XYRATEX LTD
Form S-8
November 16, 2012

As Filed with the Securities and Exchange Commission on November 16, 2012

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

XYRATEX LTD

(Exact Name of Registrant as Specified in Its Charter)

Bermuda	**Not Applicable**
(State or Other Jurisdiction of Incorporation or Organization)	(IRS Employer Identification Number)

Langstone Road

**Havant PO9 1SA
United Kingdom
(011) 44 2392 496000**

(Address of Principal Executive Offices)

XYRATEX LTD

AMENDED AND RESTATED 2006 INCENTIVE AWARD PLAN

(Full Title of the Plan)

Brad Driver
46831 Lakeview Blvd.

Fremont, CA 94538

USA
Tel: +1 510 687-5260
Email: brad_driver@xyratex.com

(Name and Address and Telephone Number,
Including Area Code, of Agent for Service)

With a Copy to:

Tad Freese

Latham & Watkins LLP

140 Scott Drive

Menlo Park, California 94025

+1 650 328-4600

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.

Large accelerated filer o	Accelerated filer x
Non-accelerated filer o	Smaller reporting company o

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common shares, par value $0.01 per share (Common Shares)	3,200,000(3)	$ 8.44	$ 27,008,000	$ 3,684

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this registration statement shall also cover any of the registrant s additional Common Shares that become issuable under the Xyratex Ltd Amended and Restated 2006 Incentive Award Plan, as amended and restated, effective as of June 26, 2012 (the Restated Plan), by reason of any stock dividend, stock split, recapitalization or similar transaction effected without the registrant s receipt of consideration which would increase the number of outstanding Common Shares. In addition, pursuant to Rule 416(c) under the Securities Act, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefits plan described herein.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act for the 3,200,000 Common Shares being registered hereunder, on the basis of the average of the high ($8.51) and low ($8.36) prices of the Common Shares as reported on the Nasdaq Global Market on November 9, 2012.

(3) Represents 3,200,000 additional Common Shares reserved for future issuance under the Restated Plan.

Registration of Additional Securities

By a registration statement on Form S-8 filed with the Securities and Exchange Commission (the Commission) on November 9, 2006, Registration No. 333-138570 (the First 2006 Plan Registration Statement), the registrant registered 4,129,648 Common Shares issuable under the Restated Plan. The registrant is hereby registering an additional 3,200,000 Common Shares issuable under the Restated Plan. The First 2006 Plan Registration Statement is incorporated by reference herein.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this registration statement on Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Commission.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents are incorporated herein by reference:

(a) The registrant s Form 20-F for the year ended November 30, 2011 (File No. 000-50799), filed with the Commission on February 24, 2012;

(b) The registrant s reports on Form 6-K (File No. 000-50799) furnished on October 16, 2012 (containing its unaudited condensed consolidated financial statements as of August 31, 2012 and for the three and nine months ended August 31, 2012 and 2011), July 16, 2012 (containing its unaudited condensed consolidated financial statements as of May 31, 2012 and for the three and six months ended May 31, 2012 and 2011) and April 17, 2012 (containing its unaudited condensed consolidated financial statements as of February 29, 2012 and for the three months ended February 29, 2012 and February 28, 2011); and

(c) The description of the registrant s Common Shares contained in the registrant s registration statement on Form 8-A (File No. 000-50799), filed with the Commission under Section 12(g) of the Securities Exchange Act of 1934, as amended (the Exchange Act) on June 15, 2004, including any amendment or report filed for the purpose of updating such a description.

In addition, all documents filed by the registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, and any Form 6-K submitted during such period (or portion thereof) that is identified in such form as being incorporated by reference into this registration statement, shall be deemed to be incorporated by reference in this registration statement and to be a part of it from the respective dates of filing such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

The registrant s bye-laws contain a provision by virtue of which the registrant s shareholders waive any claim or right of action they may have, both individually and on behalf of the registrant, against any director or officer in relation to any action or failure to take action by that director or officer, except in respect of any fraud or dishonesty of that director or officer. The registrant s bye-laws also indemnify the registrant s directors and officers in respect of their actions and omissions, except in respect of their fraud or dishonesty.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See Index to Exhibits immediately following the signature page.

