SUNPOWER CORP
Form 10-Q/A
May 03, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q/A
(Amendment No. 1)

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

For the quarterly period ended September 27, 2009

OR

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

For the transition period from ______________ to ______________

Commission file number 001-34166

SunPower Corporation
(Exact Name of Registrant as Specified in Its Charter)

Delaware	94-3008969
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

3939 North First Street, San Jose, California 95134
(Address of Principal Executive Offices and Zip Code)

(408) 240-5500
(Registrant’s Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 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 x 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 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ¨ 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. (Check one):

Large Accelerated Filer T Accelerated Filer o Non-accelerated filer o Smaller reporting company o
(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 Act). Yes o No T

The total number of outstanding shares of the registrant’s class A common stock as of April 23, 2010 was 55,387,562.
The total number of outstanding shares of the registrant’s class B common stock as of April 23, 2010 was 42,033,287.

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Explanatory Note

On March 19, 2010, SunPower Corporation (the "Company") filed its Annual Report on Form 10-K for the fiscal year ended January 3, 2010 (the "2009 Form 10-K"). In the 2009 Form 10-K, the Company restated (a) its consolidated financial statements as of and for the year ended December 28, 2008 and consolidated financial data for each of the quarterly periods for the year then ended as well as for the first three quarterly periods in the year ended January 3, 2010, and (b) the Selected Financial Data in Item 6 as of and for the year ended December 28, 2008. These restatements corrected misstatements identified through an independent investigation into certain unsubstantiated accounting entries on the books of our Company's Philippines operations, as well as other errors identified by the Audit Committee's investigation and by management and out-of-period adjustments. For a more detailed explanation of the investigation and these restatements, please see Part I — "Item 1: Financial Statements and Supplementary Data — Note 2 of Notes to Condensed Consolidated Financial Statements" and "Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations — Restatement of Previously Issued Condensed Consolidated Financial Statements" in this report and Part II — "Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations — Restatement of Previously Issued Consolidated Financial Statements" and "Item 8: Financial Statements and Supplementary Data — Note 2 of Notes to Consolidated Financial Statements" in the 2009 Form 10-K.

The Company initially filed its Quarterly Report on Form 10-Q for the period ended September 27, 2009 on November 2, 2009 ("September 2009 Form 10-Q"). In this amendment to the September 2009 Form 10-Q (this "Amendment"), the Company is presenting restated condensed consolidated financial statements for the third quarter ended September 27, 2009 and September 28, 2008 (the "Restated Periods"). These restated financial statements reflect corrections of misstatements identified through the independent investigation referred to above, other errors identified by the investigation and by management and out-of-period adjustments. The following items of the September 2009 Form 10-Q are being amended in this Amendment:

- Part I – "Item 1: Financial Statements"
- Part I – "Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations"
- Part I – "Item 4: Controls and Procedures"
- Part II – "Item 6: Exhibits"

In accordance with SEC regulations, new certifications of the Company's Chief Executive Officer and Chief Financial Officer were executed in connection with this Amendment and have been filed as exhibits to this Amendment. No other items included in the September 2009 Form 10-Q have been amended in this Amendment, and such items remain in effect as of November 2, 2009.

The Company believes that presenting this information regarding the Restated Periods in this Amendment allows investors to review the restated financial statements and related information for the Restated Periods in more detail. The Company has not filed an amendment to its Quarterly Report on Form 10-Q for the quarter ended September 28, 2008. Accordingly, investors should not rely on the financial information and other disclosures in the Quarterly Report on Form 10-Q for the period ended September 28, 2008, but should refer to the restated condensed consolidated financial statements for the quarter ended September 28, 2008 included in this Amendment.

This Amendment should be read in conjunction with the 2009 Form 10-K and the other filings made by the Company with the Securities and Exchange Commission ("SEC") subsequent to the filing of the 2009 Form 10-K.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

SunPower Corporation

Condensed Consolidated Balance Sheets
(In thousands, except share data)
(unaudited)

	September 27, 2009	December 28, 2008 (1) (As Restated)
Assets		
Current assets:		
Cash and cash equivalents	$ 472,126	$ 202,331
Restricted cash and cash equivalents, current portion	77,088	13,240
Short-term investments	796	17,179
Accounts receivable, net	243,528	194,222
Costs and estimated earnings in excess of billings	73,519	29,750
Inventories	229,062	248,255
Advances to suppliers, current portion	22,421	43,190
Prepaid expenses and other current assets	108,750	101,735
Total current assets	1,227,290	849,902
Restricted cash and cash equivalents, net of current portion	243,700	162,037
Long-term investments	8,426	23,577
Property, plant and equipment, net	684,552	622,484
Goodwill	198,329	196,720
Other intangible assets, net	29,115	39,490
Advances to suppliers, net of current portion	115,136	119,420
Other long-term assets	82,901	69,116
Total assets	$ 2,589,449	$ 2,082,746
Liabilities and Stockholders’ Equity		
Current liabilities:		
Accounts payable	$ 238,744	$ 259,429
Accrued liabilities	123,777	136,116
Billings in excess of costs and estimated earnings	17,484	15,634
Short-term debt	3,750	—
Convertible debt, current portion	135,518	—
Customer advances, current portion	22,406	19,035
Total current liabilities	541,679	430,214
Long-term debt	188,915	54,598
Convertible debt, net of current portion	395,438	357,173
Customer advances, net of current portion	74,736	91,359
Long-term deferred tax liability	7,820	6,493
Other long-term liabilities	53,054	44,222

