

AtheroNova Inc.
Form 10-Q/A
May 08, 2013
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q/A
(Amendment #2)

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

For the quarterly period ended September 30, 2012

OR

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

For the transition period from _____ to _____

Commission file number 000-52315

AtheroNova Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-1915083
(I.R.S. Employer Identification No.)

2301 Dupont Drive, Suite 525, Irvine, CA 92612
(Address of principal executive offices and zip code)

(949) 476-1100
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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

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

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting
company ☒

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

As of November 5, 2012 there were 35,195,056 shares of the issuer's common stock, \$0.0001 par value per share, outstanding.

Explanatory Note

This Amendment No. 2 on Form 10-Q/A (the “Form 10-Q/A”) amends the Quarterly Report on Form 10-Q for the period ended September 30, 2012, filed by AtheroNova, Inc. (the “Company”), which was originally filed with the Securities and Exchange Commission on November 13, 2012 and subsequently amended on March 29, 2013 (the “Form 10-Q”).

On June 15, 2012, the company amended certain of its Senior Convertible Note and warrant agreements that were issued in 2010. The initial Senior Convertible Notes and warrants included an anti-dilution provision that allowed for the automatic reset of the conversion or exercise price upon any future sale of common stock instruments at or below the current conversion or exercise price. The amended notes and warrants removed the price-based anti-dilution provisions contained in the Senior Convertible Notes and warrants. The modification was initially accounted for as an extinguishment based on an error in a calculation of the change to the Beneficial Conversion Feature. Management has determined that the transaction should have been accounted for as a modification rather than as an extinguishment.

The Form 10-Q/A includes amended disclosure regarding the Company’s disclosure controls and procedures and internal control over financial reporting for the period ended September 30, 2012.

The Form 10-Q/A amends and restates the following items of the Form 10-Q as described above: (i) Part I, Item 4 – Controls and Procedures and (ii) Part II, Item 6 - Exhibits.

All information in the Form 10-Q, as amended by the Form 10-Q/A, speaks as to the date of the original filing of the Form 10-Q for such period and does not reflect any subsequent information or events except as noted in the Form 10-Q/A. All information contained in the Form 10-Q/A is subject to updating and supplementing as provided in the Company’s reports, as amended, filed with the Securities and Exchange Commission subsequent to the date of the initial filing of the Form 10-Q.

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Part I – Financial Information

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

In connection with the restatement of our financial statements for the fiscal quarter ended September 30, 2012, we carried out an evaluation, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based upon that evaluation, and in light of accounting errors related to the accounting treatment of the amendment of certain of our senior convertible notes and warrants that resulted in the restatement of our financial statements for the fiscal quarter ended September 30, 2012, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of September 30, 2012 to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is processed, summarized and reported within the time periods specified in the SEC’s rules and forms.

Our disclosure controls or internal controls over financial reporting were designed to provide only reasonable assurance that such disclosure controls or internal control over financial reporting will prevent all errors or all instances of fraud, even as the same are improved to address any deficiencies. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be only reasonable, not absolute assurance that any design will succeed in achieving its stated goals under all potential future conditions. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system’s objectives will be met. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs.

Because of the inherent limitation of a cost-effective control system, misstatements due to error or fraud may occur and not be detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls.

Changes in Internal Control

Subsequent to the quarter ended September 30, 2012, and as a result of a material deficiency in our disclosure controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is processed, summarized and reported within the time periods specified in the Commission’s rules and forms, we implemented changes designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our financial statements for external purposes in accordance with generally accepted accounting principles. Specifically, our management has thoroughly reviewed and has gained fluency in the application of the relevant accounting guidance regarding accounting for derivative liabilities and modifications thereto, including, without limitation, EITF Issue No. 96-19, ASC 470-50-40 and ASC 815-15-35-4 (EITF 06-07). We believe that these steps are reasonably likely to materially improve our internal controls over financial reporting with respect to accounting for derivative liabilities and modifications thereto, and are reasonably likely to prevent a recurrence of the error that led to the restatement of our financial statements for the fiscal quarter ended September 30, 2012.

Item 6. Exhibits

Exhibit No. Description

- | | |
|-----------|--|
| 10.1 | Securities Purchase Agreement dated May 14, 2012, among the Registrant, ACT Capital Partners, L.P. and Amir L. Ecker. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on May 29, 2012. |
| 10.2 | Form of 12% Convertible Note. Incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on May 29, 2012. |
| 10.3 | Form of Common Stock Purchase Warrant. Incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on May 29, 2012. |
| 10.4 | Subsidiary Guarantee dated May 14, 2012, made by AtheroNova Operations, Inc. in favor of ACT Capital Partners, L.P. and Amir L. Ecker. Incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on May 29, 2012. |
| 10.5 | Form of Amendment and Exchange Agreement dated June 15, 2012. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on June 20, 2012. |
| 10.6 | Form of Second Amended and Restated 2.5% Senior Secured Convertible Note. Incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on June 20, 2012. |
| 10.7 | Form of Amended and Restated Common Stock Purchase Warrant. Incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on June 20, 2012. |
| 10.8 | Office Lease dated June 15, 2012, between the Registrant and TR Dupont Centre LLC. Incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K (File No. 0-52315) filed with the Securities and Exchange Commission on June 20, 2012. |
| 31.1 | Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, as amended. |
| 31.2 | Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, as amended. |
| 32.1 | Certification of Principal Executive Officer pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002. |
| 32.2 | Certification of Principal Financial Officer pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002. |
| 101.INS** | XBRL Instance. Incorporated by reference to Exhibit 101.INS to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 13, 2012. |

101.SCH** XBRL Taxonomy Extension Schema. Incorporated by reference to Exhibit 101.SCH to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 13, 2012.

101.CAL** XBRL Taxonomy Extension Calculation. Incorporated by reference to Exhibit 101.CAL to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 13, 2012.

101.DEF** XBRL Taxonomy Extension Definition. Incorporated by reference to Exhibit 101.DEF to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 13, 2012.

101.LAB** XBRL Taxonomy Extension Labels. Incorporated by reference to Exhibit 101.LAB to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 13, 2012.

101.PRE** XBRL Taxonomy Extension Presentation. Incorporated by reference to Exhibit 101.PRE to the Quarterly Report on Form 10-Q (File No. 000-52315) filed with the Securities and Exchange Commission on November 13, 2012.

** XBRL information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections.

SIGNATURES

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 thereunto duly authorized.

ATHERONNOVA INC.

Date: May 8, 2013

By: /s/Mark Selawski
Mark Selawski
Chief Financial Officer
(Principal financial and accounting officer)