

FINAL TRANSCRIPT

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OSTK - Overstock.com 2009 Q3 10-Q

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PRESENTATION

Operator

Good afternoon. My name is Christina and I will be your conference operator today. At this time, I would like to welcome everyone to the Overstock.com Q3 2009 unreviewed 10-Q conference call. All lines have been placed on mute to prevent any background noise. After the speakers' remarks, there will be a question-and-answer session. (Operator Instructions).

I would now like to turn the call over to Jonathan Johnson, President of Overstock.com. You may begin, sir.

Jonathan Johnson - Overstock.com - President

Thank you, Christina, and good afternoon to all who dialed in. We're holding this call to further explain and answer questions about the dismissal of our auditor, Grant Thornton, and our decision to file an unreviewed Form 10-Q for our 2009 fiscal third quarter.

Dr. Patrick Byrne, Chairman and CEO, and Steve Chesnut, Senior Vice President of Finance, are joining me on today's call.

Before I begin, I'd like to remind you that the following discussion and our responses to your questions reflect management's views as of today, November 18, 2009 only, and will include forward-looking statements. For more details, I encourage you to read the press release we issued on Monday, as well as our unreviewed Form 10-Q for the period ended September 30, 2009, and the Form 8-K that the Company filed on Monday.

Additional information about factors that could potentially impact our business is included in our filings with the SEC, including our 2008 annual report on Form 10-K/A.

During this call, we may discuss certain non-GAAP financial measures. Our filings with the SEC also contain additional disclosures regarding these non-GAAP measures, including reconciliations of these measures to the most comparable GAAP periods.

Ladies and gentlemen, we appreciate your time today. I'll now turn the call over to Patrick.



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Patrick Byrne - *Overstock.com - Chairman and CEO*

Thank you, Jonathan. I'm here with Jonathan and Steve Chesnut, CFO.

On Monday of this week, we filed an unreviewed 10-Q for the third quarter and announced the dismissal of Grant Thornton as our auditor. As we explained in our press release and filings, we were between a rock and a hard place. Grant Thornton was insisting that we re-open our 2008 filings before it would review our Q3 10-Q. And PWC was telling us that to reopen our 2008 10-Q was improper. It was a damned if you do, damned if you don't situation.

We were in the tough position of either not making any Q3 filing or filing an unreviewed document. While not unorthodox -- but not as completely unknown as some would suggest -- but unorthodox as it was, we decided to file an unreviewed 10-Q, so that investors and the public would have the best information possible that was available.

I'm going to walk through sort of three -- I guess really there's four subjects here. One is, what are the governing and accounting principles to talk about? Then, what happened? And we're going to talk about a number of different issues -- they've been disclosed in our 10-K; they're out there -- but we're going to go through in detail, so nobody can say whatever they're going to say.

We're going to talk about our accounting treatment and the objections and so forth, and what the debate is about. And fourth, the Grant Thornton issue. We're going to try to move pretty briskly and then take questions. But this is a pretty comprehensive thing.

Steve, do you have anything to add to that?

Steve Chesnut - *Overstock.com - SVP of Finance*

Yes. And I think as we go through this, people will sense the complexity of the question too, because this is not a pretty simple right/wrong; there's a lot of facts and information that, hopefully, we'll disclose through this conference call that will be helpful.

Jonathan Johnson - *Overstock.com - President*

Although I would put my footnote on that is, yes, I agree -- this is arcane -- how many accounting angels can dance on the head of a pin? But all that said, we took the position of being conservative.

Aggressive accounting is when you recognize revenue too quickly and you recognize expenses too slowly or hide them altogether. Conservative accounting, in my view, is when you are -- you're not recognizing revenues too quickly; you're recognizing them slower, and you're recognizing expenses quickly. That's what conservative is as opposed to aggressive. All the while, we've attempted to be as transparent in this process as we can be.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Right. So the first issue is the governing and accounting principles. As people know, because we had a restatement in Q4 of last year, we discovered that we didn't have -- that money we thought was owed us; so this was the restatement we did in late '04 -- that when you find a pothole in your balance sheet, you have to state it immediately. You don't -- you can't not state it. You owe somebody or somebody doesn't owe you money that you thought -- so you have a pothole in your balance sheet; you'd state immediately.