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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this 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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(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) 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, 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 purposes of determining any liability under the Securities Act, each filing of the registrant s annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Exchange Act) 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.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Havant, United Kingdom, on this 14th day of November, 2012.

XYRATEX LTD

/s/ STEVE BARBER
Steve Barber, Chief Executive Officer

Each person whose signature appears below constitutes and appoints Steve Barber and Richard Pearce, and each of them, his or her true and lawful attorney-in-fact and agent, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to effectuate the same as fully, to all intents and purposes, as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or either of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on the dates indicated:

Signature	**Title**	**Date**
/s/ STEVE BARBER Steve Barber	Chief Executive Officer and Director (Principal Executive Officer)	November 14, 2012
/s/ RICHARD PEARCE Richard Pearce	Chief Financial Officer and Director (Principal Financial and Accounting Officer)	November 14, 2012
/s/ JONATHAN BROOKS Jonathan Brooks	Chairman of the Board	November 14, 2012
/s/ ERNEST SAMPIAS Ernest Sampias	Director	November 14, 2012
/s/ STEVE SANGHI Steve Sanghi	Director	November 14, 2012
/s/ MIKE WINDRAM Mike Windram	Director	November 14, 2012

INDEX TO EXHIBITS

Exhibit Number	**Document**
4.1	Xyratex Ltd Amended and Restated 2006 Incentive Award Plan, attached as Appendix A to the registrant s proxy statement furnished on Form 6-K (File No. 000-50799) on May 14, 2012 and incorporated by reference herein.
5.1	Opinion of Conyers Dill & Pearman Limited.
23.1	Consent of PricewaterhouseCoopers LLP.
23.2	Consent of Conyers Dill & Pearman Limited (included in Exhibit 5.1).
24.1	Power of Attorney (included in the signature page hereto).

gin-left:30px; text-indent:-15px">Purchase of investments (38,349) (750)

Sale of investments
36,275
Acquisitions, net of acquired cash
(14,946) (12,584)

Net cash used in investing activities
(18,526) (14,375)

Cash flows from financing activities:

Net proceeds from exercise of stock options
1,387 327
Repurchase of common stock
(44,595)
Tax benefits from exercise of stock options
5,903 689

Net cash provided by (used in) financing activities
7,290 (43,579)

Net increase (decrease) in cash and cash equivalents
10,637 (38,460)

Cash and cash equivalents at beginning of period	85,790	104,564
Cash and cash equivalents at end of period	$96,427	$66,104

The accompanying notes are an integral part of these unaudited condensed financial statements.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1 Background and Basis of Presentation

Basis of Presentation

The accompanying condensed consolidated balance sheet as of September 30, 2008, the statements of income for the three and nine months ended September 30, 2007 and 2008 and the statements of cash flows for the nine months ended September 30, 2007 and 2008 are unaudited. These statements should be read in conjunction with the audited consolidated financial statements and related notes, together with management s discussion and analysis of financial position and results of operations, contained in the Company s annual report on Form 10-K for the year ended December 31, 2007.

The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States, or GAAP. In the opinion of the Company s management, the unaudited condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements in the Company s annual report on Form 10-K for the year ended December 31, 2007 and include normal and recurring adjustments necessary for the fair value presentation of the Company s financial position for the periods presented. The results for the three and nine months ended September 30, 2008 are not necessarily indicative of the results to be expected for the fiscal year ending December 31, 2008.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ materially from these estimates.