Total liabilities	1,261,642	984,059
Commitments and contingencies (Note 11)		
Stockholders' equity:		
Preferred stock, $0.001 par value, 10,042,490 shares authorized; none issued and outstanding	—	—
Common stock, $0.001 par value, 150,000,000 shares of class B common stock authorized; 42,033,287 shares of class B common stock issued and outstanding; $0.001 par value, 217,500,000 shares of class A common stock authorized; 55,186,633 and 44,055,644 shares of class A common stock issued; 54,858,480 and 43,849,566 shares of class A common stock outstanding, at September 27, 2009 and December 28, 2008, respectively	97	86
Additional paid-in capital	1,279,266	1,064,916
Accumulated other comprehensive loss	(31,644)	(25,611)
Retained earnings	92,453	67,953
	1,340,172	1,107,344
Less: shares of class A common stock held in treasury, at cost; 328,153 and 206,078 shares at September 27, 2009 and December 28, 2008, respectively	(12,365)	(8,657)
Total stockholders' equity	1,327,807	1,098,687
Total liabilities and stockholders' equity	$ 2,589,449	$ 2,082,746

(1) As adjusted to reflect the adoption of new accounting guidance for convertible debt instruments that may be settled in cash upon conversion (see Note 1).

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

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SunPower Corporation

Condensed Consolidated Statements of Operations
(In thousands, except per share data)
(unaudited)

	Three Months Ended September 27, 2009	Three Months Ended September 28, 2008 (1) (As Restated)	Nine Months Ended September 27, 2009	Nine Months Ended September 28, 2008 (1) (As Restated)
Revenue:				
Systems	$ 167,466	$ 198,291	$ 381,840	$ 648,331
Components	297,895	184,170	594,505	391,178
Total revenue	465,361	382,461	976,345	1,039,509
Operating costs and expenses:				
Cost of systems revenue	142,070	163,028	333,430	520,022
Cost of components revenue	223,461	117,219	470,172	281,613
Research and development	8,250	6,049	23,067	15,504
Sales, general and administrative	45,332	46,075	130,511	123,141
Total operating costs and expenses	419,113	332,371	957,180	940,280
Operating income	46,248	50,090	19,165	99,229
Other income (expense):				
Interest income	—	2,650	1,949	9,086
Interest expense	(9,854)	(5,344)	(25,503)	(17,139)
Gain on purchased options	—	—	21,193	—
Other, net	585	(5,691)	(3,765)	(8,546)
Other income (expense), net	(9,269)	(8,385)	(6,126)	(16,599)
Income before income taxes and equity in earnings of unconsolidated investees	36,979	41,705	13,039	82,630
Income tax provision (benefit)	19,962	21,412	(4,457)	27,368
Income before equity in earnings of unconsolidated investees	17,017	20,293	17,496	55,262
Equity in earnings of unconsolidated investees	2,627	2,830	7,005	5,806
Net income	$ 19,644	$ 23,123	$ 24,501	$ 61,068
Net income per share of class A and class B common stock:				
Basic	$ 0.21	$ 0.28	$ 0.27	$ 0.76
Diluted	$ 0.20	$ 0.27	$ 0.27	$ 0.72
Weighted-average shares:				
Basic	94,668	80,465	89,764	79,614
Diluted	105,031	84,064	91,513	83,477

(1) As adjusted to reflect the adoption of new accounting guidance for both convertible debt instruments that may be settled in cash upon conversion and unvested share-based payment awards that contain rights to nonforfeitable dividends that are participating securities (see Note 1).

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

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Condensed Consolidated Statements of Cash Flows
(In thousands)
(unaudited)

	Nine Months Ended	
	September 27, 2009	September 28, 2008(1) (As Restated)
Cash flows from operating activities:		
Net income	$ 24,501	$ 61,068
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock-based compensation	34,204	52,026
Depreciation	60,348	36,097
Amortization of other intangible assets	12,296	12,552
Impairment of investments and long-lived assets	1,997	3,136
Non-cash interest expense	16,186	12,717
Amortization of debt issuance costs	2,454	1,611
Gain on purchased options	(21,193)	—
Equity in earnings of unconsolidated investees	(7,005)	(5,806)
Excess tax benefits from stock-based award activity	(7,127)	(28,607)
Deferred income taxes and other tax liabilities	(14,760)	25,830
Changes in operating assets and liabilities, net of effect of acquisitions:		
Accounts receivable	(43,285)	(55,324)
Costs and estimated earnings in excess of billings	(41,992)	(21,613)
Inventories	27,776	(35,429)
Prepaid expenses and other assets	(6,615)	(27,127)
Advances to suppliers	25,174	19,102
Accounts payable and other accrued liabilities	(13,142)	76,638
Billings in excess of costs and estimated earnings	1,049	(59,096)
Customer advances	(13,639)	45,884
Net cash provided by operating activities	37,227	113,659
Cash flows from investing activities:		
Increase in restricted cash and cash equivalents	(145,583)	(42,153)
Purchases of property, plant and equipment	(149,624)	(150,742)
Proceeds from sale of equipment to third-party	9,878	—
Purchases of available-for-sale securities	—	(65,748)
Proceeds from sales or maturities of available-for-sale securities	29,545	133,948
Cash paid for acquisitions, net of cash acquired	—	(18,311)
Cash paid for investments in joint ventures and other non-public companies	(1,500)	(24,625)
Net cash used in investing activities	(257,284)	(167,631)
Cash flows from financing activities:		
Proceeds from issuance of long-term debt, net of issuance costs	137,735	—
Proceeds from issuance of convertible debt, net of issuance costs	225,018	—
Proceeds from offering of class A common stock, net of offering expenses	218,781	—
Cash paid for repurchase of convertible debt	(75,636)	—
Cash paid for purchased options	(97,336)	—