When you have a surprise to the good in your balance sheet, when you discover a surprise to the good, it's not necessarily the truth that the accounting principles are symmetrical. And the way the accounting principles work is when you have one of



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these things called a contingent gain, you first say what it is -- or you ask yourself, can I say what this is? Can I put this on my balance sheet, because I know I'm going to -- I found \$100 somebody owes me, can I put \$100 on my balance sheet and run that through my income statement?

If you know you're going to collect that and everything you can -- if you can't do that, you try to estimate it. And if you can reasonably estimate it, you put a reasonable estimate on your balance sheet. If you can't do that, then the principals say you recognize the revenue as you are actually able to collect it.

Steve, would you put -- how would you -- what would you add to that?

Steve Chesnut - *Overstock.com - SVP of Finance*

Yes. No, I think that's perfect, Patrick. Because I think the question that we had to ask ourselves through all of this is as of 12/31, did an asset exist? And that was the key question that we were working through in our own minds of, was there an asset that we could justify and put on the balance sheet?

Patrick Byrne - *Overstock.com - Chairman and CEO*

Right. That's the whole -- and of course, you're going to hear what I think, that if we had done so, the SEC and people would have 10 times the argument now that they have now, to say, oh, you inflated, you pumped your Q4 revenue, you put an asset there when you didn't really know as much as you should have known to put it there.

So, again, Steve's point is a good one. This should all be thought of, what was our state of knowledge at 12/31 and then as we filed our 10-K.

So then we get to what happened. Now, much of this has been -- and all of this, I think, has been disclosed in our 10-Q and our recent [stuff] in detail. The first thing what happened is we discovered a partner underbilling. We have about 1,400 partners and we discovered that, collectively, we had underbilled them \$5.5 million over two years -- maybe a little more than two years.

Of that, we were able -- and we discovered this near the end of Q4, and we went to work going back to collect what we could. However, as a simple business matter, you can't go back to a partner -- you can't go back to somebody and say, gee, that thing we did for you 20 months ago, we underbilled you \$800 on -- or something; it doesn't -- there's a business practice here; there's a business issue.

And it was \$2.8 million from '07 and \$2.7 million from '08. And so the people who manage the relationships with partners went back with the instructions as to work through this like in a businesslike way. It's not something we're going to sue anybody over. We never have sued a partner over something like this, right.

But this is where a businessperson goes in and starts negotiating with the other side and, gee, partner, we -- over two years, we underbilled you \$7,000. How do we make this right now? And out of that, we collected -- well, we collected \$1.8 million in the fourth quarter. We collected, in this year, quarters one, two, and three, we collected a total of \$580,000. And we just got our last -- I mean, it's dribbling down, it's dribbling down. I think we just got our last \$40,000. So, that's the fact of how the money came in.

Now Steve, how did you account for that?



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Steve Chesnut - *Overstock.com - SVP of Finance*

Yes. So what we had to do is think through this. It says our business practice is never to impose these dollars upon a business -- upon these partners. So there was a negotiation process that took place in order to be able to establish what that amount was.

And then because of the fact that all of these funds that we were going to collect back were based on future sales, we said it all is conditioned upon a future activity. And so because of that future activity in our practice of not litigating these balances, we said, all of that should be recognized when we actually collect the funds, rather than book an asset.

Because it was all based on the notion that we had to sell their product on our website in order to collect. And all of these partners have the right at any moment to be able to pull their SKUs off our site, which fundamentally, took our collectibility to virtually \$0 if they pull their business from us.

Patrick Byrne - *Overstock.com - Chairman and CEO*

But it is fair to say, since we collected the \$1.8 million in the Q4, that you put that in Q4's numbers.

Steve Chesnut - *Overstock.com - SVP of Finance*

Yes, because all of this we recognize in the quarter in which we collected it.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Okay. So our guiding principle on this was there was uncertainty. While we had a contractual right, it wasn't a right we were going to exercise. We didn't know if partners would leave their product on our site and we'd be able to collect in the future.

