VOCERA COMMUNICATIONS, INC.
Form 8-K
June 03, 2014

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 29, 2014

VOCERA COMMUNICATIONS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-35469	**94-3354663**
(Commission	**(IRS Employer**

File Number)	**Identification No.)**
525 Race Street, San Jose, CA	**95126**
(Address of principal executive offices)	**(Zip Code)**

(408) 882-5100

(Registrant s telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

¨ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

¨ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

¨ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

¨ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.07 Submission of Matters to a Vote of Security Holders.

On May 29, 2014, Vocera Communications, Inc. (the Company) held its 2014 Annual Meeting at which the Company s stockholders (i) elected the three Class II directors identified in the table below, each to serve until the third annual meeting of stockholders following the 2014 Annual Meeting and until a successor has been elected and qualified or until an earlier resignation or removal and (ii) ratified the appointment of Deloitte & Touche LLP as the Company s independent registered public accounting firm for the fiscal year ending December 31, 2014. Set forth below are the final voting tallies for the Company s 2014 Annual Meeting:

Proposal: Election of Directors	**For**	**Withheld**	**Broker Non-Vote**
Brian D. Ascher	20,142,847	192,706	2,032,042
John B. Grotting	18,688,714	1,646,839	2,032,042
Howard E. Janzen	20,304,395	31,158	2,032,042

Proposal:	**For**	**Against**	**Abstain**	**Broker Non-Vote**
Ratification of independent auditor	22,300,654	45,408	21,533	0

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

VOCERA COMMUNICATIONS, INC.

Date: June 3, 2014

By: /s/ Jay M. Spitzen
Jay M. Spitzen
General Counsel and Corporate Secretary

nbsp;

Interest income and other	5,257		5,257	2,785		2,785
Foreign currency loss	(2,158)		(2,158)	(1,942)		(1,942)
Total other income, net	3,099		3,099	843		843
Income before provision for income Taxes	66,864	(3,815)	63,049	47,207	(3,950)	43,257
Provision for income taxes	17,931	(1,139)	16,792	15,106	(1,217)	13,889
Net income	$48,933	$(2,676)	$46,257	$32,101	$(2,733)	$29,368
Earnings per share:						
Basic	$1.28	$(0.07)	$1.21	$0.89	$(0.07)	$0.82
Diluted	$1.18	$(0.06)	$1.12	$0.82	$(0.06)	$0.76
Weighted average shares outstanding:						
Basic	38,227		38,227	36,031		36,031
Diluted	41,571	(147)	41,424	39,010	(203)	38,807

Table of Contents

(In thousands, except per share data)

Year Ended November 30,	2003 (as reported)	2003 (adjustments)	2003 (as restated)
Revenue:			
Software licenses	$109,666		$109,666
Maintenance and services	199,394		199,394
Total revenue	309,060		309,060
Costs of revenue:			
Cost of software licenses	8,435	28	8,463
Cost of maintenance and services	52,599	392	52,991
Amortization of acquired intangibles for purchased technology	1,108		1,108
Total costs of revenue	62,142	420	62,562
Gross profit	246,918	(420)	246,498
Operating expenses:			
Sales and marketing	125,650	1,694	127,344
Product development	50,054	810	50,864
General and administrative	33,080	1,407	34,487
Amortization of other acquired Intangibles	1,182		1,182
Compensation expense from Repurchase of subsidiary stock options			
Acquisition-related expenses, net	200		200
Total operating expenses	210,166	3,911	214,077
Income from operations	36,752	(4,331)	32,421
Other income (expense):			
Interest income and other	3,358		3,358
Foreign currency loss	(1,433)		(1,433)
Total other income, net	1,925		1,925
Income before provision for income Taxes	38,677	(4,331)	34,346
Provision for income taxes	11,603	(1,405)	10,198
Net income	$ 27,074	$(2,926)	$ 24,148
Earnings per share:			
Basic	$ 0.79	$ (0.08)	$ 0.71
Diluted	$ 0.72	$ (0.07)	$ 0.65

Weighted average shares outstanding:			
Basic	34,217		34,217
Diluted	37,554	(624)	36,930

Table of Contents

Balance Sheet Adjustments
The following is a summary of the adjustments to our previously issued consolidated balance sheets as of November 30, 2005 and 2004.
(In thousands, except share data)

November 30,	2005			2004		
	(as reported)	(adjustments)	(as restated)	(as reported)	(adjustments)	(as restated)
Assets						
Current assets:						
Cash and equivalents	$ 57,399	(17,001)	$ 40,398	$ 69,939	(11,500)	$ 58,439
Short-term investments	209,021	17,001	226,022	121,328	11,500	132,828
Total cash and short-term investments	266,420		266,420	191,267		191,267
Accounts receivable	66,592		66,592	63,503		63,503
Other current assets	11,813		11,813	11,909		11,909
Deferred income taxes	21,502	(5,123)	16,379	11,576		11,576
Total current assets	366,327	(5,123)	361,204	278,255		278,255
Property and equipment, net	42,816		42,816	40,658		40,658
Intangible assets, net	47,213		47,213	40,233		40,233
Goodwill	84,974		84,974	67,130		67,130
Deferred income taxes	20,442		20,442	17,176		17,176
Other assets	5,066		5,066	3,362		3,362
Total	$566,838	(5,123)	$561,715	$446,814		$446,814
Liabilities and Shareholders Equity						
Current liabilities:						
Current portion, long-term debt	$ 262		$ 262	$ 238		$ 238
Accounts payable	11,654		11,654	11,953		11,953
Accrued compensation and related taxes	39,259	2,394	41,653	34,907	1,190	36,097
Income taxes payable	984	138	1,122	3,018	471	3,489
Other accrued liabilities	22,737		22,737	20,553		20,553
Short-term deferred revenue	99,697		99,697	101,106		101,106

