

ORION ENERGY SYSTEMS, INC.

Form 10-Q/A

August 02, 2011

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q/A
(Amendment No. 1)**

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

For the Quarterly Period Ended September 30, 2010

OR

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

Commission file number 001-33887

Orion Energy Systems, Inc.

(Exact name of Registrant as specified in its charter)

Wisconsin

39-1847269

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification number)

2210 Woodland Drive, Manitowoc, Wisconsin

54220

(Address of principal executive offices)

(Zip code)

Registrant's telephone number, including area code: (920) 892-9340

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) 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 (§232.405) during the preceding 12 months (or for 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 accelerated filer, large accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a 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

There were 22,715,028 shares of the Registrant's common stock outstanding on November 4, 2010.

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EXPLANATORY NOTE

As used herein, unless otherwise expressly stated or the context otherwise requires, all references to Orion, we, us, our, Company and similar references are to Orion Energy Systems, Inc. and its consolidated subsidiaries.

As previously disclosed, in this Quarterly Report on Form 10-Q/A, we have restated our previously issued unaudited consolidated financial statements and related disclosures for the quarter ended September 30, 2010 to reclassify our transactions under our Orion Throughput Agreements, or OTAs, as sales-type leases instead of as operating leases.

Our prior method of accounting for OTA transactions as operating leases deferred revenue recognition over the full term of the OTA contracts, only recognizing revenue on a monthly basis as customer payments became due, while the upfront sales, general and administrative expenses related to these OTA contracts were recognized immediately. On June 9, 2011, we concluded that generally accepted accounting principles, or GAAP, required us to reclassify our transactions under our OTAs as sales-type leases instead of as operating leases. We voluntarily submitted our determination of the proper accounting treatment for the OTAs for confirmation with the Office of the Chief Accountant of the Securities and Exchange Commission, which did not object to our conclusion.

This Quarterly Report on Form 10-Q/A for the quarterly period ended September 30, 2010, initially filed with the SEC on November 9, 2010 (Original Filing), is being filed to reflect the financial statement restatement. Generally, for the quarterly and year-to-date periods ended September 30, 2010, this change in accounting treatment and financial statement restatements has resulted in:

No impact to our cash, cash equivalents, short-term investments; or overall cash flow;

Increases in our revenue of \$2.1 million (16%), a decrease in our net loss of \$0.7 million (437%) and an increase in our earnings per share of \$0.03 (300%) for the quarter ended September 30, 2009, and an increase in our revenue of \$4.4 million (16%), a decrease in our net loss of \$1.2 million (100%) and a reduction in our loss per share of \$0.05 (100%) for the six months ended September 30, 2009; and

Increases in our current assets of \$5.0 million (8%), an increase in our total assets of \$1.4 million (1%), a decrease in our total liabilities of \$0.5 million (2%) and a reduction in our retained deficit of \$1.9 million (48%).

For a more detailed description of this financial statement restatement, see Note B, Restatement of Financial Statements to our consolidated financial statements and the section entitled Restatement of Previously Issued Consolidated Financial Statements in Management's Discussion and Analysis of Financial Condition and Results of Operations contained in this Form 10-Q/A.

This Form 10-Q/A only amends and restates Items 1, 2, and 4 of Part I of the Original Filing, in each case, solely as a result of, and to reflect, the restatement, and no other information in the Original Filing is amended hereby. The foregoing items have not been updated to reflect other events occurring after the Original Filing or to modify or update those disclosures affected by subsequent events. In addition, pursuant to the rules of the SEC, Item 6 of Part II of the Original Filing has been amended to contain currently-dated certifications from our Chief Executive Officer and Chief Financial Officer, as required by Section 302 and 906 of the Sarbanes-Oxley Act of 2002. The certifications of our Chief Executive Officer and Chief Financial Officer are attached to this Form 10-Q/A as Exhibits 31.1, 31.2, 32.1, and 32.2, respectively.

Except for the foregoing amended information, this Form 10-Q/A continues to describe conditions as of the date of the Original Filing, and we have not updated the disclosures contained herein to reflect events that occurred at a later date. Throughout this Quarterly Report on Form 10-Q/A, all amounts presented from prior periods and prior period comparisons that have been revised are labeled As Restated and reflect the balances and amounts on a restated basis.