Recent Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 157, *Fair Value Measurements* (SFAS No. 157). SFAS No. 157 establishes a framework for measuring fair value in generally accepted accounting principles, clarifies the definition of fair value and expands disclosures about fair value measurements. SFAS No. 157 does not require any new fair value measurements. However, the application of SFAS No. 157 may change current practice for some entities. SFAS No. 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company adopted this statement effective January 1, 2008 and there has been no significant impact on the Company s financial statements since its adoption.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (SFAS No.159) including an Amendment of FASB No. 151. Under SFAS No. 159, the Company may elect to measure certain financial instruments and certain other items at fair value. The standard requires that unrealized gains and losses on items for which the fair value option has been elected be reported in earnings. SFAS No. 159 was effective for the Company beginning in the first quarter of 2008. Currently, the Company does not have any instruments eligible for election of the fair value option. Therefore, the adoption of SFAS No. 159 in the first quarter of fiscal 2008 did not impact the Company s consolidated financial position, results of operations or cash flows.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations* (SFAS No. 141(R)). This Statement provides greater consistency in the accounting and financial reporting of business combinations. It requires the acquiring entity in a business combination to recognize all assets acquired and liabilities assumed in the transaction, establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed, and requires the acquiror to disclose the nature and financial effect of the business combination. SFAS No. 141(R) is effective for fiscal years beginning after December 15, 2008. The Company will adopt SFAS No. 141(R) no later than the first quarter of fiscal 2009 and we are currently assessing the impact the adoption will have on our financial position and results of operations.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements* (SFAS No.160). This Statement amends Accounting Research Bulletin No. 51, *Consolidated Financial*

Statements, to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. The Company will adopt SFAS No.160 no later than the first quarter of fiscal 2009 and we are currently assessing the impact the adoption will have on our financial position and results of operations.

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Note 2 Earnings Per Share (EPS)

The share count used to compute basic and diluted net income per share is calculated as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2008	2007	2008
Weighted average common shares outstanding	38,552	35,503	38,159	36,243
Add dilutive common equivalents:				
Stock options	2,026	1,223	2,202	1,371
Restricted stock units		11		11
Unvested restricted stock (1)	247	50	309	68
Shares used to compute diluted net income per share	40,825	36,787	40,670	37,693

(1) Outstanding unvested restricted common stock purchased by employees is subject to repurchase by the Company and therefore is not included in the calculation of the weighted-average shares outstanding for basic earnings per share.

The following is a summary of the securities outstanding during the respective periods that have been excluded from the calculations because the effect on earnings per share would have been anti-dilutive (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2008	2007	2008
Stock options	218	3,157	366	2,414

The following table sets forth the computation of basic and diluted EPS (in thousands, except in per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2008	2007	2008
Calculation of basic net income per share:				
Net income	$ 5,778	$ 4,820	$ 15,426	$ 14,208
Weighted average common shares outstanding	38,552	35,503	38,159	36,243

Basic earnings per share	**$ 0.15**	**$ 0.14**	**$ 0.40**	**$ 0.39**
Calculation of diluted net income per share:				
Net Income	$ 5,778	$ 4,820	$ 15,426	$ 14,208
Weighted average diluted shares outstanding	40,825	36,787	40,670	37,693
Diluted net income per share	**$ 0.14**	**$ 0.13**	**$ 0.38**	**$ 0.38**

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Note 3 Acquisitions

On August 2, 2007, the Company acquired all of the shares of capital stock of Cityfeet.com Inc., a private company incorporated in Delaware (Cityfeet), pursuant to a Stock Purchase Agreement dated as of August 2, 2007, by and among the Company, the stockholders of Cityfeet, and Scripps Ventures II, LLC, as Stockholder Representative, for a purchase price of $14.9 million net of acquired cash. In addition, the Company was obligated to make additional cash payments up to $3.0 million if certain performance targets were met, which would be treated as additional consideration for the acquisition. On January 18, 2008, the Company made a $1.3 million cash payment to settle the outstanding contingent payment. The acquisition of Cityfeet was accounted for as a purchase consistent with SFAS No. 141 *Business Combinations* (see the Company s 2007 Form 10-K for additional information).

On April 7, 2008, the Company acquired all of the shares of capital stock of REApplications, Inc., a private company incorporated in Delaware (REApps) pursuant to a Stock Purchase Agreement dated as of April 7, 2008, by and among the Company and the shareholders of REApps for a purchase price of $9.2 million net of acquired cash.