Proceeds from warrant transactions	71,001	—
Proceeds from exercises of stock options	1,408	3,786
Excess tax benefits from stock-based award activity	7,127	28,607
Purchases of stock for tax withholding obligations on vested restricted stock	(3,708)	(5,853)
Net cash provided by financing activities	484,390	26,540
Effect of exchange rate changes on cash and cash equivalents	5,462	(1,166)
Net increase (decrease) in cash and cash equivalents	269,795	(28,598)
Cash and cash equivalents at beginning of period	202,331	285,214
Cash and cash equivalents at end of period	$ 472,126	$ 256,616
Non-cash transactions:		
Additions to property, plant and equipment included in accounts payable and other accrued liabilities	$ —	$ 45,154
Non-cash interest expense capitalized and added to the cost of qualified assets	4,456	6,367
Issuance of common stock for purchase acquisition	1,471	3,054
Change in goodwill relating to adjustments to acquired net assets	—	231

(1) As adjusted to reflect the adoption of new accounting guidance for convertible debt instruments that may be settled in cash upon conversion (see Note 1).

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

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Notes to Condensed Consolidated Financial Statements
(unaudited)

Note 1. THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company

SunPower Corporation (together with its subsidiaries, the “Company” or “SunPower”) designs, manufactures and markets high-performance solar electric power technologies. The Company’s solar cells and solar panels are manufactured using proprietary processes, and its technologies are based on more than 15 years of research and development. The Company operates in two business segments: systems and components. The Systems Segment generally represents sales directly to system owners of engineering, procurement, construction and other services relating to solar electric power systems that integrate the Company’s solar panels and balance of systems components, as well as materials sourced from other manufacturers. The Components Segment primarily represents sales of the Company’s solar panels and inverters to solar systems installers and other resellers, including the Company’s third-party global dealer network.

The Company was a majority-owned subsidiary of Cypress Semiconductor Corporation (“Cypress”) through September 29, 2008. After the close of trading on September 29, 2008, Cypress completed a spin-off of all of its shares of the Company’s class B common stock in the form of a pro rata dividend to the holders of Cypress common stock of record as of September 17, 2008. As a result, the Company’s class B common stock trades publicly and is listed on the Nasdaq Global Select Market, along with the Company’s class A common stock.

On May 4, 2009, the Company completed a public offering of 10.35 million shares of its class A common stock, at a per share price of $22.00, and received net proceeds of $218.8 million. Also on May 4, 2009, the Company issued $230.0 million in principal amount of its 4.75% senior convertible debentures (“4.75% debentures”) and received net proceeds, before payment of the net cost of the call spread overlay, of $225.0 million. Concurrent with the issuance of the 4.75% debentures, the Company paid a net cost of $26.3 million for the call spread overlay with respect to the Company’s class A common stock which are intended to effectively increase the conversion price of the 4.75% debentures (see Note 13).

Recently Adopted Accounting Guidance

Accounting Standards Codification (“ASC” or the “Codification”)

In June 2009, the Financial Accounting Standards Board (“FASB”) issued the Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles (“GAAP”) which became the single source of authoritative, nongovernmental GAAP in the United States, except for rules and interpretive releases of the Securities and Exchange Commission (“SEC”), which are additional sources of authoritative GAAP for SEC registrants. The Codification did not change GAAP, but it introduced a new indexing structure for GAAP literature that is organized by topic in an online research system. Adoption of the Codification in the third quarter of fiscal 2009 had no impact on the Company’s condensed consolidated financial statements.

Convertible Debt

On December 29, 2008, the start of its 2009 fiscal year, the Company adopted new accounting guidance for convertible debt instruments that may be settled in cash upon conversion, which requires recognition of both the liability and equity components of convertible debt instruments with cash settlement features. The debt component is required to be recognized at the fair value of a similar debt instrument that does not have an associated equity component. The equity component is recognized as the difference between the proceeds from the issuance of the convertible debt and the fair value of the liability, after adjusting for the deferred tax impact. The new accounting guidance also requires an accretion of the resulting debt discount over the expected life of the convertible debt. The new accounting guidance was required to be applied retrospectively to prior periods and, accordingly, financial statements for prior periods have been adjusted to reflect its adoption.

In February 2007, the Company issued $200.0 million in principal amount of its 1.25% senior convertible debentures (“1.25% debentures”). In July 2007, the Company issued $225.0 million in principal amount of its 0.75% senior convertible debentures (“0.75% debentures”). The 1.25% debentures and the 0.75% debentures contain partial cash settlement features and are therefore subject to the aforementioned new accounting guidance. As a result, the carrying value of the equity and debt components was retrospectively adjusted. As of December 28, 2008, the carrying value of the equity component was $61.8 million in the aggregate and the principal amount of the outstanding debentures, the unamortized discount and the net carrying value were $423.6 million, $66.4 million and $357.2 million in the aggregate, respectively (see Note 13). On a cumulative basis from the respective issuance dates of the 1.25% debentures and the 0.75% debentures through December 28, 2008, the Company has recognized $24.4 million in non-cash interest expense, excluding the related tax effects.