Orion Energy Systems, Inc.
Quarterly Report On Form 10-Q/A
For The Quarter Ended September 30, 2010
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ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	March 31, 2010 (As Restated)	September 30, 2010 (As Restated)
Assets		
Cash and cash equivalents	\$ 23,364	\$ 13,324
Short-term investments	1,000	1,007
Accounts receivable, net of allowances of \$382 and \$446	15,991	13,381
Inventories, net	25,991	33,706
Deferred tax assets	1,244	2,361
Prepaid expenses and other current assets	4,112	6,651
Total current assets	71,702	70,430
Property and equipment, net	28,193	30,313
Patents and licenses, net	1,590	1,627
Deferred tax assets	974	1,231
Long-term accounts receivable	2,092	4,603
Other long-term assets	27	1,793
Total assets	\$ 104,578	\$ 109,997
Liabilities and Shareholders' Equity		
Accounts payable	\$ 7,761	\$ 9,235
Accrued expenses and other	4,128	3,771
Current maturities of long-term debt	562	1,202
Total current liabilities	12,451	14,208
Long-term debt, less current maturities	3,156	4,934
Deferred revenue, long-term	186	1,149
Other long-term liabilities	398	399
Total liabilities	16,191	20,690
Commitments and contingencies (See Note G)		
Shareholders' equity:		
Preferred stock, \$0.01 par value: Shares authorized: 30,000,000 shares at March 31, 2010 and September 30, 2010; no shares issued and outstanding at March 31, 2010 and September 30, 2010		
Common stock, no par value: Shares authorized: 200,000,000 at March 31, 2010 and September 30, 2010; shares issued: 29,911,203 and 30,158,399 at March 31, 2010 and September 30, 2010; shares outstanding: 22,442,380 and 22,714,228 at March 31, 2010 and September 30, 2010		
Additional paid-in capital	122,515	123,378

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Shareholder notes receivable		(121)
Treasury stock: 7,468,823 and 7,444,171 common shares at March 31, 2010 and September 30, 2010	(32,011)	(31,835)
Accumulated deficit	(2,117)	(2,115)
Total shareholders' equity	88,387	89,307
Total liabilities and shareholders' equity	\$ 104,578	\$ 109,997

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

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ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share amounts)

	Three Months Ended September		Six Months Ended September	
	30,	30,	30,	30,
	2009	2010	2009	2010
	(As Restated)	(As Restated)	(As Restated)	(As Restated)
Product revenue	\$ 15,219	\$ 15,086	\$ 27,143	\$ 30,844
Service revenue	856	767	2,807	1,986
Total revenue	16,075	15,853	29,950	32,830
Cost of product revenue	10,122	9,745	18,870	20,053
Cost of service revenue	632	498	1,887	1,415
Total cost of revenue	10,754	10,243	20,757	21,468
Gross profit	5,321	5,610	9,193	11,362
Operating expenses:				
General and administrative	3,143	2,988	6,307	5,933
Sales and marketing	2,962	3,299	6,113	6,889
Research and development	491	573	910	1,183
Total operating expenses	6,596	6,860	13,330	14,005
Loss from operations	(1,275)	(1,250)	(4,137)	(2,643)
Other income (expense):				
Interest expense	(73)	(55)	(127)	(124)
Dividend and interest income	147	153	383	246
Total other income (expense)	74	98	256	122
Loss before income tax	(1,201)	(1,152)	(3,881)	(2,521)
Income tax benefit	(269)	(1,692)	(869)	(2,525)
Net loss	\$ (932)	\$ 540	\$ (3,012)	\$ 4
Basic net income (loss) per share attributable to common shareholders	\$ (0.04)	\$ 0.02	\$ (0.14)	\$ 0.00
Weighted-average common shares outstanding	21,707,477	22,638,638	21,648,246	22,581,188
Diluted net income (loss) per share attributable to common shareholders	\$ (0.04)	\$ 0.02	\$ (0.14)	\$ 0.00
Weighted-average common shares outstanding	21,707,477	22,901,590	21,648,246	23,007,067