The acquisition of REApps was accounted for as a purchase consistent with SFAS No. 141 *Business Combinations,* and accordingly, the purchase price has been allocated to the tangible assets, liabilities assumed, and identifiable intangible assets acquired based on their estimated fair values on the acquisition date. The excess of the purchase price over the aggregate fair values was recorded as goodwill. Our purchase price was allocated as follows (in thousands):

Customer relationships	$ 120
Domain name	480
Developed technology	2,490
Net assets acquired	100
Deferred Tax Liability	(1,302)
Goodwill	7,287
	$ 9,175

Customer relationships, developed technology and the domain name have a weighted average useful life of 6.3 years.

The results of operations of REApps have been included in the Company s condensed consolidated statements of income for the period subsequent to our acquisition of REApps. REApps s results of operations for the periods prior to this acquisition were not material to our condensed consolidated statement of income and, accordingly, pro forma financial information has not been presented.

On July 29, 2008, the Company acquired all of the shares of capital stock of RPB Media, Inc., a private company incorporated in Delaware pursuant to a Stock Purchase Agreement dated as of July 29, 2008, by and among the Company and the sole shareholder of RPB Media, Inc. for a purchase price of $2.1 million net of acquired cash. On August 19, 2008, Articles of Amendment were filed with The Commonwealth of Massachusetts to amend the exact name of the corporation from RPB Media, Inc. to LandAndFarm.com, Inc. (LandAndFarm).

The acquisition of LandAndFarm was accounted for as a purchase consistent with SFAS No. 141 *Business Combinations,* and accordingly, the purchase price has been allocated to the tangible assets, liabilities assumed, and identifiable intangible assets acquired based on their estimated fair values on the acquisition date. The excess of the purchase price over the aggregate fair values was recorded as goodwill. Our purchase price was allocated as follows (in thousands):

Customer relationships	$ 497
Trade names / Trademarks	254
Developed technology	279
Non-competition Agreements	63
Net assets (liabilities) acquired	(19)
Deferred Tax Liability	(445)

Goodwill	1,481
	$ 2,110

Customer relationships, developed technology and the non-competition agreement have a weighted average useful life of 4.26 years.

The results of operations of LandAndFarm have been included in the Company s condensed consolidated statements of income for the period subsequent to our acquisition of LandAndFarm. LandAndFarm s results of operations for the periods prior to this acquisition were not material to our condensed consolidated statement of income and, accordingly, pro forma financial information has not been presented.

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Note 4 Stock-Based Compensation

In the first quarter of 2006, the Company adopted SFAS No. 123R, *Share-Based Payment* (SFAS 123R), which revises SFAS No. 123, *Accounting for Stock-Based Compensation* (SFAS 123) and supersedes Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25). SFAS 123R requires that share-based payment transactions with employees be recognized in the financial statements based on their fair value and recognized as compensation expense over the vesting period. Prior to SFAS 123R, the Company disclosed the pro forma effects of SFAS 123 under the minimum value method. The Company adopted SFAS 123R effective January 1, 2006, prospectively for new equity awards issued subsequent to January 1, 2006.

In connection with the adoption of SFAS 123R, the Company reviewed and updated, among other things, its forfeiture rate, expected term and volatility assumptions. The weighted average expected lives of the options for the three and nine month periods ended September 30, 2008 reflects the application of the simplified method set out in SEC Staff Accounting Bulletin No. 107 (SAB 107), which was issued in March 2005. The simplified method defines the life as the average of the contractual term of the options and the weighted average vesting period for all option tranches. Estimated volatility for the three and nine month periods ended September 30, 2008 also reflects the application of SAB 107 interpretive guidance and, accordingly, incorporates historical volatility of similar companies whose share price is publicly available.