Total current liabilities	174,593	2,532	177,125	171,775	1,661	173,436
Long-term debt, less current portion	1,938		1,938	2,200		2,200
Long-term deferred revenue	5,068		5,068	5,861		5,861
Deferred income taxes	3,580		3,580			
Shareholders equity:						
Common stock, $.01 par value, and additional paid-in capital	146,589	14,322	160,911	70,085	17,640	87,725
Deferred compensation	(5,706)		(5,706)			
Retained earnings	240,776	(21,977)	218,799	196,893	(19,301)	177,592
Total shareholders equity	381,659	(7,655)	374,004	266,978	(1,661)	265,317
Total	$566,838	(5,123)	$561,715	$446,814		$446,814

67

Table of Contents

Consolidated Statements of Cash Flows Adjustments
The following is a summary of the adjustments to our previously issued consolidated statements of cash flows for the fiscal years ended November 30, 2005, 2004 and 2003.
(In thousands)

Year Ended November 30,		2005	
	(as reported)	(adjustment)	(as restated)
Cash flows from operating activities:			
Net income	$ 48,933	$ (2,676)	$ 46,257
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization of property and equipment	8,547		8,547
Amortization of capitalized software costs	243		243
Amortization of intangible assets	9,399		9,399
Stock-based compensation	134	2,611	2,745
Allowances for accounts receivable	648		648
Deferred income taxes	(10,213)	4,317	(5,896)
In-process research and development			
Tax benefit from stock plans	22,868	(5,123)	17,745
Changes in operating assets and liabilities, net of effects from acquisitions:			
Accounts receivable	(5,141)		(5,141)
Other assets	1,628		1,628
Accounts payable and accrued expenses	5,077	1,204	6,281
Income taxes payable	(2,565)	(333)	(2,898)
Deferred revenue	1,072		1,072
Net cash provided by operating activities	80,630		80,630
Cash flows from investing activities:			
Purchases of investments available for sale	(368,463)	(5,500)	(373,963)
Sales and maturities of investments available for sale	280,765		280,765
Purchases of property and equipment	(10,909)		(10,909)
Capitalized software costs			
Acquisitions, net of cash acquired and purchase price settlements	(31,488)		(31,488)
Increase in other noncurrent assets	(2,390)		(2,390)
Net cash used for investing activities	(132,485)	(5,500)	(137,985)
Cash flows from financing activities:			
Issuance of common stock	55,195		55,195
Issuance (repurchase) of stock in subsidiary, net	(467)		(467)
Payment of long-term debt	(238)		(238)
Repurchase of common stock	(11,714)		(11,714)
Net cash provided by financing activities	42,776		42,776

Effect of exchange rate changes on cash	(3,461)	(1)	(3,462)
Net increase (decrease) in cash and equivalents	(12,540)	(5,501)	(18,041)
Cash and equivalents, beginning of year	69,939	(11,500)	58,439
Cash and equivalents, end of year	$ 57,399	$(17,001)	$ 40,398

Table of Contents

(In thousands)

Year Ended November 30,		2004	
	(as reported)	(adjustment)	(as restated)
Cash flows from operating activities:			
Net income	$ 32,101	$ (2,733)	$ 29,368
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization of property and equipment	9,134		9,134
Amortization of capitalized software costs	313		313
Amortization of intangible assets	7,076		7,076
Stock-based compensation		3,468	3,468
Allowances for accounts receivable	922		922
Deferred income taxes	2,596	(1,115)	1,481
In-process research and development	2,600		2,600
Tax benefit from stock plans	4,745		4,745
Changes in operating assets and liabilities, net of effects from acquisitions:			
Accounts receivable	(5,516)		(5,516)
Other assets	2,105		2,105
Accounts payable and accrued expenses	857	482	1,339
Income taxes payable	(908)	(102)	(1,010)
Deferred revenue	16,163		16,163
Net cash provided by operating activities	72,188		72,188
Cash flows from investing activities:			
Purchases of investments available for sale	(193,277)	(11,500)	(204,777)
Sales and maturities of investments available for sale	228,017		228,017
Purchases of property and equipment	(10,716)		(10,716)
Capitalized software costs	(300)		(300)
Acquisitions, net of cash acquired and purchase price settlements	(99,320)		(99,320)
Increase in other noncurrent assets	(88)		(88)
Net cash used for investing activities	(75,684)	(11,500)	(87,184)
Cash flows from financing activities:			
Issuance of common stock	21,105		21,105
Issuance (repurchase) of stock in subsidiary, net	40		40
Payment of long-term debt			
Repurchase of common stock	(12,966)		(12,966)
Net cash provided by financing activities	8,179		8,179
Effect of exchange rate changes on cash	2,579		2,579
Net increase (decrease) in cash and equivalents	7,262	(11,500)	(4,238)

Cash and equivalents, beginning of year	62,677		62,677
Cash and equivalents, end of year	$ 69,939	$(11,500)	$ 58,439

