

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. 1)

(Mark One)

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

For the quarterly period ended June 30, 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 94-3253730  
(State or other jurisdiction of (I.R.S. Employer  
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 July 31, 2013, there were 31,255,741 shares of the registrant's Common Stock outstanding.

## Explanatory Note

NeoPhotonics Corporation (the “Company”), is filing this Amendment No. 1 (“Amendment”) to its Quarterly Report on Form 10-Q to restate and amend the Company’s previously issued and unaudited interim financial statements and related financial information as of June 30, 2013 and for the three and six months ended June 30, 2013, which was originally filed with the Securities and Exchange Commission on August 8, 2013.

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 six months ended June 30, 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). 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 June 30, 2013 as more fully described in Item 4 “Controls and Procedures” in this Amendment.

Consistent with the information described above, the Company has revised the following items in this Amendment:

### 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, 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 August 8, 2013 are unchanged and this Amendment does not reflect any events that have occurred after the initial Form 10-Q was filed. Accordingly, this Amendment should be read in conjunction with the Company’s initial Form 10-Q 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 and six month periods ended June 30, 2013.



NEOPHOTONICS CORPORATION

For the Quarter Ended June 30, 2013

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## PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED BALANCE SHEETS

(Unaudited)

	As of June 30, 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	\$37,558	\$ 36,940
Short-term investments	36,874	64,301
Restricted cash	1,813	2,626
Accounts receivable, net of allowance for doubtful accounts	72,998	70,354
Inventories	58,227	43,793
Prepaid expenses and other current assets	8,863	7,630
Total current assets	216,333	225,644
Long-term investments	355	188
Property, plant and equipment, net	70,761	54,440
Other intangible assets, net	17,362	14,213
Other long-term assets	1,318	1,147
Total assets	\$306,129	\$ 295,632
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$43,894	\$ 36,308
Notes payable	9,041	12,003
Current portion of long-term debt	8,785	5,000
Accrued and other current liabilities	20,530	19,959
Total current liabilities	82,250	73,270
Long-term debt, net of current portion	28,070	17,167
Deferred income tax liabilities	664	653
Other noncurrent liabilities	7,882	1,862
Total liabilities	118,866	92,952

## Commitments and contingencies (Note 10)

## Stockholders' equity:

Preferred stock, \$0.0025 par value

At June 30, 2013 and December 31, 2012: 10,000,000 shares authorized, no shares

issued or outstanding

— —

Common stock, \$0.0025 par value

At June 30, 2013: 100,000,000 shares authorized, 30,971,280 shares issued and

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

issued and outstanding

77 76

Additional paid-in capital

443,157 438,858

Accumulated other comprehensive income

12,636 11,829

Accumulated deficit

(268,607) (248,083 )

Total stockholders' equity

187,263 202,680

Total liabilities and stockholders' equity

\$306,129 \$ 295,632

See accompanying Notes to Condensed Consolidated Financial Statements.

## NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

	Three Months Ended		Six Months Ended June 30,	
	June 30, 2013		2013	2012
	Restated and Revised, see Notes 2 and 7	2012	Restated and Revised, see Notes 2 and 7	2012
(In thousands, except share and per share data)				
Revenue	\$74,990	\$63,025	\$131,053	\$117,248
Cost of goods sold	59,389	47,837	103,695	90,654
Gross profit	15,601	15,188	27,358	26,594
Operating expenses:				
Research and development	11,087	9,322	20,794	19,860
Sales and marketing	3,349	3,406	6,935	6,429
General and administrative	7,889	6,409	13,273	13,140
Acquisition-related transaction costs	681	312	5,191	706
Amortization of purchased intangible assets	426	321	747	675
Adjustment to fair value of contingent consideration	—	(1,303 )	—	604
Total operating expenses	23,432	18,467	46,940	41,414
Loss from operations	(7,831 )	(3,279 )	(19,582 )	(14,820 )
Interest income	72	145	203	277
Interest expense	(342 )	(145 )	(505 )	(299 )
Other expense, net	(273 )	—	(547 )	(275 )
Total interest and other expense, net	(543 )	—	(849 )	(297 )
Loss before income taxes	(8,374 )	(3,279 )	(20,431 )	(15,117 )
Benefit (provision) for income taxes	90	(377 )	(93 )	(317 )
Loss from continuing operations	(8,284 )	(3,656 )	(20,524 )	(15,434 )
Income from discontinued operations, net of tax (including gain on disposal of \$636, net of tax, for the six months ended June 30, 2012)	—	—	—	170
Net loss	\$(8,284 )	\$(3,656 )	\$(20,524 )	\$(15,264 )
Basic and diluted net loss per share attributable to NeoPhotonics Corporation common stockholders:				
Continuing operations	\$(0.27 )	\$(0.13 )	\$(0.67 )	\$(0.58 )
Discontinued operations	\$—	\$—	\$—	\$0.01
Net loss	\$(0.27 )	\$(0.13 )	\$(0.67 )	\$(0.57 )
Weighted average shares used to compute net loss per share attributable to NeoPhotonics Corporation common stockholders:				
Basic and diluted	30,779,730	28,402,929	30,677,449	26,636,807



See accompanying Notes to Condensed Consolidated Financial Statements.