The fair value of each option is estimated on the date of grant using the Black-Scholes method with the following assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2008	2007	2008
Risk-free interest rate	4.50%	3.11%	4.64%	3.00%
Expected volatility	43%	42%	45%	42%
Expected life	4.6 years	4.6 years	4.6 years	4.6 years
Dividend yield	0%	0%	0%	0%

The weighted-average fair value of options granted during the three month periods ended September 30, 2007 and 2008 was $9.20 and $4.23, respectively, and during the nine month periods ended September 30, 2007 and 2008 was $7.81 and $4.50, respectively, using the Black-Scholes option-pricing model.

Total stock-based compensation has been allocated as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2008	2007	2008
Cost of revenue	$ 96	$ 153	$ 257	$ 408
Sales and marketing	363	554	953	1,632
Technology and product development	169	347	409	919
General and administrative	365	465	804	1,418
Total	$ 993	$ 1,519	$ 2,423	$ 4,377

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Stock Plan Activity

Stock options and other equity awards are granted by the Company under its 2006 Equity Incentive Plan. The 2006 Equity Incentive Plan became effective on June 9, 2006. Prior to that date, stock options were granted under the Company s 2001 Stock Option Plan, which terminated on June 9, 2006.

A summary of the Company s stock option activity is as follows:

	Options outstanding			Options exercisable		
	Number of shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Number of shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)
Outstanding at December 31, 2007	3,638,382	$ 8.93	6.51	1,339,128	$ 4.59	6.15
Granted	1,574,996	$ 11.68				
Exercised	(274,895)	$ 1.19				
Cancelled	(259,078)	$ 13.54				
Outstanding at September 30, 2008	4,679,405	$ 10.06	5.97	1,931,310	$ 7.50	5.66

A summary of the Company s unvested restricted stock unit activity is as follows:

	Unvested Restricted Stock Units		
	Number of shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Life (Years)
Balance at December 31, 2007		$	
Granted	195,000	$ 11.47	
Vested		$	
Cancelled		$	
Outstanding at September 30, 2008	195,000	$ 11.47	1.99

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Note 5 Income Taxes

The Company recorded a provision for income taxes of $9.5 million for the nine month period ended September 30, 2008, based upon a 40.0% effective tax rate. The effective tax rate is based upon the Company s estimated fiscal 2008 income before the provision for income taxes. To the extent the estimate of fiscal 2008 income before the provision for income taxes changes, the Company s provision for income taxes will change as well.

Note 6 Stock Repurchases

On January 31, 2008, LoopNet s Board of Directors authorized the repurchase of up to $50.0 million of the Company s common stock. The stock repurchase program was announced on February 5, 2008. On July 30, 2008, the Company announced that the board of directors of the Company authorized the repurchase of up to an additional $50 million of the Company s common stock. As of September 30, 2008, the Company repurchased approximately 3.8 million shares at an average price of $11.59 per share and $55.4 million remained available for further purchases under the program.

These repurchased shares are recorded as treasury stock and are accounted for under the cost method.

The stock repurchase program may be limited or terminated at any time without prior notice. Stock repurchases under this program may be made through open market and privately negotiated transactions at times and in such amounts as management deems appropriate and will be funded using the Company s working capital. The timing and actual number of shares repurchased will depend on a variety of factors including corporate and regulatory requirements, price and other market conditions. The program is intended to comply with the volume, timing and other limitations set forth in Rule 10b-18 under the Securities Exchange Act of 1934.

Note 7 Litigation and Other Contingencies

Litigation and Other Legal Matters

There have been no material developments in our pending legal proceedings. Although the results of litigation cannot be predicted with certainty, we believe that the resolution of our current pending matters will not have a material adverse effect on our business, consolidated financial position and results of operations.

Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis by our management of our financial condition and results of operations in conjunction with our consolidated financial statements and the accompanying notes included elsewhere in this Quarterly Report on Form 10-Q. This discussion and other parts of this Quarterly Report on Form 10-Q contain forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in Item 1A of Part II, Risk Factors.