69

Table of Contents

(In thousands)

Year Ended November 30,	2003 (as reported)	(adjustment)	(as restated)
Cash flows from operating activities:			
Net income	$ 27,074	$(2,926)	$ 24,148
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization of property and equipment	8,389		8,389
Amortization of capitalized software costs	318		318
Amortization of intangible assets	2,290		2,290
Stock-based compensation		3,623	3,623
Allowances for accounts receivable	1,725		1,725
Deferred income taxes	(1,905)	(1,162)	(3,067)
In-process research and development	200		200
Tax benefit from stock plans	6,928	(816)	6,112
Changes in operating assets and liabilities, net of effects from acquisitions:			
Accounts receivable	5,233		5,233
Other assets	1,400		1,400
Accounts payable and accrued expenses	2,708	708	3,416
Income taxes payable	(1,395)	573	(822)
Deferred revenue	4,715		4,715
Net cash provided by operating activities	57,680		57,680
Cash flows from investing activities:			
Purchases of investments available for sale	(200,496)		(200,496)
Sales and maturities of investments available for sale	170,557		170,557
Purchases of property and equipment	(7,134)		(7,134)
Capitalized software costs	(400)		(400)
Acquisitions, net of cash acquired and purchase price settlements	(24,255)		(24,255)
Increase in other noncurrent assets	(463)		(463)
Net cash used for investing activities	(62,191)		(62,191)
Cash flows from financing activities:			
Issuance of common stock	26,705		26,705
Issuance (repurchase) of stock in subsidiary, net	56		56
Payment of long-term debt			
Repurchase of common stock	(12,116)		(12,116)
Net cash provided by financing activities	14,645		14,645
Effect of exchange rate changes on cash	2,118		2,118
Net increase (decrease) in cash and equivalents	12,252		12,252

Cash and equivalents, beginning of year	50,425	50,425
Cash and equivalents, end of year	$ 62,677	$ 62,677

70

Table of Contents

Note 15. Selected Quarterly Financial Data (Unaudited)

The unaudited quarterly results presented below reflect the restatement of our previously issued consolidated financial statements as discussed above in Note 14. As a result, the quarterly data presented herein does not agree to previously issued quarterly statements. Selected quarterly financial data for the years ended November 30, 2005 and 2004 is as follows:

(In thousands, except per share data)		Three Months Ended, Feb. 28, 2005			Three Months Ended, May 31, 2005	
	(as reported)	(adjustments)	(as restated)	(as reported)	(adjustments)	(as restated)
Revenue:						
Software licenses	$37,555		$37,555	$ 37,221		$ 37,221
Maintenance and services	60,167		60,167	62,988		62,988
Total revenue	97,722		97,722	100,209		100,209
Costs of revenue:						
Cost of software licenses	1,951	6	1,957	1,855	5	1,860
Cost of maintenance and services	14,036	118	14,154	13,800	117	13,917
Amortization of acquired intangibles for purchased technology	1,145		1,145	1,260		1,260
Total costs of revenue	17,132	124	17,256	16,915	122	17,037
Gross profit	80,590	(124)	80,466	83,294	(122)	83,172
Operating expenses:						
Sales and marketing	38,329	405	38,734	37,560	352	37,912
Product development	16,399	262	16,661	15,393	245	15,638
General and administrative	10,652	309	10,961	11,012	245	11,257
Amortization of other acquired intangibles	852		852	1,036		1,036
Acquisition-related expenses, net				974		974
Total operating expenses	66,232	976	67,208	65,975	842	66,817
Income from operations	14,358	(1,100)	13,258	17,319	(964)	16,355
Other income (expense):						
Interest income and other	890		890	1,160		1,160
Foreign currency loss	(1,551)		(1,551)	(260)		(260)
Total other income, net	(661)		(661)	900		900
Income before provision for income taxes	13,697	(1,100)	12,597	18,219	(964)	17,255

Provision for income taxes	4,383	(332)	4,051	5,990	(293)	5,697
Net income	$ 9,314	$ (768)	$ 8,546	$ 12,229	$ (671)	$ 11,558
Earnings per share:						
Basic	$ 0.25	$ (0.02)	$ 0.23	$ 0.33	$ (0.02)	$ 0.31
Diluted	$ 0.23	$ (0.01)	$ 0.22	$ 0.30	$ (0.02)	$ 0.28
Weighted average shares outstanding:						
Basic	36,573		36,573	37,433		37,433
Diluted	39,721	(177)	39,544	40,979	(147)	40,832