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As a result of the Company's adoption of the new accounting guidance, the Company's Condensed Consolidated Balance Sheet as of December 28, 2008 has been adjusted. The impact of the Company's adoption of the new accounting guidance on its Condensed Consolidated Balance Sheet as of December 28, 2008 is shown in its Annual Report on Form 10-K for the year ended January 3, 2010 (the "2009 Form 10-K").

As a result of the Company's adoption of the new accounting guidance, the Company's Condensed Consolidated Statements of Operations for the three and nine months ended September 28, 2008 have been adjusted as follows:

(In thousands)	Three Months Ended		Nine Months Ended	
	As Adjusted in this Quarterly Report on Form 10-Q/A	Prior to Retrospective Application of New Accounting Guidance	As Adjusted in this Quarterly Report on Form 10-Q/A	Prior to Retrospective Application of New Accounting Guidance
Cost of systems revenue	$ 163,028	$ 162,929	$ 520,022	$ 519,786
Cost of components revenue	117,219	117,010	281,613	281,226
Operating income	50,090	50,398	99,229	99,852
Interest expense	(5,344)	(1,012)	(17,139)	(3,288)
Other, net	(5,691)	(5,692)	(8,546)	(9,519)
Income before income taxes and equity in earnings of unconsolidated investees	41,705	46,344	82,630	96,131
Income tax provision	21,412	29,353	27,368	45,980
Income before equity in earnings of unconsolidated investees	20,293	16,991	55,262	50,169
Net income	23,123	19,821	61,068	55,975

As a result of the Company's adoption of the new accounting guidance, the Company's Condensed Consolidated Statement of Cash Flows for the nine months ended September 28, 2008 has been adjusted as follows:

(In thousands)	As Adjusted in this Quarterly Report on Form 10-Q/A	Prior to Retrospective Application of New Accounting Guidance
Cash flows from operating activities:		
Net income	$ 61,068	$ 55,975
Depreciation	36,097	35,951
Non-cash interest expense	12,717	—
Amortization of debt issuance costs	1,611	972
Deferred income taxes and other tax liabilities	25,830	44,425
Net cash provided by operating activities	113,659	113,659

Earnings Per Share

On December 29, 2008, the Company adopted accounting guidance which clarifies that all outstanding unvested stock-based payment awards that contain rights to nonforfeitable dividends are considered participating securities for the purpose of calculating earnings per share and are subject to the two-class method. In fiscal 2007, the Company granted restricted stock awards with the same dividend rights as its other common stockholders. These unvested restricted stock awards are considered participating securities and the two-class method of computing basic and diluted earnings per share must be applied (see Note 17). Stock-based awards granted subsequent to fiscal 2007 do not contain nonforfeitable dividend rights and are not considered participating securities. The new accounting guidance was applied retrospectively to the Company's historical results of operations and, as a result, the Company's Condensed Consolidated Statements of Operations for the three and nine months ended September 28, 2008 have been adjusted as follows:

(In thousands, except per share data)	Three Months Ended		Nine Months Ended	
	As Adjusted in this Quarterly Report on Form 10-Q/A	Prior to Retrospective Application of New Accounting Guidance	As Adjusted in this Quarterly Report on Form 10-Q/A	Prior to Retrospective Application of New Accounting Guidance
Net income	$ 23,123	$ 19,821	$ 61,068	$ 55,975
Net income per share of class A and class B common stock:				
Basic	$ 0.28	$ 0.25	$ 0.76	$ 0.70
Diluted	$ 0.27	$ 0.23	$ 0.72	$ 0.67
Weighted-average shares:				
Basic	80,465	80,465	79,614	79,614
Diluted	84,064	84,488	83,477	84,061

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Disclosures about Derivative Instruments and Hedging Activities

On December 29, 2008, the Company adopted new accounting guidance which requires entities to provide enhanced disclosures addressing the following: (a) how and why an entity uses derivative instruments; (b) how derivative instruments and related hedged items are accounted for and related interpretations; and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. The new accounting guidance had no impact on the Company's condensed consolidated financial statements and only required additional financial statement disclosures as set forth in Note 15.

Fair Value of Assets and Liabilities

During the first quarter of fiscal 2009, the Company adopted accounting guidance for nonfinancial assets and liabilities that are not measured and recorded at fair value on a recurring basis. The adoption of this accounting guidance had no impact on the Company's condensed consolidated financial statements.

In April 2009, the FASB issued additional accounting guidance on how to determine fair value of financial assets and liabilities when the volume and level of activity for an asset or liability have significantly decreased and how to identify transactions that are not orderly in light of the current economic environment. If the Company were to conclude that there has been a significant decrease in the volume and level of activity of an asset or liability in relation to normal market activities, quoted market values may not be representative of fair value and the Company may conclude that a change in valuation technique or the use of multiple valuation techniques may be appropriate. The accounting guidance also clarified the recognition and presentation of other-than-temporary impairments of securities to bring consistency to the timing of impairment recognition, and provide clarity to investors about the credit and noncredit components of impaired debt securities that are not expected to be sold. In addition, the accounting guidance required disclosures about fair value of financial instruments in annual financial statements of publicly traded companies to also be disclosed during interim reporting periods. The Company's adoption of the accounting guidance in the second quarter of fiscal 2009 had no impact on the Company's condensed consolidated financial statements and only required additional financial statement disclosures (see Notes 3, 7 and 9).