Overview

We are a leading online marketplace for commercial real estate in the United States, based on the number of monthly unique visitors to our marketplace, which averaged approximately 500,000 unique visitors per month during 2005, approximately 800,000 per month during 2006, approximately 900,000 per month during 2007, and approximately 900,000 per month during the third quarter of 2008 as reported by comScore Media Metrix. comScore Media Metrix defines a unique visitor as an individual who visited any content of a website, a category, a channel, or an application. Our online marketplace, available at *www.LoopNet.com* , enables commercial real estate agents, working on behalf of property owners and landlords, to list properties for sale or for lease and submit detailed information on property listings including qualitative descriptions, financial and tenant information, photographs and key property characteristics in order to find a buyer or tenant. We offer two types of memberships on the LoopNet online marketplace. Basic membership is available free-of-charge, and enables members to experience some of the benefits of the LoopNet offering, with limited functionality. LoopNet premium membership is available for a monthly subscription fee and provides enhanced marketing exposure for property listings and full access to LoopNet property listings, as well as numerous other features. The minimum term of a premium membership subscription is one month.

We believe that the key metrics that are material to an analysis of our business are the number of our registered members, the number of our premium members, the rate of conversion of our basic members to premium members, the average monthly subscription price paid by our premium members and the cancellation rate of our premium members. We also believe that the number of listings on our marketplace and the number of property profiles viewed by our registered members are key metrics, as they affect the attractiveness of our website to current and potential customers. Our registered members has grown from approximately 1.1 million registered members as of December 31, 2005, to over 1.7 million registered members as of December 31, 2006, to over 2.5 million registered members as of December 31, 2007, and to over 3.1 million registered members as of September 30, 2008. Our base of premium members has grown from over 57,000 premium members as of December 31, 2005, to over 78,000 premium members as of December 31, 2006, to over 88,000 premium members as of December 31, 2007 and is currently over 83,000 premium members as of September 30, 2008. Historically, our average monthly rate of conversion of basic members to premium members has been approximately five percent, and our average monthly cancellation rate for premium members has ranged between three and five percent. We believe that a decline in the third quarter of 2008 in our average monthly conversion rate to approximately 2.7% is attributable to an increasing proportion of principals (i.e. investors and tenants) in our membership base, who convert to premium membership at a lower rate than the professional agents and brokers in the market, the impact of a slowdown in commercial real estate transaction activity, and an approximately 22% increase in the average monthly subscription prices which we charge our premium members. Sale and Leasing activity in the Commercial Real Estate market that we serve has slowed, due to deteriorating economic conditions and due to the credit crunch impacting the availability and cost of debt capital for real estate transactions. In the third quarter of 2008 our cancellation rate exceeded our historical levels and we believe the increase is attributable to the credit tightening that the commercial real estate industry experienced, the slowdown in overall transaction activity in the industry, and the increase in the average subscription prices which we charge our premium members. The average monthly subscription price paid by our premium members has increased from $44.96 in the fourth quarter of 2005, to $47.26 in the fourth quarter of 2006, to $56.00 in the fourth quarter of 2007 and to $64.51 in the third quarter of 2008. We anticipate that the average subscription price for our premium members will continue to rise, which may in turn drive slower acquisition of new premium members and increased cancellations of existing premium memberships. Premium membership fees have driven the majority of our growth in revenues since

2001 and were the source of approximately 80% of our revenues in 2005 and 2006, 77% of our revenue in 2007, and 75% of our revenue in the nine month period ended September 30, 2008. The number of listings on our marketplace has grown from approximately 335,000 as of December 31, 2005, to approximately 460,000 as of December 31, 2006, to approximately 560,000 as of December 31, 2007, and to approximately 642,000 as of September 30, 2008. The number of property profiles that were viewed by our registered members increased from 40.0 million in the third quarter of 2007 to 44.4 million in the third quarter of 2008.

Our Revenues and Expenses

Our primary sources of revenues are:

- LoopNet premium membership fees;
- BizBuySell BrokerWorks membership fees and paid listings;
- advertising on, and lead generation from, our marketplaces,
- LoopLink product license fees; and

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LoopNet RecentSales membership fees.