71

Table of Contents

(In thousands, except per share data)	Three Months Ended, Aug. 31, 2005 (as reported)	(adjustments)	(as restated)	Three Months Ended, Nov. 30, 2005 (as reported)	(adjustments)	(as restated)
Revenue:						
Software licenses	$ 37,986		$ 37,986	$ 44,084		$ 44,084
Maintenance and services	61,502		61,502	63,873		63,873
Total revenue	99,488		99,488	107,957		107,957
Costs of revenue:						
Cost of software licenses	1,843	5	1,848	2,501	4	2,505
Cost of maintenance and services	13,492	141	13,633	13,990	58	14,048
Amortization of acquired intangibles for purchased technology	1,367		1,367	1,350		1,350
Total costs of revenue	16,702	146	16,848	17,841	62	17,903
Gross profit	82,786	(146)	82,640	90,116	(62)	90,054
Operating expenses:						
Sales and marketing	37,910	396	38,306	43,346	246	43,592
Product development	15,957	289	16,246	15,322	143	15,465
General and administrative	10,284	259	10,543	10,374	210	10,584
Amortization of other acquired intangibles	1,201		1,201	1,188		1,188
Compensation expense from repurchase of subsidiary stock options	2,803		2,803			
Acquisition-related expenses, net	1,776		1,776	653		653
Total operating expenses	69,931	944	70,875	70,833	599	71,482
Income from operations	12,855	(1,090)	11,765	19,233	(661)	18,572
Other income (expense):						
Interest income and other	1,620		1,620	1,587		1,587
Foreign currency loss	(317)		(317)	(30)		(30)
Total other income, net	1,303		1,303	1,557		1,557
Income before provision for income taxes	14,158	(1,090)	13,068	20,790	(661)	20,129
Provision for income taxes	801	(328)	473	6,757	(186)	6,571
Net income	$ 13,357	$ (762)	$ 12,595	$ 14,033	$ (475)	$ 13,558

Earnings per share:						
Basic	$ 0.34	$ (0.02)	$ 0.32	$ 0.35	$ (0.01)	$ 0.34
Diluted	$ 0.31	$ (0.01)	$ 0.30	$ 0.33	$ (0.01)	$ 0.32
Weighted average shares outstanding:						
Basic	38,947		38,947	39,953		39,953
Diluted	42,501	(144)	42,357	43,083	(121)	42,962

Table of Contents

(In thousands, except per share data)	Three Months Ended, Feb. 28, 2004 (as reported)	(adjustments)	(as restated)	Three Months Ended, May 31, 2004 (as reported)	(adjustments)	(as restated)
Revenue:						
Software licenses	$ 33,895		$ 33,895	$ 36,905		$ 36,905
Maintenance and services	52,480		52,480	53,872		53,872
Total revenue	86,375		86,375	90,777		90,777
Costs of revenue:						
Cost of software licenses	2,592	6	2,598	2,299	6	2,305
Cost of maintenance and services	12,826	100	12,926	13,959	78	14,037
Amortization of acquired intangibles for purchased technology	898		898	1,087		1,087
Total costs of revenue	16,316	106	16,422	17,345	84	17,429
Gross profit	70,059	(106)	69,953	73,432	(84)	73,348
Operating expenses:						
Sales and marketing	36,180	384	36,564	36,100	355	36,455
Product development	14,609	222	14,831	15,275	185	15,460
General and administrative	9,676	290	9,966	9,837	291	10,128
Amortization of other acquired intangibles	661		661	750		750
Acquisition-related expenses, net	2,600		2,600			
Total operating expenses	63,726	896	64,622	61,962	831	62,793
Income from operations	6,333	(1,002)	5,331	11,470	(915)	10,555
Other income (expense):						
Interest income and other	771		771	650		650
Foreign currency loss	(379)		(379)	(403)		(403)
Total other income, net	392		392	247		247
Income before provision for income taxes	6,725	(1,002)	5,723	11,717	(915)	10,802
Provision for income taxes	2,085	(311)	1,774	3,632	(276)	3,356
Net income	$ 4,640	$ (691)	$ 3,949	$ 8,085	$ (639)	$ 7,446

Earnings per share:						
Basic	$ 0.13	$ (0.02)	$ 0.11	$ 0.22	$ (0.01)	$ 0.21
Diluted	$ 0.12	$ (0.02)	$ 0.10	$ 0.21	$ (0.02)	$ 0.19
Weighted average shares outstanding:						
Basic	35,644		35,644	36,046		36,046
Diluted	38,955	(294)	38,661	39,233	(216)	39,017

73

Table of Contents

(In thousands, except per share data)	Three Months Ended, Aug. 31, 2004 (as reported)	(adjustments)	(as restated)	Three Months Ended, Nov. 30, 2004 (as reported)	(adjustments)	(as restated)
Revenue:						
Software licenses	$ 32,864		$ 32,864	$ 36,798		$ 36,798
Maintenance and services	56,452		56,452	59,396		59,396
Total revenue	89,316		89,316	96,194		96,194
Costs of revenue:						
Cost of software licenses	2,092	6	2,098	1,990	9	1,999
Cost of maintenance and services	12,826	65	12,891	12,743	95	12,838
Amortization of acquired intangibles for purchased technology	1,045		1,045	1,070		1,070
Total costs of revenue	15,963	71	16,034	15,803	104	15,907
Gross profit	73,353	(71)	73,282	80,391	(104)	80,287
Operating expenses:						
Sales and marketing	35,310	305	35,615	38,581	486	39,067
Product development	14,907	156	15,063	15,580	238	15,818
General and administrative	9,674	256	9,930	9,566	417	9,983
Amortization of other acquired intangibles	764		764	801		801
Acquisition-related expenses, net						
Total operating expenses	60,655	717	61,372	64,528	1,141	65,669
Income from operations	12,698	(788)	11,910	15,863	(1,245)	14,618
Other income (expense):						
Interest income and other	606		606	758		758
Foreign currency loss	(503)		(503)	(657)		(657)
Total other income, net	103		103	101		101
Income before provision for income taxes	12,801	(788)	12,013	15,964	(1,245)	14,719
Provision for income taxes	4,281	(233)	4,048	5,108	(397)	4,711
Net income	$ 8,520	$ (555)	$ 7,965	$ 10,856	$ (848)	$ 10,008