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

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ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Six Months Ended September	
	30,	
	2009	2010
	(As	(As
	Restated)	Restated)
Operating activities		
Net income (loss)	\$ (3,012)	\$ 4
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,325	1,543
Stock-based compensation expense	663	611
Deferred income tax benefit	(1,556)	(1,374)
Change in allowance for notes and accounts receivable	353	64
Other	(3)	34
Changes in operating assets and liabilities:		
Accounts receivable	(1,969)	2,546
Inventories	560	(7,715)
Prepaid expenses and other assets and liabilities	(383)	(5,463)
Accounts payable	(2,338)	1,474
Accrued expenses	703	(357)
Net cash used in operating activities	(5,657)	(8,633)
Investing activities		
Purchase of property and equipment	(2,235)	(1,957)
Purchase of property and equipment held under operating leases		(1,630)
Purchase of short-term investments		(7)
Sale of short-term investments	5,583	
Additions to patents and licenses	(131)	(110)
Proceeds from sales of property, plant and equipment	6	1
Long-term assets		(330)
Net cash provided by (used in) investing activities	3,223	(4,033)
Financing activities		
Payment of long-term debt	(433)	(271)
Proceeds from long-term debt		2,689
Repurchase of common stock into treasury	(400)	
Deferred financing costs		(61)
Proceeds from issuance of common stock	517	269
Net cash (used in) provided by financing activities	(316)	2,626
Net decrease in cash and cash equivalents	(2,750)	(10,040)
Cash and cash equivalents at beginning of period	36,163	23,364
Cash and cash equivalents at end of period	\$ 33,413	\$ 13,324

Supplemental cash flow information:

Cash paid for interest	\$	149	\$	126
Cash paid for income taxes		30		28

Supplemental disclosure of non-cash investing and financing activities:

Shares issued from treasury for shareholder note receivable	\$		\$	121
Shares surrendered into treasury for stock option exercise	\$		\$	51

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

Table of Contents**ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES****UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS****NOTE A DESCRIPTION OF BUSINESS****Organization**

The Company includes Orion Energy Systems, Inc., a Wisconsin corporation, and all consolidated subsidiaries. The Company is a developer, manufacturer and seller of lighting and energy management systems and a seller and integrator of renewable energy technologies to commercial and industrial businesses, predominantly in North America. The corporate offices and manufacturing operations are located in Manitowoc, Wisconsin and an operations facility is located in Plymouth, Wisconsin.

NOTE B RESTATEMENT OF FINANCIAL STATEMENTS

The Company accounts for the correction of an error in previously issued financial statements in accordance with the provisions of ASC Topic 250, Accounting Changes and Error Corrections. In accordance with the disclosure provisions of ASC 250, when financial statements are restated to correct an error, an entity is required to disclose that its previously issued financial statements have been restated along with a description of the nature of the error, the effect of the correction on each financial statement line item and any per share amount affected for each prior period presented, and the cumulative effect on retained earnings or other appropriate component of equity or net assets in the statement of financial position, as of the beginning of the earliest period presented.

As previously disclosed in a Current Report on Form 8-K, on June 14, 2011, the Company's management, with concurrence from the Audit & Finance Committee of the Company's Board of Directors, concluded that the financial statements contained in the Form 10-Q for the quarterly period ended September 30, 2010 should no longer be relied upon and must be restated to properly record revenue from its OTAs as sales-type lease contracts.

In accordance with ASC Topic 840, Leases, the Company's prior method of accounting for OTA transactions as operating leases deferred revenue recognition over the full term of the OTA contracts, only recognizing revenue on a monthly basis as customer payments became due, while the upfront sales, general and administrative expenses related to these OTA contracts were recognized immediately. On June 9, 2011, the Company concluded that generally accepted accounting principles, or GAAP, required the Company to reclassify its transactions under its OTAs as sales-type leases instead of as operating leases. Accounting for OTA contracts as sales-type leases under GAAP requires the Company to record revenue at the net present value of the future payments at the time customer acceptance of its installed and operating energy management system is complete, rather than deferring revenue recognition over the full term of the OTA contracts.

Throughout this Form 10-Q/A, all amounts presented from prior periods and prior period comparisons that have been revised are labeled "As Restated" and reflect the balances and amounts on a restated basis.

The specific line-item effect of the restatement on the Company's previously issued unaudited condensed consolidated financial statements as of and for the three months ended September 30, 2010 as filed on Form 10-Q on November 9, 2010 are as follows (in thousands, except share and per share data):

Consolidated Balance Sheets as of September 30, 2010

	As Previously reported	Adjustments	As Restated
Assets:			
Accounts receivable	\$ 11,589	\$ 1,792	\$ 13,381
Deferred tax assets, current	521	1,840	2,361
Prepaid expenses and other current assets	5,295	1,356	6,651
Total current assets	65,442	4,988	70,430
Property, plant and equipment	36,333	(6,020)	30,313
Deferred tax assets, long-term	3,383	(2,152)	1,231
Accounts receivable, long-term		4,603	4,603