Our revenues have grown significantly in the past three years from $31.0 million in 2005, to $48.4 million in 2006, and to $70.7 million in 2007. We had revenues of $22.4 million and $65.0 million in the three and nine month periods ended September 30, 2008, respectively. We have been profitable and cash flow positive each quarter since the second quarter of 2003. The key factors influencing our growth in revenues are:

- the increased adoption of our premium membership services by the commercial real estate industry;
- increases in the average monthly subscription price of our premium membership product;
- the increased adoption of our RecentSales services by the commercial real estate industry; and
- our acquisition of BizBuySell in October, 2004, and the increased adoption of our services by the operating business for sale industry.

Our ability to continue to grow our revenues will largely depend on our ability to expand the number of users of *www.LoopNet.com* and *www.BizBuySell.com* and to convince those users to upgrade to our paid services, especially premium membership. As noted below, we anticipate that revenues will not increase in the future at the same percentage rate as in previous periods.

We derive the substantial majority of our revenues from customers that pay monthly fees for a suite of services to market and search for commercial real estate and operating businesses. The fee for our LoopNet premium membership averaged $64.51 per month during the third quarter of 2008. The minimum term of a premium membership subscription is one month. We also offer quarterly and annual memberships which are priced and discounted accordingly, and paid in advance for the subscription period. A customer choosing to cancel a discounted annual or quarterly membership will receive a refund based on the number of months the membership was used and charging the customer at the monthly rate rather than at the discounted quarterly or annual rates. We also license our LoopLink product to commercial real estate brokerage firms who pay a monthly, quarterly or annual fee. For our BrokerWorks product at BizBuySell, we charge $49.95 per month. We also charge fees associated with marketing individual businesses listed on BizBuySell. For our RecentSales product, we charge $29.95 per month or $1.95 to $3.95 for an individual transaction.

Revenues from other sources include advertising and lead generation revenues from both our LoopNet and BizBuySell marketplaces, which are recognized ratably over the period in which the advertisement is displayed, provided that no significant obligations remain and collection of the resulting receivable is probable. Advertising rates are dependent on the services provided and the placement of the advertisements. To date, the duration of our advertising commitments has generally averaged two to three months.

The largest component of our expenses is personnel costs. Personnel costs consist of salaries, benefits and incentive compensation for our employees, including commissions for salespeople. These expenses are categorized in our statements of operations based on each employee s principal function.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with generally accepted accounting principles in the United States. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures. On an ongoing basis, we evaluate our estimates and assumptions. Accordingly, our actual results may differ from these estimates under different assumptions or conditions.

Our significant accounting policies are described in Note 1 to the consolidated financial statements included in our annual report on Form 10-K for the year ended December 31, 2007.

Seasonality and Cyclicality

The commercial real estate market is influenced by annual seasonality factors, as well as by overall economic cycles. The market is large and fragmented, and different segments of the industry are influenced differently by various factors. Broadly speaking, the commercial real estate industry has two major components: tenants leasing space from owners or landlords, and the investment market for buying and selling properties.

We have experienced seasonality in our business in the past, and expect to continue to experience it in the future. While individual geographic markets vary, commercial real estate transaction activity is fairly consistent throughout the year, with the exception of a slow-down during the end-of-year holiday period. The impact that this has had on our business is that the growth rate in the fourth quarter of each year, has been slower than in the first three quarters of each year. We expect this pattern to continue.

The commercial real estate industry has historically experienced cyclicality. The different segments of the industry, such as office, industrial, retail, multi-family, and others, are influenced differently by different factors, and have historically moved through cycles with different timing. The for lease and for sale components of the market also do not necessarily move on the same timing cycle. During the second half of 2007 and the first nine months of 2008 the commercial real estate credit markets experienced tightening as a result of the subprime issues affecting the residential real estate credit markets. We believe the credit tightening caused our premium membership cancellation rates to exceed our historical levels during the third quarter of 2008.