Earnings per share:						
Basic	$ 0.24	$ (0.02)	$ 0.22	$ 0.30	$ (0.02)	$ 0.28
Diluted	$ 0.22	$ (0.01)	$ 0.21	$ 0.28	$ (0.02)	$ 0.26
Weighted average shares outstanding:						
Basic	36,220		36,220	36,212		36,212
Diluted	38,853	(153)	38,700	38,997	(149)	38,848

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Background of Restatement

On August 29, 2006, the Audit Committee of our Board of Directors concluded that the actual measurement dates for determining the accounting treatment of certain stock option grants differed from the measurement dates we used in preparing our consolidated financial statements, and that our consolidated financial statements, including the reports of our independent registered public accounting firm thereon, and our earnings releases and similar communications for the year ended November 30, 1996 and subsequent periods, should no longer be relied upon.

On November 28, 2006, our Board of Directors concluded that our consolidated financial statements for each of the years during the three year period ended November 30, 2005 and for the three months ended February 28, 2006, as well as the selected financial data for the years ended November 30, 2002 and 2001 (as well as for certain prior periods not included in these financial statements) should be restated to record additional non-cash stock-based

Table of Contents

compensation expense, and related tax effects, resulting from stock options granted during fiscal years 1996 to 2005 that were incorrectly accounted for under GAAP. This decision was based on the determination that the actual measurement dates for determining the accounting treatment of certain stock option grants differed from the measurement dates we used in preparing our consolidated financial statements.

Our decision to restate our financial statements was based on the facts obtained by an internal investigation into our stock option accounting, conducted initially by the Audit Committee of our Board of Directors, and subsequently by a Special Committee of our Board consisting entirely of non-employee directors who had not served on the Compensation Committee of our Board. The Special Committee, advised by our outside legal counsel and special legal counsel, in consultation with management, concluded that nearly all option grants from December 1995 through July 2005 were accounted for improperly, and concluded that stock-based compensation associated with nearly all grants was misstated in fiscal years 1996 through 2005 and in the first quarter of fiscal 2006. The Special Committee identified several practices, including the retrospective selection of grant dates and the completion subsequent to the grant date of the allocation of individual awards, which caused errors related to stock option grant measurement dates and stock-based compensation. The Special Committee concluded, based on its review of the facts and circumstances surrounding our option grant practices, that management knew that relevant accounting rules required us to record stock-based compensation charges when we made below fair market value option grants, but did not apply those rules correctly or assure that they were being applied correctly and therefore failed to record necessary accounting charges. The Special Committee further concluded that there was no evidence to indicate that the practices that caused errors related to stock option grant measurement dates and stock-based compensation resulted from willful misconduct.

During the second half of fiscal 2005, prior to the commencement of the investigation by the Audit Committee and the Special Committee, we revised our stock option grant practices. The revised grant process includes, among other things, fixed grant dates during the year, review by the Compensation Committee of a preliminary grant list in advance of the fixed grant date and a final approval by the Compensation Committee of the final list of grant recipients on the fixed grant date.

(a) Evaluation of disclosure controls and procedures

Our management, including the chief executive officer and the chief financial officer, carried out an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d- 15(e) under the Securities and Exchange Act of 1934, as amended) as of November 30, 2005 in connection with the filing of our original Form 10-K in February 2006. Based on this evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective to provide a reasonable level of assurance that the information required to be disclosed in the reports filed or submitted by us under the Securities Exchange Act of 1934 was recorded, processed, summarized and reported within the requisite time periods.

Subsequent to the evaluation made in connection with the Original Filing for the year ended November 30, 2005 and in connection with the restatement and the filing of this Form 10-K/A, our management, including the chief executive officer and chief financial officer, re-evaluated the effectiveness of the design and operation of our disclosure controls and procedures and concluded that, because of the material weakness in our internal control over financial reporting discussed below, our disclosure controls and procedures were not effective as of November 30, 2005. Notwithstanding the material weakness discussed below, our management, including the chief executive officer and chief financial officer, has concluded that the consolidated financial statements included in this Form 10-K/A present fairly, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States.

(b) Management s Annual Report on Internal Control Over Financial Reporting (as revised)

The management of Progress Software Corporation is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Our internal control system was designed to provide reasonable assurance to our management and board of directors regarding the preparation and fair presentation of published financial statements.

In connection with the filing of the original Form 10-K in February 2006, our management included Management s Annual Report on Internal Control over Financial Reporting therein, which expressed a conclusion by management

75

that management believed that our internal control over financial reporting was effective as of November 30, 2005. In connection with filing this amended Form 10-K/A for the year ended November 30, 2005, our management reassessed the effectiveness of our internal control over financial reporting as of November 30, 2005. In making each of these assessments, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control Integrated Framework. As a result of the restatement of our consolidated financial statements, our management has determined that a material weakness in our internal control over financial reporting existed as of November 30, 2005, and, based on the criteria noted above, has now concluded that our internal control over financial reporting was not effective as of November 30, 2005.