Business Combinations

On December 29, 2008, the Company adopted new accounting guidance which significantly changed the accounting for business combinations in a number of areas including the treatment of contingent consideration, acquisition costs, in-process research and development and restructuring costs. In addition, changes in deferred tax asset valuation allowances and acquired income tax uncertainties in a business combination after the measurement period affect income tax expense under the new accounting guidance. As a result of the Company's adoption of the new accounting guidance, the Company reflected an asset for in-process research and development of $1.0 million in connection with its acquisition of Tilt Solar LLC ("Tilt Solar") during the second quarter of fiscal 2009 which would have been expensed under previous accounting guidance (see Note 6).

In April 2009, the FASB issued new accounting guidance for the initial recognition and measurement, subsequent measurement and accounting, and disclosures for assets and liabilities arising from contingencies in business combinations. The new accounting guidance eliminates the distinction between contractual and non-contractual contingencies. The Company's adoption of the new accounting guidance for contingent assets and liabilities acquired in business combinations during the first quarter of fiscal 2009 had no impact on its condensed consolidated financial statements.

Subsequent Events

In May 2009, the FASB issued new accounting guidance which established general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. The new accounting guidance requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for selecting that date, that is, whether that date represents the date the financial statements were issued or were available to be issued. The Company’s adoption of this accounting guidance in the second quarter of fiscal 2009 had no impact on its condensed consolidated financial statements and only required additional financial statement disclosures. The Company evaluated subsequent events through November 2, 2009, the date this Quarterly Report on Form 10-Q was filed.

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Issued Accounting Guidance Not Yet Adopted

With the exception of those discussed below, there has been no issued accounting guidance not yet adopted by the Company that it believes is of significance, or of potential significance.

Share Lending Arrangements

In June 2009, the FASB issued new accounting guidance that will change how companies account for share lending arrangements that are executed in connection with convertible debt offerings or other financings. The new accounting guidance requires all such share lending arrangements to be valued and amortized to interest expense in the same manner as debt issuance costs. As a result of the new accounting guidance, existing share lending arrangements relating to the Company’s class A common stock will be required to be measured at fair value and amortized to interest expense in its consolidated financial statements. In addition, in the event that counterparty default pursuant to the share lending agreement becomes probable, the Company will be required to recognize an expense equal to the then fair value of the unreturned loaned shares, net of any probable recoveries. The new accounting guidance is effective for fiscal years beginning after December 15, 2009 (the Company’s first quarter of fiscal 2010) and retrospective adoption is required for all periods presented.

In connection with the issuance of the 1.25% debentures and 0.75% debentures, the Company loaned approximately 2.9 million shares of its class A common stock to Lehman Brothers International (Europe) Limited (“LBIE”) and approximately 1.8 million shares of its class A common stock to Credit Suisse International (“CSI”) under share lending arrangements. The new accounting guidance will result in higher non-cash amortization of imputed share lending costs in current and prior periods, as well as a material non-cash loss resulting from Lehman Brothers Holding Inc. (“Lehman”) filing of a petition for protection under Chapter 11 of the U.S. bankruptcy code on September 15, 2008, and LBIE commencing administration proceedings (analogous to bankruptcy) in the United Kingdom. The then fair value of the approximately 2.9 million shares of the Company’s class A common stock loaned and unreturned by LBIE is approximately $241 million, which will be expensed retrospectively in the third quarter of fiscal 2008, before consideration of any potential recoveries and related tax effects. The Company is currently determining the full impact that the January 2010 adoption of this new accounting guidance will have on its current and prior-period’s consolidated financial statements.

Variable Interest Entities

In June 2009, the FASB issued new accounting guidance regarding consolidation of variable interest entities to eliminate the exemption for qualifying special purpose entities, provide a new approach for determining which entity should consolidate a variable interest entity, and require an enterprise to regularly perform an analysis to determine whether the enterprise’s variable interest or interests give it a controlling financial interest in a variable interest entity. The new accounting guidance is effective for fiscal years beginning after November 15, 2009 and earlier application is prohibited. The Company is currently evaluating the potential impact of the adoption of the new accounting guidance on its condensed consolidated financial statements.

Revenue Arrangements with Multiple Deliverables

In October 2009, the FASB issued new accounting guidance for revenue arrangements with multiple deliverables. Specifically, the new guidance requires an entity to allocate arrangement consideration at the inception of an arrangement to all of its deliverables based on their relative selling prices. In addition, the new guidance eliminates the use of the residual method of allocation and requires the relative-selling-price method in all circumstances in which an entity recognizes revenue for an arrangement with multiple deliverables. The new accounting guidance is effective in the fiscal year beginning on or after June 15, 2010. Early adoption is permitted. The Company plans to adopt the new accounting guidance in the first quarter of fiscal 2010 and apply the prospective application for new or materially modified arrangements with multiple deliverables. The Company does not anticipate the adoption of the new accounting guidance to have a material impact on its condensed consolidated financial statements.

Fiscal Years

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Fiscal year 2009 consists of 53 weeks while fiscal year 2008 consists of 52 weeks. The third quarter of fiscal 2009 ended on September 27, 2009 and the third quarter of fiscal 2008 ended on September 28, 2008.