Results of Operations

The following table presents our historical operating results as a percentage of revenues for the periods indicated:

	Three months ended September 30,		Nine months ended September 30,	
	2007	**2008**	**2007**	**2008**
(unaudited)				
Revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenue	11.1	12.8	11.2	12.3
Gross margin	88.9	87.2	88.8	87.7
Operating expenses				
Sales and marketing	21.0	21.0	21.0	22.1
Technology and product development	9.1	10.3	9.0	10.2
General and administrative	17.2	23.3	16.9	21.9
Total operating expenses	47.4	54.6	46.9	54.2
Income from operations	41.5	32.5	41.9	33.5
Interest and other income, net	6.7	2.0	7.3	2.9
Income before tax	48.2	34.6	49.2	36.4
Income tax expense	17.1	13.1	19.1	14.6
Net income	31.0%	21.5%	30.2%	21.9%

Comparison of Three Months Ended September 30, 2007 and 2008

Revenues

	Three Months Ended September 30,			
	2007	**2008**	**Increase/ (Decrease)**	**Percent Change**
	(dollars in thousands)			
Revenues	$18,627	$22,403	$ 3,776	20.3%
Premium members at September 30	90,186	83,803	(6,383)	(7.1)%

The increase in revenues was due largely to an increase of approximately 22.0% in the average monthly price of a premium membership.

We anticipate that revenues will not increase in the future at the same percentage rate as in previous periods, as a result of the larger revenue base and the current market conditions we are experiencing.

Cost of Revenues

	Three Months Ended September 30,			
	2007	2008	Increase	Percent Change
	(dollars in thousands)			
Cost of revenues	$2,072	$2,876	$804	38.8%
Percentage of revenues	11.1%	12.8%		

Cost of revenues consists of the expenses associated with the operation of our website, including depreciation of network infrastructure equipment, salaries and benefits of network operations personnel, Internet connectivity and hosting costs. Cost of revenues also includes salaries and benefits expenses associated with our data quality, data import and customer support personnel and credit card and other transaction fees relating to processing customer transactions.

The increase in cost of revenues was due to an increase in salaries and benefit costs related to an increase in the number of data quality, data import and customer support personnel, which was required in order to support our increased property listing and user activity coupled with higher credit card fees due to the growth in revenues. Also contributing to the increase in cost of revenues were customer support costs related to the REApplications business.

We expect cost of revenues to increase in absolute dollar amounts and potentially as a percentage of revenues, as we continue to expand our business and absorb the recent acquisition of REApplications, Inc. (see Note 3 to our condensed consolidated financial statements for a description of this acquisition).

Sales and Marketing

	Three Months Ended September 30,			
	2007	2008	Increase	Percent Change
	(dollars in thousands)			
Sales and marketing	$3,916	$4,711	$795	20.3%
Percentage of revenues	21.0%	21.0%		

Sales and marketing expenses consist of the compensation and associated costs for sales and marketing personnel, advertising, public relations and other promotional activities.

The increase in sales and marketing expenses was due largely to an increase in the number of sales personnel and increased commissions paid as a result of growth in our revenues. Additionally, advertising costs were higher, primarily to attract new members to our online marketplace. Also contributing to the increase was higher stock-based compensation, which increased to $554,000 in the third quarter of 2008 compared to $363,000 in the third quarter of 2007.

We expect sales and marketing expenses to increase in absolute dollar amounts, and potentially as a percentage of revenues, as we continue to expand our marketing programs to attract and retain premium members and launch and support new products and services.

Technology and Product Development

	Three Months Ended September 30,			
	2007	2008	Increase	Percent Change
	(dollars in thousands)			
Technology and product development	$1,699	$2,301	$602	35.4%
Percentage of revenues	9.1%	10.3%		

Technology and product development costs include expenses for the research and development of new product enhancements and services, as well as improvements to and maintenance of existing products and services.

The increase in technology and product development expenses was due primarily to increases in salaries and related costs associated with an increase in headcount to assist in the launch of new product enhancements and services and the maintenance of our existing services. Also contributing to the increase was higher stock-based compensation, which increased to $347,000 in the third quarter of 2008 compared to $169,000 in th