Specifically, our management determined that we had a material weakness resulting from the failure to design and implement controls necessary to provide reasonable assurance that historical measurement dates for stock option grants to employees were appropriately determined; accordingly, the measurement dates used for certain option grants were not appropriate, and the Company s accounting for those grants was not in accordance with Accounting Principles Board Opinion 25, *Accounting for Stock Issued to Employees*. This material weakness resulted in the restatement described in Note 14 to the restated consolidated financial statements included in this Form 10-K/A. Our management determined that this control deficiency was a material weakness, based upon the actual misstatements identified, the potential for additional material misstatements to have occurred as a result of the deficiency, and the lack of other mitigating controls.

Management s revised assessment of the effectiveness of its internal control over financial reporting as of November 30, 2005, as included in this Form 10-K/A, has been attested to by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report which is included herein.

(c) Changes in internal control over financial reporting

No changes in our internal control over financial reporting occurred during the quarter ended November 30, 2005 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

We believe that subsequent to November 30, 2005, we completed our remediation of the material weakness in our internal control over financial reporting relating to the proper measurement of expense under Accounting Principles Board Opinion 25 that existed at November 30, 2005. During the second half of fiscal 2005, prior to the commencement of the investigation by the Audit Committee and the Special Committee, we revised our stock option grant practices. The revised grant process includes, among other things, fixed grant dates during the year, review by the Compensation Committee of a preliminary grant list in advance of the fixed grant date and a final approval by the Compensation Committee of the final list of grant recipients on the fixed grant date. Additionally, during fiscal 2006 our management has corrected its understanding of the accounting principles included in APB 25 and as a result, our previous accounting for stock-based compensation has been corrected in the restated selected financial data appearing in Item 6 and the restated consolidated financial statements appearing in Item 8 of this Form 10-K/A.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Progress Software Corporation
Bedford, Massachusetts

We have audited management s assessment, included in the accompanying Management s Annual Report on Internal Control over Financial Reporting (as revised), that Progress Software Corporation and subsidiaries (the Company) did not maintain effective internal control over financial reporting as of November 30, 2005, because of the effect of the material weakness identified in management s assessment based on criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management s assessment and an opinion on the effectiveness of the Company s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit

76

Table of Contents

included obtaining an understanding of internal control over financial reporting, evaluating management s assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company s internal control over financial reporting is a process designed by, or under the supervision of, the company s principal executive and principal financial officers, or persons performing similar functions, and effected by the company s board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company s assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our report dated February 10, 2006, we expressed an unqualified opinion on management s assessment that the Company maintained effective internal control over financial reporting and an unqualified opinion on the effectiveness of internal control over financial reporting as of November 30, 2005. As described in the following paragraph, the Company subsequently identified material misstatements in its annual financial statements, which caused such annual financial statements to be restated. Management subsequently revised its assessment due to the identification of the material weakness described in the following paragraph. Accordingly, our opinion on the effectiveness of the Company s internal control over financial reporting as of November 30, 2005 expressed herein is different from that expressed in our previous report.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weakness has been identified and included in management s revised assessment. The Company did not design and implement controls necessary to provide reasonable assurance that historical measurement dates for stock option grants to employees were appropriately determined; accordingly, the measurement dates used for certain option grants were not appropriate, and the Company s accounting for those grants was not in accordance with Accounting Principles Board Opinion 25, *Accounting for Stock Issued to Employees.* This material weakness resulted in the restatement described in Note 14 to the consolidated financial statements. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the Company s consolidated financial statements as of and for the year ended November 30, 2005 (as restated), and this report does not affect our report on such restated financial statements.

In our opinion, management s revised assessment that the Company did not maintain effective internal control over financial reporting as of November 30, 2005, is fairly stated, in all material respects, based on the criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also in our opinion, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over

Table of Contents

financial reporting as of November 30, 2005, based on the criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements of the Company as of and for the year ended November 30, 2005 (as restated), and our report dated February 10, 2006 (December 18, 2006 as to the effect of the matters discussed in the third, fourth and fifth paragraphs of Note 13 and the effect of the restatement discussed in Note 14) expressed an unqualified opinion on those financial statements.

/s/ DELOITTE & TOUCHE LLP

Boston, Massachusetts

February 10, 2006 (December 18, 2006 as to the effect of the material weakness described in Management s Annual Report on Internal Control over Financial Reporting (as revised))

Item 9B. Other Information

None.

PART III

Item 10. Directors and Executive Officers of the Registrant

The information regarding executive officers set forth under the caption Executive Officers of the Registrant in Item 1 of this Annual Report is incorporated herein by reference.

The information regarding directors set forth under the caption Election of Directors appearing in our definitive Proxy Statement for the Annual Meeting of Shareholders to be held on April 20, 2006, which will be filed with the Securities and Exchange Commission (SEC) not later than 120 days after November 30, 2005, is incorporated herein by reference.

The information regarding our code of ethics and audit committee set forth under the caption Board of Directors and Committees of the Board appearing in our definitive Proxy Statement for the Annual Meeting of Shareholders to be held on April 20, 2006, which will be filed with the SEC not later than 120 days after November 30, 2005, is incorporated herein by reference.

Item 11. Executive Compensation

The information set forth under the caption Executive Compensation appearing in our definitive Proxy Statement for the Annual Meeting of Shareholders to be held on April 20, 2006, which will be filed with the SEC not later than 120 days after November 30, 2005, is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The information set forth under the caption Security Ownership of Certain Holders and Management appearing in our definitive Proxy Statement for the Annual Meeting of Shareholders to be held on April 20, 2006, which will be filed with the SEC not later than 120 days after November 30, 2005, is incorporated herein by reference.

