

NEOPHOTONICS CORP  
Form 10-Q/A  
April 09, 2014

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

(Amendment No. 2)

(Mark One)

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

For the quarterly period ended March 31, 2013

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-35061

NeoPhotonics Corporation

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of

94-3253730  
(I.R.S. Employer

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incorporation or organization) Identification No.)

2911 Zanker Road

San Jose, California 95134

(Address of principal executive offices, zip code)

(408) 232-9200

(Registrant's telephone number, including area code)

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 ("Exchange Act") during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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

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

Large accelerated filer

Accelerated filer

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

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

As of April 30, 2013, there were 30,611,417 shares of the registrant's Common Stock outstanding.

## Explanatory Note

NeoPhotonics Corporation (the “Company”), is filing this Amendment No. 2 to its Quarterly Report on Form 10-Q (“Amendment No. 2”) to restate and amend the Company’s previously issued and unaudited interim financial statements and related financial information as of March 31, 2013 and for the three months ended March 31, 2013, which was originally filed with the Securities and Exchange Commission (the “SEC”) on May 15, 2013 and subsequently amended in Amendment No. 1 (“Amendment No. 1”) filed with the SEC on August 8, 2013. Amendment No. 1 was filed to adjust the Company’s consolidated statement of cash flows for the three months ended March 31, 2013 for amounts related to purchases of property and equipment that were overstated.

As disclosed in the Company’s Current Report on Form 8-K filed with the SEC on November 14, 2013, the Company determined that its unaudited condensed consolidated financial statements for the three months ended March 31, 2013 contained an error related to its accounting for a real estate registration tax which was incorrectly reflected as a component of the property, plant and equipment acquired as part of the purchase of NeoPhotonics Semiconductor (formerly the Optical Component Unit of LAPIS Semiconductor (“OCI”). In addition, the Company has made other corrections related to the purchase of NeoPhotonics Semiconductor, classification of certain amounts and other corrections, all of which were discovered during the close of its September 30, 2013 accounting records. For further information regarding the restatement, see Note 2 of the Notes to the Condensed Consolidated Financial Statements.

Because of the corrections described above, management re-evaluated the Company’s control environment and concluded that additional material weaknesses existed at March 31, 2013 as more fully described in Item 4 “Controls and Procedures” in this Amendment No. 2.

Consistent with the information described above, the Company has revised the following items in this Amendment No. 2:

### Part I

Item 1- Condensed Consolidated Financial Statements

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

Item 4 – Controls and Procedures

### Part II

Item 1A- Risk Factors

Additionally, in this Amendment No. 2, the Company is including currently dated certifications from the Company’s Principal Executive Officer and Principal Financial Officer as required by Section 302 of the Sarbanes-Oxley Act of 2002 in Exhibits 31.1 and 31.2 and a currently dated certification from the Company’s Principal Executive Officer and Principal Financial Officer as required by Section 906 of the Sarbanes-Oxley Act of 2002 in Exhibit 32.1.

Except to the extent described above and set forth herein, the items and other disclosures in the Form 10-Q initially filed on May 15, 2013 (the “initial Form 10-Q”) as previously amended by Amendment No. 1 are unchanged and this Amendment No. 2 does not reflect any events that have occurred after the initial Form 10-Q was filed. Accordingly, this Amendment No. 2 should be read in conjunction with the Company’s initial Form 10-Q (as amended by Amendment No. 1) and the Company’s subsequent filings with the United States Securities and Exchange Commission.

In light of the restatement, readers should not rely on the Company's previously filed financial statements as of and for the three month period ended March 31, 2013.

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NEOPHOTONICS CORPORATION

For the Quarter Ended March 31, 2013

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## PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED BALANCE SHEETS

(Unaudited)

	As of March 31, 2013 Restated and Revised, see Notes 2 and 7	December 31, 2012 Revised, see Note 2
(In thousands, except share and per share data)		
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$51,404	\$ 36,940
Short-term investments	48,356	64,301
Restricted cash	2,108	2,626
Accounts receivable, net of allowance for doubtful accounts	63,267	70,354
Inventories	61,859	43,793
Prepaid expenses and other current assets	10,480	7,630
Total current assets	237,474	225,644
Long-term investments	331	188
Property, plant and equipment, net	70,001	54,440
Other intangible assets, net	18,766	14,213
Other long-term assets	1,361	1,147
Total assets	\$327,933	\$ 295,632
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$40,817	\$ 36,308
Notes payable	10,431	12,003
Current portion of long-term debt	8,960	5,000
Accrued and other current liabilities	24,874	19,959
Total current liabilities	85,082	73,270
Long-term debt, net of current portion	42,170	17,167
Deferred income tax liabilities	655	653
Other noncurrent liabilities	8,147	1,862
Total liabilities	136,054	92,952

## Commitments and contingencies (Note 10)

## Stockholders' equity:

Preferred stock, \$0.0025 par value

At March 31, 2013 and December 31, 2012: 10,000,000 shares authorized, no shares issued or outstanding;

— —

Common stock, \$0.0025 par value

At March 31, 2013: 100,000,000 shares authorized, 30,604,293 shares issued and outstanding;

At December 31, 2012: 100,000,000 shares authorized, 30,546,155 shares issued and outstanding

76 76

Additional paid-in capital

440,144 438,858

Accumulated other comprehensive income

11,982 11,829

Accumulated deficit

(260,323) (248,083 )

Total stockholders' equity

191,879 202,680

Total liabilities and stockholders' equity

\$327,933 \$ 295,632

See accompanying Notes to Condensed Consolidated Financial Statements.

## NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

(In thousands, except share and per share data)	Three Months Ended March 31, 2013 Restated and Revised, see Note 2		2012
Revenue	\$56,063		\$54,223
Cost of goods sold	44,306		42,817
Gross profit	11,757		11,406
Operating expenses:			
Research and development	9,707		10,538
Sales and marketing	3,586		3,023
General and administrative	5,059		6,601
Acquisition-related transaction costs	4,510		394
Amortization of purchased intangible assets	321		354
Restructuring charges	325		130
Adjustment to fair value of contingent consideration	—		1,907
Total operating expenses	23,508		22,947
Loss from operations	(11,751 )		(11,541 )
Interest income	131		132
Interest expense	(163 )		(154 )
Other expense, net	(274 )		(275 )
Total interest and other expense, net	(306 )		(297 )
Loss before income taxes	(12,057 )		(11,838 )
Income tax (expense) benefit	(183 )		60
Loss from continuing operations	(12,240 )		(11,778 )
Income from discontinued operations, net of tax (including gain on disposal of \$636, net of tax, for the three months ended March 31, 2012)	—		170
Net loss	\$(12,240 )		\$(11,608 )
Basic and diluted net income (loss) per share:			
Continuing operations	\$(0.40 )		\$(0.47 )
Discontinued operations	\$—		\$0.01
Net loss	\$(0.40 )		\$(0.46 )
Weighted average shares used to compute basic and diluted net income (loss) per share:	30,574,032		24,870,684

See accompanying Notes to Condensed Consolidated Financial Statements.



## NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

(Unaudited)

	Three months ended March 31, 2013 Restated and Revised, see Note 2 2012	
(In thousands)		
Net loss	\$(12,240)	\$(11,608)
Foreign currency translation adjustments	172	125
Unrealized gain (loss) on investments, net of tax of \$0	(19 )	296
Comprehensive loss	\$(12,087)	\$(11,187)

See accompanying Notes to Condensed Consolidated Financial Statements.

## NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(In thousands)	Three Months Ended March 31, 2013 Restated and Revised, see Note 2		2012
Cash flows from operating activities			
Net loss	\$(12,240)		\$(11,608)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	4,152		5,353
Asset impairment charges	34		14
Stock-based compensation expense	1,202		1,144
Deferred taxes	—		387
Loss on disposal of property and equipment	111		18
Gain on sale of discontinued operations	—		(750 )
Allowance for doubtful accounts	22		8
Write-down of inventories	30		721
Change in assets and liabilities, net of effects of acquisitions:			
Accounts receivable	7,155		9,155
Inventories	(4,682 )		(4,680 )
Prepaid expenses and other assets	(977 )		(1,800 )
Accounts payable	2,126		584
Acquisition-related transaction costs	3,948		—
Accrued and other liabilities	280		(184 )
Net cash provided by (used in) operating activities	1,161		(1,638 )
Cash flows from investing activities			
Purchase of property, plant and equipment	(5,134 )		(2,019 )
Purchase of marketable securities	(29,030)		(12,964)
Proceeds from sale of marketable securities	23,747		5,139
Proceeds from maturity of securities	20,900		15,100
Decrease in restricted cash	524		68
Acquisition of OCU, net of notes payable	(14,087)		—
Proceeds received on sale of discontinued operations, net of tax	—		1,825
Net cash provided by (used in) investing activities	(3,080 )		7,149
Cash flows from financing activities			
Proceeds from exercise of stock options	79		64
Proceeds from bank loans	26,443		—
Repayment of bank loans	(8,610 )		(1,250 )
Proceeds from issuance of notes payable	4,881		7,738
Repayment of notes payable	(6,482 )		(7,867 )

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Net cash provided by (used in) financing activities	16,311	(1,315 )
Effect of exchange rates on cash and cash equivalents	72	209
Net increase in cash and cash equivalents	14,464	4,405
Cash and cash equivalents at the beginning of the period	36,940	32,485
Cash and cash equivalents at the end of the period	\$51,404	\$36,890
Supplemental disclosure of noncash investing and financing activities:		
Issuance of notes to the seller of acquired business	\$11,130	\$—

See accompanying Notes to Condensed Consolidated Financial Statements.