Basis of Presentation

The accompanying condensed consolidated interim financial statements have been prepared pursuant to the rules and regulations of the SEC regarding interim financial reporting and include the accounts of the Company and all of its subsidiaries. Intercompany transactions and balances have been eliminated in consolidation. The year-end Condensed Consolidated Balance Sheet data was derived from audited financial statements as adjusted for the Company's adoption of new accounting guidance for convertible debt instruments that may be settled in cash upon conversion discussed above. Accordingly, these financial statements do not include all of the information and footnotes required by GAAP for complete financial statements and should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 28, 2008.

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The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("United States" or "U.S.") requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates in these financial statements include percentage-of-completion for construction projects, allowances for doubtful accounts receivable and sales returns, inventory write-downs, estimates for future cash flows and economic useful lives of property, plant and equipment, goodwill, other intangible assets and other long-term assets, asset impairments, valuation of auction rate securities, investments in joint ventures, certain accrued liabilities including accrued warranty reserves, valuation of debt without the conversion feature, income taxes and tax valuation allowances. Actual results could materially differ from those estimates.

In the opinion of management, the accompanying condensed consolidated interim financial statements contain all adjustments, consisting only of normal recurring adjustments, which the Company believes are necessary for a fair statement of the Company’s financial position as of September 27, 2009 and its results of operations for the three and nine months ended September 27, 2009 and September 28, 2008 and its cash flows for the nine months ended September 27, 2009 and September 28, 2008. These condensed consolidated interim financial statements are not necessarily indicative of the results to be expected for the entire year.

Note 2. RESTATEMENT OF PREVIOUSLY ISSUED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

On November 16, 2009, the Company announced that its Audit Committee commenced an independent investigation into certain accounting and financial reporting matters at the Company’s Philippines operations (“SPML”). The Audit Committee retained independent counsel, forensic accountants and other experts to assist it in conducting the investigation.

As a result of the investigation, the Audit Committee concluded that certain unsubstantiated accounting entries were made at the direction of the Philippines-based finance personnel in order to report results for manufacturing operations that would be consistent with internal expense projections. The entries generally resulted in an understatement of the Company’s cost of goods sold (referred to as “cost of revenue” in the Condensed Consolidated Statement of Operations). The Audit Committee concluded that the efforts were not directed at achieving the Company’s overall financial results or financial analysts’ projections of the Company’s financial results. The Audit Committee also determined that these accounting issues were confined to the accounting function in the Philippines. Finally, the Audit Committee concluded that executive management neither directed nor encouraged, nor was aware of, these activities and was not provided with accurate information concerning the unsubstantiated entries. In addition to the unsubstantiated entries, during the Audit Committee investigation various accounting errors were discovered by the investigation and by management. See Part I — “Item 4: Controls and Procedures” of this report.

The nature of the restatement adjustments and the impact of the adjustments for the three and nine months ended September 27, 2009 and September 28, 2008 are shown in the following table (in thousands):

	Three Months Ended		Nine Months Ended	
	September 27, 2009	September 28, 2008	September 27, 2009	September 28, 2008 (1)
Investigation related adjustments	$ 5,005	$ (2,881)	$ (12,414)	$ (9,114)
Errors identified during course of investigation	6,577	(5,894)	(7,485)	(9,908)
	11,582	(8,775)	(19,899)	(19,022)
Out-of-period adjustments	105	6,773	(2,853)	8,346
Total adjustments	11,687	(2,002)	(22,752)	(10,676)

Income tax effect of adjustments		(4,874)		444		15,037		3,907
Increase (decrease) in net income	$	6,813	$	(1,558)	$	(7,715)	$	(6,769)

(1) Includes the correction of errors identified that occurred in fiscal 2007 and 2006 that were determined to be immaterial both individually and in the aggregate to those years. Consequently, a total of approximately $0.6 million and $0.5 million of pre-tax expense and after tax expense, respectively, identified in fiscal 2007 were recorded in the three months ended March 30, 2008 as well as a total of approximately $0.4 million of both pre-tax income and after tax income identified in fiscal 2006 were recorded in the three months ended March 30, 2008.

Investigation Related Adjustments:

As noted above, the Audit Committee's investigation found that unsubstantiated entries (a) were made at the direction of the Philippines-based finance personnel in order to report results for manufacturing operations that would be consistent with internal expense projections, (b) generally resulted in an understatement of the Company's cost of goods sold, and (c) were not directed or encouraged by or done with the knowledge of, executive management. During the course of the investigation, various accounting errors which required adjustments were also identified. Adjustments for these unsubstantiated entries and errors affected cost of goods sold and the following balance sheet accounts:

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Ÿ Accounts payable and accrued liabilities: The investigation found that certain expenses were understated by (a) not sufficiently accruing expenses or (b) reversing previously recorded expenses through manual journal entries that were not based on actual transactions or reasonable estimates of expenses. The accounts primarily affected were accruals for manufacturing expenses such as subcontracted wafering costs, electricity, and freight and other accrued expenses. Unsubstantiated entries were also recorded to reduce uninvoiced receipts liability accounts, with an offsetting reduction to cost of goods sold.

Ÿ Inventories: The investigation found that unsubstantiated entries were made to increase inventory and decrease cost of goods sold by adjusting variance capitalization amounts. In addition, inventory obsolescence was understated for materials used in-house by wafering services of silicon ingots.