Table of Contents

Information related to securities authorized for issuance under equity compensation plans as of November 30, 2005 is as follows:
(In thousands, except per share data)

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights		Weighted-average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available For Future Issuance
Equity compensation plans approved by shareholders	4,842	$	15.26	301
Equity compensation plans not approved by shareholders	4,617		20.37	596
Total	9,459	$	17.75	897

We have adopted two equity compensation plans, the 2002 Nonqualified Stock Plan (2002 Plan) and the 2004 Inducement Stock Plan (2004 Plan), for which the approval of shareholders was not required. We intend that the 2004 Plan be reserved for persons to whom we may issue securities as an inducement to become employed by us pursuant to the rules and regulations of the Nasdaq Stock Market. Executive officers and members of the Board of Directors are not eligible for awards under the 2002 Plan. An executive officer or director would be eligible to receive an award under the 2004 Plan only as an inducement to join us. Awards under the 2002 Plan and the 2004 Plan may include nonqualified stock options, grants of conditioned stock, unrestricted grants of stock, grants of stock contingent upon the attainment of performance goals and stock appreciation rights. A total of 7,000,000 shares are issuable under the two plans.

Item 13. Certain Relationships and Related Transactions

The information set forth under the caption Certain Relationships and Related Transactions appearing in our definitive Proxy Statement for the Annual Meeting of Shareholders to be held on April 20, 2006, which will be filed with the SEC not later than 120 days after November 30, 2005, is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services

The information set forth under the caption Principal Accounting Fees and Services appearing in our definitive Proxy Statement for the Annual Meeting of Shareholders to be held on April 20, 2006, which will be filed with the SEC not later than 120 days after November 30, 2005, is incorporated herein by reference.

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) Documents Filed as Part of this Form 10-K/A

1. Financial Statements (included in Item 8 of this report on Form 10-K/A):

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of November 30, 2005 and 2004

Consolidated Statements of Operations for the years ending November 30, 2005, 2004 and 2003

Consolidated Statements of Shareholders Equity for the years ending November 30, 2005, 2004 and 2003

Consolidated Statements of Cash Flows for the years ending November 30, 2005, 2004 and 2003

Notes to Consolidated Financial Statements

2. Financial Statement Schedules

Financial statement schedules are omitted as they are either not required or the information is otherwise included.

(b) Exhibits

Documents listed below, except for documents followed by parenthetical numbers, are being filed as exhibits. Documents followed by parenthetical numbers are not being filed herewith and, pursuant to Rule 12b-32 of the General Rules and Regulations promulgated by the SEC under the Securities Exchange Act of 1934 (the Act), reference is made to such documents as previously filed as exhibits with the SEC. Our file number under the Act is 0-19417.

79

Table of Contents

2.1	Agreement and Plan of Merger Among Progress Software Corporation, Chopin Merger Sub, Inc. and eXcelon Corporation (1)
2.2	Purchase Agreement Dated as of December 5, 2003 By and Among Progress Software Corporation, Diamond Acquisition Corp. and DataDirect Technologies Limited (2)
2.3	Agreement and Plan of Merger dated as of April 6, 2005 by and among Progress Software Corporation, PSC Merger Corp., Apama Inc., and certain stockholders of Apama Inc. (3)
2.4	Agreement and Plan of Merger dated August 31, 2005 by and among Progress Software Corporation, Sonic Software Corporation and Sonic Merger Corporation (4)
2.5	Agreement and Plan of Merger dated December 19, 2005 by and among Progress Software Corporation, Noble Acquisition Corporation and NEON Systems, Inc. (5)
2.6	Agreement and Plan of Merger dated January 18, 2006 by and among Progress Software Corporation, ACTC Acquisition Corp., Actional Corporation, Certain Stockholders of Actional Corporation and Standish O Grady, as the Company Stockholder Representative (6)
3.1	Restated Articles of Organization (7)
3.1.1	Articles of Amendment to Restated Articles of Organization filed on January 19, 1995 (8)
3.1.2	Articles of Amendment to Restated Articles of Organization filed on November 17, 1997 (9)
3.1.3	Articles of Amendment to Restated Articles of Organization filed on May 6, 1999 (10)
3.1.4	Articles of Amendment to Restated Articles of Organization filed on June 17, 2000 (11)
3.2	By-Laws, as amended and restated (12)
4.1	Specimen certificate for the Common Stock (13)
10.1*	Amended and Restated 1984 Incentive Stock Option Plan (14)
10.2*	1991 Employee Stock Purchase Plan, as amended (15)
10.3*	1992 Incentive and Nonqualified Stock Option Plan (16)
10.4*	1994 Stock Incentive Plan (17)
10.5*	1993 Directors Stock Option Plan (18)
10.6*	1997 Stock Incentive Plan, as amended (19)
10.7*	Employee Retention and Motivation Agreement executed by each of the Executive Officers (20)
10.8*	

