at December 31, 2008, and $157,000 at September 30, 2009.

Sales returns allowance

The Company inspects all returned items when they arrive at the Company s processing facility. The Company will refund the full cost of the merchandise returned and all original shipping charges if the returned item is defective or there has been a Company error, such as shipping the wrong products.

If the return is not a result of a product defect or Company error and the customer initiates a return of an unopened item within 30 days of delivery, except for computers and electronics, the Company will refund the full cost of the merchandise minus the original shipping charge and actual return shipping fees. However, the Company will reduce refunds for returns initiated more than 30 days after delivery or that are received at its returns processing facility more than 45 days after initial delivery.

If the Company s customer returns an item that has been opened or shows signs of wear, it will issue a partial refund minus both the original shipping charge and return shipping fees.

Total net revenue is recorded net of estimated returns. The Company records an allowance for returns based on current period revenues and historical returns experience. The Company analyzes actual historical returns, current economic trends and changes in order volume and acceptance of its products when evaluating the adequacy of the sales returns allowance in any accounting period. The Company s actual product returns have not differed materially from its estimates. The Company is not currently aware of any trends that it expects would significantly change future returns experience compared to historical experience. The allowance for returns was $16.2 million at December 31, 2008, and $10.4 million at September 30, 2009.

Deferred revenue

Customer orders are recorded as deferred revenue prior to estimated delivery of products or services In addition, amounts received in advance for Club O membership fees are recorded as deferred revenue and recognized ratably over the membership period. The Company sells gift cards and records related deferred revenue at the time of the sale. Gift cards are sold without expiration dates and revenue is recognized upon redemption. If a gift card is not redeemed, the Company recognizes revenue when the likelihood of its redemption becomes remote based on the Company s historical redemption experience. The Company considers the likelihood of redemption to be remote after 36 months.

Advertising expense

The Company expenses the costs of producing advertisements the first time the advertising takes place and expenses the cost of communicating advertising in the period during which the advertising space or airtime is used. Internet advertising expenses are recognized as incurred based on the terms of the individual agreements, which are generally: 1) a commission for traffic driven to the Website that generates a sale or 2) a referral fee based on the number of clicks on keywords or links to the Company s Website generated during a given period. Advertising expense is included in sales and marketing expenses and totaled $10.6 million during each of the three month periods ended September 30, 2008 and 2009, respectively. For the nine month periods ended September 30, 2008 and 2009, advertising expenses totaled $37.6 million and $32.5 million, respectively. Prepaid advertising (included in Prepaids and other assets in the accompanying Consolidated Balance Sheets) was $877,000 at December 31, 2008, and $879,000 at September 30, 2009.

Stock-based compensation

As required by ASC Topic 718, *Compensation - Stock Compensation,* the Company measures compensation expense for

Table of Contents

all outstanding unvested share-based awards at fair value on date of grant and recognizes compensation expense on a straight line basis. The estimation of stock awards that will ultimately vest requires judgment, and to the extent actual results differ from estimates, such amounts will be recorded as an adjustment in the period estimates are revised. Management considers many factors when estimating expected forfeitures, including types of awards, and historical experience. Actual results may differ substantially from these estimates (see Note 13 Stock-Based Awards).

Loss contingencies

In the normal course of business, the Company is involved in legal proceedings and other potential loss contingencies. The Company accrues a liability for such matters when it is probable that a loss has been incurred and the amount can be reasonably estimated. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued.

Restructuring

Restructuring expenses are primarily comprised of lease termination costs. ASC Topic 420, *Exit or Disposal Cost Obligations,* requires that when an entity ceases using a property that is leased under an operating lease before the end of its contractual term , the termination costs should be recognized and measured at fair value when the entity ceases using the facility. Key assumptions in determining the restructuring expenses include the terms that may be negotiated to exit certain contractual obligations (see Note 4 Restructuring Expense).

Loss per share

Basic loss per share is computed by dividing net loss attributable to common shares by the weighted average number of common shares outstanding during the period. Diluted loss per share is computed by dividing net loss attributable to common shares for the period by the weighted average number of common and potential common shares outstanding during the period. Potential common shares, comprising incremental common shares issuable upon the exercise of stock options, restricted stock units and convertible senior notes are included in the calculation of diluted net loss per common share to the extent such shares are dilutive.