NeoPhotonics Corporation

Notes to Condensed Consolidated Financial Statements

(Unaudited)

Note 1. Basis of presentation

The unaudited condensed consolidated financial statements of NeoPhotonics Corporation (“NeoPhotonics” or the “Company”) as of March 31, 2013 and December 31, 2012 and for the three months ended March 31, 2013 and 2012, have been prepared in accordance with the instructions on Form 10-Q pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). In accordance with those rules and regulations, the Company has omitted certain information and notes normally provided in the Company’s annual consolidated financial statements. In the opinion of management, the condensed consolidated financial statements contain all adjustments, consisting only of normal recurring items, except as otherwise noted, necessary for the fair presentation of the Company’s financial position and results of operations for the interim periods. The year-end condensed balance sheet data was derived from audited financial statements, but does not include all disclosures required by U.S. generally accepted accounting principles (“U.S. GAAP”). These condensed consolidated financial statements should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2012. The results of operations for the three months ended March 31, 2013 are not necessarily indicative of the results expected for the entire fiscal year. For purposes of these Notes to Condensed Consolidated Financial Statements, amounts have been restated and revised to give effect to the matters described in Note 2.

Consolidation

The condensed consolidated financial statements are prepared in accordance with U.S. GAAP and include the consolidated accounts of the Company and its majority owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in accordance with U.S. GAAP 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 revenue and expenses during the reporting period. Significant estimates made by management include: the fair values of identifiable assets acquired and liabilities assumed in business combinations; the useful lives of property, plant and equipment and intangible assets as well as future cash flows to be generated by those assets; allowances for doubtful accounts; valuation allowances for deferred tax assets; write off of excess and obsolete inventories and the valuations of stock-based compensation, among others. Actual results could differ from these estimates.

Business Combinations—Acquisition Accounting

Under the acquisition method of accounting, the Company allocates the purchase price of acquired companies to the tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values. The Company records the excess of purchase price over the aggregate fair values of the tangible and identifiable intangible assets as goodwill. The Company determines the fair values of assets acquired and liabilities assumed. To establish fair value, the Company measures the price that would be received to sell an asset or paid to transfer a liability in an ordinary transaction between market participants. The measurement assumes the highest and best use of the asset by

the market participants that would maximize the value of the asset or the group of assets within which the asset would be used at the measurement date, even if the intended use of the asset is different.

The Company estimates the economic lives of certain acquired assets and these lives are used to calculate depreciation and amortization expenses. The Company estimates the future cash flows to be derived from such assets, and these estimates are used to determine the fair value of the assets. If any of these estimates change, depreciation or amortization expenses could be changed and/or the value of our intangible assets could be impaired.

Acquisition related costs, including real estate transaction taxes, finder's fees, advisory, legal, accounting, valuation and other professional or consulting fees are accounted for as expenses in the periods in which the costs are incurred or the services are received.

## Note 2. Restatement and Revision of unaudited condensed consolidated financial statements

The Company has restated and revised its March 31, 2013 unaudited condensed consolidated financial statements as described below.

The effects of the restatement and revisions on the condensed consolidated balance sheet as of March 31, 2013 are summarized in the following table:

March 31, 2013 (In thousands, except per share data)					
	Previously Reported	Corrections	Penalty Payment Derivative	Revision for Measurement Period Adjustments	Restated and Revised
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$51,404	\$ —	\$ —	\$ —	\$51,404
Short-term investments	48,356	—	—	—	48,356
Restricted cash	2,108	—	—	—	2,108
Accounts receivable, net of allowance for doubtful accounts	63,267	—	—	—	63,267
Inventories	68,818	(212 )	—	(6,747 )	61,859
Prepaid expenses and other current assets	8,053	74	—	2,353	10,480
Total current assets	242,006	(138 )	—	(4,394 )	237,474
Long-term investments	331	—	—	—	331
Property, plant and equipment, net	65,079	2,156	—	2,766	70,001
Goodwill	2,188	(2,188 )	—	—	—
Other intangible assets, net	17,176	(72 )	—	1,662	18,766
Other long-term assets	4,206	(2,064 )	—	(781 )	1,361
Total assets	\$330,986	\$ (2,306 )	\$ —	\$ (747 )	\$327,933
<b>LIABILITIES, REDEEMABLE COMMON STOCK AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Accounts payable	\$40,963	\$ (146 )	\$ —	\$ —	\$40,817
Notes payable	10,431	—	—	—	10,431
Current portion of long-term debt	10,710	(1,750 )	—	—	8,960
Accrued and other current liabilities	23,520	1,225	—	129	24,874
Total current liabilities	85,624	(671 )	—	129	85,082
Long-term debt, net of current portion	40,420	1,750	—	—	42,170
Deferred income tax liabilities	655	—	—	—	655
Other noncurrent liabilities	10,506	(2,400 )	138	(97 )	8,147
Total liabilities	137,205	(1,321 )	138	32	136,054
Redeemable common stock	5,000	—	(5,000 )	—	—
Stockholders' equity:					
Preferred stock, \$0.0025 par value					
Common stock, \$0.0025 par value	76	—	—	—	76
Additional paid-in capital	435,282	—	4,862	—	440,144
Accumulated other comprehensive income	11,970	12	—	—	11,982
Accumulated deficit	(258,547)	(997 )	—	(779 )	(260,323)

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Total stockholders' equity	188,781	(985	)	4,862	(779	)	191,879
Total liabilities, redeemable common stock and stockholders' equity	\$330,986	\$					