Total assets	108,578	1,419	109,997
Liabilities and Shareholders Equity:			
Accrued Expenses	3,656	115	3,771
Deferred revenue, long-term	1,779	(630)	1,149
Shareholders equity:			
Retained deficit	(4,049)	1,934	(2,115)

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	Three months ended September 30, 2010			Six months ended September 30, 2010		
	As			As		
	Previously reported	Adjustments	As Restated	Previously reported	Adjustments	As Restated
Product revenue	\$ 12,948	\$ 2,138	\$ 15,086	\$ 26,417	\$ 4,427	\$ 30,844
Cost of product revenue	8,257	1,488	9,745	16,782	3,271	20,053
Dividend and interest income	6	147	153	16	230	246
Income tax benefit	(1,788)	96	(1,692)	(2,692)	167	(2,525)
Net income (loss)	(160)	700	540	(1,215)	1,219	4
Net income (loss) per share attributable to common shareholders basic and diluted	\$ (0.01)	\$ 0.03	\$ 0.02	\$ (0.05)	\$ 0.05	\$ 0.00
Weighted average common shares outstanding basic	22,638,638		22,638,638	22,581,188		22,581,188
Weighted average common shares outstanding diluted	22,638,638		22,901,590	22,581,188		23,007,067

Consolidated Statements of Cash Flows
Six months ended September 30, 2010

	As		
	Previously Reported	Adjustments	As Restated
Net (loss) income	\$ (1,215)	\$ 1,219	\$ 4
Depreciation and Amortization	1,994	(451)	1,543
Deferred income tax benefit	(1,337)	(37)	(1,374)
Accounts receivable	2,964	(418)	2,546
Prepaid expenses and other assets and liabilities	(1,155)	(4,308)	(5,463)
Accrued expenses	(188)	(169)	(357)
Net cash used in operating activities	(4,519)	(4,114)	(8,633)
Purchase of property and equipment	(1,955)	(2)	(1,957)
Purchase of property and equipment held under operating leases	(5,746)	4,116	(1,630)
Net cash used in investing activities	(8,147)	4,114	(4,033)

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The condensed consolidated financial statements include the accounts of Orion Energy Systems, Inc. and its wholly-owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

Reclassifications

Certain items have been reclassified from the fiscal 2010 classifications to conform to the fiscal year 2011 presentation. The reclassification had no effect on net cash provided by operating activities, total assets, net income or earnings per share.

Basis of presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States (GAAP) for interim financial information and with the rules and regulations of the Securities and Exchange Commission (SEC). Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments, consisting of normal recurring adjustments, considered necessary for a fair presentation have been included. Interim results are not necessarily indicative of results that may be expected for the year ending March 31, 2011 or other interim periods.

The condensed consolidated balance sheet at March 31, 2010 has been derived from the audited consolidated financial statements at that date but does not include all of the information required by GAAP for complete financial statements.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2010 filed with the SEC on June 14, 2010 as supplemented by the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2011 filed with the SEC on July 22, 2011 (see, in particular, Footnote B, therein).

Use of estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during that reporting period. Areas that require the use of significant management estimates include revenue recognition, inventory obsolescence, bad debt reserves, accruals for warranty expenses, income taxes and certain equity transactions. Accordingly, actual results could differ from those estimates.

Reclassification

Certain reclassifications have been made in the prior periods financial statements to conform to current period presentation.

Cash and cash equivalents

The Company considers all highly liquid, short-term investments with original maturities of three months or less to be cash equivalents.

Short-term investments available for sale

The amortized cost and fair value of marketable securities, with gross unrealized gains and losses, as of March 31, 2010 and September 30, 2010 were as follows (in thousands):

	March 31, 2010				Cash and Cash	Short Term
	Amortized	Unrealized	Unrealized	Fair	Equivalents	Investments
	Cost	Gains	Losses	Value		
Money market funds	\$ 22,297	\$	\$	\$ 22,297	\$ 22,297	\$
Bank certificates of deposit	1,000			1,000		1,000

Total \$ 23,297 \$ \$ \$ 23,297 \$ 22,297 \$ 1,000

September 30, 2010

	Amortized	Unrealized	Unrealized		Cash and	Short
	Cost	Gains	Losses	Fair	Cash	Term
				Value	Equivalents	Investments
Money market funds	\$ 484	\$	\$	\$ 484	\$ 484	\$
Bank certificate of deposit	1,007			1,007		1,007
Total	\$ 1,491	\$	\$	\$ 1,491	\$ 484	\$ 1,007

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