The following table sets forth the computation of basic and diluted net loss per common share for the periods indicated (in thousands, except per share data):

	Three months ended September 30,		Nine months ended September 30,	
	2008 (Restated)	**2009 (Restated)**	**2008 (Restated)**	**2009 (Restated)**
Net loss attributable to common shares	$ (420)	$ (1,379)	$ (10,378)	$ (5,015)

Weighted average common shares outstanding basic and diluted	22,768	22,824	22,954	22,815
Net loss atributable to common shares basic and diluted	$ (0.02)	$ (0.06)	$ (0.45)	$ (0.22)

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2009	2008	2009
Stock options and restricted stock units	1,441	1,365	1,441	1,365
Convertible senior notes	885	787	885	787

Accounting pronouncements issued not yet adopted

In October 2009, the FASB issued Accounting Standards Update 2009-13 (ASU 2009-13), which amends ASC Topic 605, *Revenue Recognition*, to require companies to allocate revenue in multiple-element arrangements based on an element s estimated selling price if vendor-specific or other third-party evidence of value is not available. ASU 2009-13 is effective beginning January 1, 2011. Earlier application is permitted. The Company is currently evaluating both the timing and the impact of the pending adoption of ASU 2009-13 on its consolidated financial statements.

Table of Contents

3. RESTATEMENT OF FINANCIAL STATEMENTS

On January 29, 2010, the Audit Committee of the Board of Directors of the Company concluded, based on the recommendation of management, that the Company would restate its quarterly consolidated financial statements as of and for the three and nine months ended September 30, 2008 and 2009 within this Form 10-Q/A to correct the following errors:

- Accounting for amounts that the Company pays its 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 the Company paid to partners or deducted from partner payments 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. Once discovered, the Company 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. The Company 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 the Company s 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 the Company received from vendors, an increase in inventory, accounts payable and accrued liabilities to record the Company s sales return allowance on a gross basis, an adjustment to the Company s 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):

Table of Contents

	Three months ended September 30, 2008	Three months ended September 30, 2009	Nine months ended September 30, 2008	Nine months ended September 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.	$ 1,248	$ (394)	$ 3,130	$ (1,703)
The effect of the adjustments related to accounting for certain of the Company s share-based compensation plans.	(97)	(254)	(255)	(884)
The effect of the adjustments related to customer refunds and credits.		(9)		(3)
The effect of the adjustments related to the co-branded credit card bounty revenue and promotion expense.	51	55	346	198
The effect of the adjustments related to restructuring expense and interest expense related to the accretion of the restructuring accrual.	(60)	(13)	191	(209)
The effect of the adjustments related to external audit fees.	29	32	(183)	(175)
The effect of other miscellaneous adjustments	(2)	(9)	65	258
Total impact of the effect of the adjustments	$ 1,169	$ (592)	$ 3,294	$ (2,518)

The effect of the adjustments on the Consolidated Results of Operations for the three and nine months ended September 30, 2008 is to decrease net loss attributable to common shares by $1.2 million and $3.3 million, respectively. The effect of the adjustments on loss per common share from continuing operations for the three and nine months ended September 30, 2008 is to decrease loss per common share by $0.05 and $0.15, respectively.

The effect of the adjustments on the Consolidated Results of Operations for the three and nine months ended September 30, 2009 is to increase net loss attributable to common shares by $592,000 and $2.5 million, respectively. The effect of the adjustments on loss per common share for the three and nine months ended September 30, 2009 is to increase loss per common share by $0.03 and $0.11, respectively.

Table of Contents

The consolidated statements of operations, balance sheets and statements of cash flows have been restated as follows:

Consolidated Statement of Operations (unaudited)

(in thousands, except per share data)

	Three months ended September 30, 2008		
	As Previously Reported	**Adjustments**	**As Restated**
Revenue, net			
Direct	$ 34,176	$ (97)	$ 34,079
Fulfillment partner	152,679	(751)	151,928
Total net revenue			