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## NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

(Unaudited)

	Three Months Ended June 30, 2013		Six Months Ended June 30, 2013	
	Restated and Revised, see Notes 2 and 7		Restated and Revised, see Notes 2 and 7	
(In thousands)	2012	2012	2012	2012
Net loss	\$ (8,284 )	\$ (3,656 )	\$ (20,524 )	\$ (15,264 )
Foreign currency translation adjustments	689	(472 )	861	(347 )
Unrealized gains (losses) on investments, net of tax of \$0	(35 )	(60 )	(54 )	236
Comprehensive loss	\$ (7,630 )	\$ (4,188 )	\$ (19,717 )	\$ (15,375 )

See accompanying Notes to Condensed Consolidated Financial Statements.

## NEOPHOTONICS CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

	Six Months Ended June 30, 2013	
	Restated and Revised, see Notes 2 and 7	2012
(In thousands)		
Cash flows from operating activities		
Net loss	\$ (20,524 )	\$ (15,264 )
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	9,512	9,827
Stock-based compensation expense	2,675	2,153
Deferred taxes	(6 )	387
Amortization of premiums and discounts on investments	669	386
Gain on sale of discontinued operations	—	(750 )
Allowance for doubtful accounts	(144 )	93
Write-down of inventories	849	2,931
Others	465	82
Change in assets and liabilities, net of effects of acquisitions:		
Accounts receivable	(1,766 )	(6,771 )
Inventories	(1,577 )	(8,081 )
Prepaid expenses and other current assets	47	(1,303 )
Accounts payable	2,308	3,763
Acquisition-related transaction costs	3,282	—
Accrued and other liabilities	104	733
Net cash used in operating activities	(4,106 )	(11,814 )
Cash flows from investing activities		
Purchase of property, plant and equipment	(10,545 )	(4,965 )
Proceeds from disposition of property, plant and equipment	92	—
Purchase of marketable securities	(48,771 )	(112,773 )
Proceeds from sale of marketable securities	35,247	53,294
Proceeds from maturity of securities	40,255	29,532
Decrease in restricted cash	859	647
Acquisition, net of cash acquired	(14,979 )	—
Proceeds received on sale of discontinued operations, net of tax	—	1,825
Net cash provided by (used in) investing activities	2,158	(32,440 )

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Cash flows from financing activities		
Proceeds from issuance of common stock, net of issuance costs	—	39,636
Proceeds from exercise of stock options	572	188
Proceeds from issuance of stock under ESPP	1,162	923
Proceeds from bank loans	26,443	—
Repayment of bank loans	(22,360 )	(2,500 )
Proceeds from issuance of notes payable	9,471	12,759
Repayment of notes payable	(12,661 )	(16,064 )
Net cash provided by financing activities	2,627	34,942
Effect of exchange rates on cash and cash equivalents	(61 )	56
Net increase (decrease) in cash and cash equivalents	618	(9,256 )
Cash and cash equivalents at the beginning of the period	36,940	32,485
Cash and cash equivalents at the end of the period	\$ 37,558	\$ 23,229
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 condensed consolidated financial statements of NeoPhotonics Corporation (“NeoPhotonics” or the “Company”) as of June 30, 2013 and December 31, 2012 and for the three and six months ended June 30, 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 and six months ended June 30, 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 June 30, 2013 unaudited condensed consolidated financial statements as described below.

The effects of the restatement and revisions on the condensed consolidated balance sheet as of June 30, 2013 are summarized in the following table:

	June 30, 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	\$37,857	\$ (299 )	\$ —	\$ —	\$37,558
Short-term investments	36,874	—	—	—	36,874
Restricted cash	1,813	—	—	—	1,813
Accounts receivable, net of allowance for doubtful accounts	72,998	—	—	—	72,998
Inventories	64,164	(15 )	—	(5,922 )	58,227
Prepaid expenses and other current assets	6,684	306	—	1,873	8,863
Total current assets	220,390	(8 )	—	(4,049 )	216,333
Long-term investments	355	—	—	—	355
Property, plant and equipment, net	65,886	2,045	—	2,830	70,761
Goodwill	2,084	(2,084 )	—	—	—
Other intangible assets, net	15,926	(62 )	—	1,498	17,362
Other long-term assets	3,586	(2,274 )	—	6	1,318
Total assets	\$308,227	\$ (2,383 )	\$ —	\$ 285	\$306,129
<b>LIABILITIES, REDEEMABLE COMMON STOCK AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Accounts payable	\$44,115	\$ (221 )	\$ —	\$ —	\$43,894
Notes payable	9,041	—	—	—	9,041