Errors Identified during Course of Investigation:

Through the investigation, errors were also found in the Philippines relating to inventories, prepaid expenses and other current assets, property, plant and equipment, and accounts payable and accrued liabilities. The primary categories of these adjustments are discussed below:

Ÿ Inventories: The Company recorded corrections related to accounting for inventories in-transit and scrap, as well as the methodology used to calculate the capitalization of inventory variances.

Ÿ Prepaid expenses and other current assets: Certain foreign individual income tax filings prepared for employees on foreign assignments contained omissions of taxable income. The amount of the estimated tax understatement plus interest and penalties less any employee receivables generated by the filing of amended returns has been included in the restated financials.

Ÿ Property plant and equipment: In some instances, depreciation expense was not recorded in the proper period.

Ÿ Accounts payable and accrued liabilities: Vendor credits were not properly applied and certain employee bonuses were not correctly accrued.

Out-Of-Period Adjustments:

The Company also recorded out-of-period adjustments during the restatement periods that were previously considered to be immaterial. These adjustments related to systems revenue, inventories, accounts payable and accruals and stock-based compensation. As part of the restatement these adjustments have now been reflected in the quarterly period in which a substantial portion of the errors arose. The primary categories of these adjustments are discussed below:

Ÿ Systems revenue: The Company determined it had improperly deferred revenue earned in 2008 due to the improper application of multiple element accounting. In addition, the Company recorded revenue adjustments for several solar system contracts in 2008 for which costs to complete had not been properly estimated. Also, the Company incorrectly recorded a materials-only sale using the percentage-of-completion method.

Ÿ Inventories: Various inventory adjustments were the result of the improper accounting for consigned inventory, in-transit inventories, and standard costing.

Ÿ Accounts payable and accruals: The Company noted several under and over accruals of operating expenses.

Ÿ

Stock based compensation: The Company determined it had recorded excess stock based compensation expense due to a spreadsheet error.

Ÿ The Company has also made some minor revisions to disclosures in connection with this Amendment.

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The table below summarizes: (i) the adjustments related to the investigation; (ii) errors identified during the course of the investigation; and (iii) out-of-period adjustments on the Condensed Consolidated Balance Sheet as of September 27, 2009.

	September 27, 2009		
	As Previously Reported (1)	Restatement Adjustments	As Restated
Assets			
Current assets:			
Cash and cash equivalents	$ 472,126	$ -	$ 472,126
Restricted cash and cash equivalents, current portion	77,088	-	77,088
Short-term investments	796	-	796
Accounts receivable, net	243,528	-	243,528
Costs and estimated earnings in excess of billings	73,519	-	73,519
Inventories	239,211	(10,149)	229,062
Advances to suppliers, current portion	22,718	(297)	22,421
Prepaid expenses and other current assets	107,294	1,456	108,750
Total current assets	1,236,280	(8,990)	1,227,290
Restricted cash and cash equivalents, net of current portion	243,700	-	243,700
Long-term investments	8,426	-	8,426
Property, plant and equipment, net	695,409	(10,857)	684,552
Goodwill	198,329	-	198,329
Other intangible assets, net	29,115	-	29,115
Advances to suppliers, net of current portion	115,136	-	115,136
Other long-term assets	89,836	(6,935)	82,901
Total assets	$ 2,616,231	$ (26,782)	$ 2,589,449
Liabilities and Stockholders' Equity			
Current liabilities:			
Accounts payable	$ 232,547	$ 6,197	$ 238,744
Accrued liabilities	127,548	(3,771)	123,777
Billings in excess of costs and estimated earnings	17,484	-	17,484
Short-term debt	3,750	-	3,750
Convertible debt, current portion	135,518	-	135,518
Customer advances, current portion	22,406	-	22,406
Total current liabilities	539,253	2,426	541,679
Long-term debt	188,915	-	188,915
Convertible debt, net of current portion	395,438	-	395,438
Customer advances, net of current portion	74,736	-	74,736
Long-term deferred tax liability	9,468	(1,648)	7,820
Other long-term liabilities	54,795	(1,741)	53,054
Total liabilities	1,262,605	(963)	1,261,642
Commitments and contingencies			
Stockholders' equity:			
	-	-	-

Preferred stock, $0.001 par value, 10,042,490 shares authorized; none issued and outstanding			
Common stock, $0.001 par value, 150,000,000 shares of class B common stock authorized; 42,033,287 shares of class B common stock issued and outstanding; $0.001 par value, 217,500,000 shares of class A common stock authorized; 55,186,633 shares of class A common stock issued; 54,858,480 shares of class A common stock outstanding	97	-	97
Additional paid-in capital	1,287,711	(8,445)	1,279,266
Accumulated other comprehensive loss	(31,644)	-	(31,644)
Retained earnings	109,827	(17,374)	92,453
	1,365,991	(25,819)	1,340,172
Less: 328,153 shares of class A common stock held in treasury, at cost	(12,365)	-	(12,365)
Total stockholders' equity	1,353,626	(25,819)	1,327,807
Total liabilities and stockholders' equity	$ 2,616,231	$ (26,782)	$ 2,589,449

(1) Certain short-term warranty reserves have been revised to long-term warranty reserves to conform to the presentation in the Company's Condensed Consolidated Balance Sheets in the 2009 Form 10-K.