	First amendment to Employee Retention and Motivation Agreement executed by each of the Executive Officers (21)
10.9*	2002 Nonqualified Stock Plan (22)
10.10*	2004 Inducement Stock Plan (23)
10.12	Written offer of employment with Larry R. Harris dated April 29, 2005 (24)
21.1**	List of Subsidiaries of the Registrant
23.1	Consent of Deloitte & Touche LLP
31.1	Certification Pursuant to Section 302 of Sarbanes-Oxley Act of 2002 Joseph W. Alsop
31.2	Certification Pursuant to Section 302 of Sarbanes-Oxley Act of 2002 Norman R. Robertson
32.1	Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
99.1	Agreement and Plan of Merger By and Among Progress Software Corporation, PSI Acquisition Sub, Inc. and Persistence Software, Inc. (25)
99.1	Asset Purchase Agreement dated April 29, 2005 by and among Progress Development Corporation, EasyAsk, Inc. and Sigma Partners LLP, as indemnification representative (26)

(1) Incorporated by reference to Exhibit 1 of Schedule 13D filed October 28, 2002.

(2) Incorporated by reference to Exhibit 2.1 of Form 8-K filed January 7, 2004.

(3) Incorporated by reference to Exhibit 2.1 of Form 8-K filed April 12, 2005.

(4) Incorporated by reference to Exhibit 2.1 of Form 8-K filed September 7, 2005.

(5) Incorporated by reference to Exhibit 2.1 of Form 8-K filed December 22, 2005.

(6) Incorporated by reference to Exhibit 2.1 of Form 8-K filed January 23, 2006.

(7) Incorporated by reference to Exhibit 3.1 to our Annual Report on Form 10-K for the fiscal year ended November 30, 1997.

80

Table of Contents

(8) Incorporated by reference to Exhibit 3.1.1 to our Annual Report on Form 10-K for the fiscal year ended November 30, 1994.

(9) Incorporated by reference to Exhibit 3.1.2 to our Annual Report on Form 10-K for the fiscal year ended November 30, 1997.

(10) Incorporated by reference to Exhibit 3.1.3 to our Annual Report on Form 10-K for the fiscal year ended November 30, 1999.

(11) Incorporated by reference to Exhibit 3.1.4 to our Annual Report on Form 10-K for the fiscal year ended November 30, 2000.

(12) Incorporated by reference to Exhibit 3.2 to our Annual Report on Form

10-K for the fiscal year ended November 30, 1991.

(13) Incorporated by reference to Exhibit 4.1 to our Registration Statement on Form S-1, File No. 33-41223, as amended.

(14) Incorporated by reference to Exhibit 10.12 to our Registration Statement on Form S-1, File No. 33-41223, as amended.

(15) Incorporated by reference to Exhibit 10.8 to our Quarterly Report on Form 10-Q for the quarter ended May 31, 1998.

(16) Incorporated by reference to Exhibit 10.12 to our Quarterly Report on Form 10-Q for the quarter ended May 31, 1992.

(17) Incorporated by reference to Exhibit 10.16 to our Quarterly Report on Form 10-Q for the quarter ended August 31, 1994.

(18) Incorporated by reference to Exhibit 10.17 to our Quarterly Report on Form 10-Q for the quarter ended August 31, 1994.

(19) Incorporated by reference to Exhibit 10.7 to our Annual Report on Form 10-K for the fiscal year ended November 30, 2000.

(20) Incorporated by reference to Exhibit 10.10 to our Annual Report on Form 10-K for the fiscal year ended November 30, 1998.

(21) Incorporated by reference to Exhibit 10.10.1 to our Quarterly Report on Form 10-Q for the quarter ended August 31, 1999.

(22) Incorporated by reference to Exhibit 10.10 to our Quarterly Report on Form 10-Q for the quarter ended May 31, 2002.

(23) Incorporated by reference to Exhibit 10.12 to our Annual Report on Form 10-K for the fiscal year ended November 30, 2004.

(24) Incorporated by reference to Exhibit 10.1 of Form 8-K filed May 5, 2005.

(25) Incorporated by reference to Exhibit 99.1 of Form 8-K filed September 27, 2004.

(26) Incorporated by reference to Exhibit 99.1 of Form 8-K filed May 5, 2005.

* Management contract or compensatory plan or arrangement in which an executive officer or director of PSC participates

81

Table of Contents

** Previously filed

(c) Financial Statement Schedules

All schedules are omitted because they are not applicable or the required information is shown on the financial statements or notes thereto.

Table of Contents

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 18th day of December, 2006.

PROGRESS SOFTWARE CORPORATION

By: /s/ JOSEPH W. ALSOP

Joseph W. Alsop
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JOSEPH W. ALSOP Joseph W. Alsop	Chief Executive Officer and Director (Principal Executive Officer)	December 18, 2006
/s/ NORMAN R. ROBERTSON Norman R. Robertson	Senior Vice President, Finance and Administration and Chief Financial Officer (Principal Financial Officer)	December 18, 2006
/s/ DAVID H. BENTON, JR. David H. Benton, Jr.	Vice President and Corporate Controller (Principal Accounting Officer)	December 18, 2006
/s/ ROGER J. HEINEN, JR. Roger J. Heinen, Jr.	Director	December 18, 2006
/s/ CHARLES F. KANE Charles F. Kane	Director	December 18, 2006
/s/ MICHAEL L. MARK Michael L. Mark	Director	December 18, 2006
/s/ SCOTT A. MCGREGOR Scott A. McGregor	Director	December 18, 2006
/s/ AMRAM RASIEL	Director	December 18, 2006

Amram Rasiel

83