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The table below summarizes: (i) the adjustments related to the investigation; (ii) errors identified during the course of the investigation; and (iii) out-of-period adjustments on the Condensed Consolidated Statement of Operations for the three and nine months ended September 27, 2009.

	Three Months Ended September 27, 2009			Nine Months Ended September 27, 2009		
	As Previously Reported	Restatement Adjustments	As Restated	As Previously Reported	Restatement Adjustments	As Restated
Revenue:						
Systems	$ 168,412	$ (946)	$ 167,466	$ 383,233	$ (1,393)	$ 381,840
Components	297,895	-	297,895	594,505	-	594,505
Total revenue	466,307	(946)	465,361	977,738	(1,393)	976,345
Operating costs and expenses:						
Cost of systems revenue	144,859	(2,789)	142,070	325,003	8,427	333,430
Cost of components revenue	232,164	(8,703)	223,461	457,240	12,932	470,172
Research and development	8,250	-	8,250	23,067	-	23,067
Selling, general and administrative	46,473	(1,141)	45,332	130,511	-	130,511
Total operating costs and expenses	431,746	(12,633)	419,113	935,821	21,359	957,180
Operating income	34,561	11,687	46,248	41,917	(22,752)	19,165
Other income (expense)						
Interest income	-	-	-	1,949	-	1,949
Interest expense	(9,854)	-	(9,854)	(25,503)	-	(25,503)
Gain on purchased options	-	-	-	21,193	-	21,193
Other, net	585	-	585	(3,765)	-	(3,765)
Other income (expense), net	(9,269)	-	(9,269)	(6,126)	-	(6,126)
Income before income taxes and equity in earnings of unconsolidated investees	25,292	11,687	36,979	35,791	(22,752)	13,039
Provision for (benefit from) income taxes	15,088	4,874	19,962	10,580	(15,037)	(4,457)
Income before equity in earnings of unconsolidated investees	10,204	6,813	17,017	25,211	(7,715)	17,496
Equity in earnings of unconsolidated investees	2,627	-	2,627	7,005	-	7,005
Net income	$ 12,831	$ 6,813	$ 19,644	$ 32,216	$ (7,715)	$ 24,501
Net income per share of class A and class B common stock:						
Basic	$ 0.14	$ 0.07	$ 0.21	$ 0.36	$ (0.09)	$ 0.27
Diluted	$ 0.13	$ 0.07	$ 0.20	$ 0.35	$ (0.08)	$ 0.27
Weighted-average shares:						
Basic	94,668		94,668	89,764		89,764
Diluted	96,319		105,031	91,513		91,513

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The table below summarizes: (i) the adjustments related to the investigation; (ii) errors identified during the course of the investigation; and (iii) out-of-period adjustments on the Condensed Consolidated Statement of Comprehensive Income for the three and nine months ended September 27, 2009.

	Three Months Ended September 27, 2009			Nine Months Ended September 27, 2009		
	As Previously Reported	Restatement Adjustments	As Restated	As Previously Reported	Restatement Adjustments	As Restated
Net income	$ 12,831	$ 6,813	$ 19,644	$ 32,216	$ (7,715)	$ 24,501
Other comprehensive income:						
Translation adjustment	4,124	-	4,124	(9,934)	-	(9,934)
Unrealized gain on derivatives, net of tax	327	-	327	3,893	-	3,893
Unrealized gain on investments, net of tax	-	-	-	8	-	8
Total comprehensive income	$ 17,282	$ 6,813	$ 24,095	$ 26,183	$ (7,715)	$ 18,468

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The table below summarizes: (i) the adjustments related to the investigation; (ii) errors identified during the course of the investigation; and (iii) out-of-period adjustments on the Condensed Consolidated Statement of Cash Flows for the nine months ended September 27, 2009.

	Nine Months Ended September 27, 2009		
	As Previously Reported	Restatement Adjustments	As Restated
Cash flows from operating activities:			
Net income	$ 32,216	$ (7,715)	$ 24,501
Adjustments to reconcile net income to net cash provided by operating activities:			
Stock-based compensation	34,204	-	34,204
Depreciation	60,348	-	60,348
Amortization of other intangible assets	12,296	-	12,296
Impairment of investments and long-lived assets	1,997	-	1,997
Non-cash interest expense	16,186	-	16,186
Amortization of debt issuance costs	2,454	-	2,454
Gain on purchased options	(21,193)	-	(21,193)
Equity in earnings of unconsolidated investees	(7,005)	-	(7,005)
Excess tax benefits from stock-based award activity	(14,744)	7,617	(7,127)
Deferred income taxes and other tax liabilities	277	(15,037)	(14,760)
Changes in operating assets and liabilities, net of effect of acquisitions:			
Accounts receivable	(43,285)	-	(43,285)
Costs and estimated earnings in excess of billings	(41,416)	(576)	(41,992)
Inventories	20,914	6,862	27,776
Prepaid expenses and other assets	(7,940)	1,325	(6,615)
Advances to suppliers	24,877	297	25,174
Accounts payable and other accrued liabilities	(31,345)	18,203	(13,142)
Billings in excess of costs and estimated earnings	4,877	(3,828)	1,049
Customer advances	(13,639)	-	(13,639)
Net cash provided by operating activities	30,079	7,148	37,227
Cash flows from investing activities:			
Increase in restricted cash and cash equivalents	(145,583)	-	(145,583)
Purchases of property, plant and equipment	(150,093)	469	(149,624)