So our guiding principle, given that, was to account for the dollars as we received them. Anything we received in 2008, we booked in 2008. And we got in Q1 of this year, we booked in Q1 of this year and so forth.

Steve Chesnut - *Overstock.com - SVP of Finance*

Yes. The only other backdrop that I think is important is -- remember, Patrick, fourth quarter 2008 was a retail Armageddon. And so all of this was put in the context of a pretty uncertain fourth quarter and where is the environment going to go?

Patrick Byrne - *Overstock.com - Chairman and CEO*

Right. So, on that \$5.5 million, we collected ultimately \$2.4 million. \$1.8 million, we were actually able to collect in the fourth quarter. So -- and we learned about this and collected it quickly. Of the -- there's a remaining \$600,000 that has dribbled in over this year and we recognize that as it came in.

Steve Chesnut - *Overstock.com - SVP of Finance*

That's correct.

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Patrick Byrne - *Overstock.com - Chairman and CEO*

Okay. Is that a fair summary to this point, Jonathan?

Jonathan Johnson - *Overstock.com - President*

Yes.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Okay. In addition, in February of this year, one of our partners -- oh, and by the way -- back on Jonathan's point, we have now I think about 1,400 partners. We've had over 10 years with many, many partners, you occasionally have some business dispute with a partner. We've had business disputes with partners; some number of them have walked away.

We have pulled our relationship with some number of them ourselves. In none of those disputes did we ever go after any partner for anything that we said that -- on the way out the door, you still owe us this bill for \$1,200 or something like that. Have we ever --?

Jonathan Johnson - *Overstock.com - President*

No.

Patrick Byrne - *Overstock.com - Chairman and CEO*

So we have no -- we have a business -- that's a business practice. So we knew on these -- for these 1,400 partners, and in addition, to the real issue is Q4, it's clear we had the [1.89] and we had \$600,000 additionally come in this year. If you asked us on December 31 to predict -- well, we certainly couldn't tell you what was going to come in. And if you had asked us to estimate it, I couldn't have -- could you have had any reasonable estimate?

Steve Chesnut - *Overstock.com - SVP of Finance*

No. So, that's why we took the guiding principle of state conservative only recognize this as it comes in.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Right. And it turned out to be \$600,000 over nine months. And I couldn't have told you it was going to be \$100,000 or \$1.5 million.

The next issue is in February, we had one of these partners contacted us on a different underlying mechanism but a very similar issue. And their issue was they said we think that Overstock, you have underbilled us \$700,000 but there is a different issue on which you owe us \$260,000, but we're not sure of that. And ultimately, that \$260,000 they claim was \$400,000.

So, what did we know -- so now the issue and this is the partner in -- well, what ultimately happened was we took a draw of \$200,000 in late February. That is, they had not agreed what they owed us on the \$700,000, if they owed us, et cetera. But that we said we were going to take a draw of \$200,000 on the assumption that we're going to work all this out in the future.

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Jonathan Johnson - *Overstock.com - President*

Let me just make one correction on that. We didn't say we were going to take a draw. They said, you take a draw, we may come back and ask for it. It was -- they said, take a draw as a good-faith negotiating stance; nothing had been decided or determined at that point.

Patrick Byrne - *Overstock.com - Chairman and CEO*

So, now you say, now we file our 10-K and we filed it February 21. And you say what was our -- now you're trying to say what -- did we have an asset on -- just as of December 31? Well, on December 31, we didn't know anything about this thing. We only learned of it in the middle of February, is the first time we even learned of it.

And could you, based on the facts we just said, say that we had a -- now you're closing the books and filing the books for December 31, do you have an asset as of December 31?

Well, again, that looks -- you know, it's unknown; it's -- well, what eventually happened was at the end of March, we worked a deal where they agreed that, A, that the number here was \$785,000 that we could collect on -- that we could take out of future sales. And we still were going to keep fighting about the \$260,000 that they said we owed them, which was really \$400,000 -- or which they later said was \$400,000.

However, so the question is what do we -- what did the balance sheet in God's eye look like as of December 31 with our knowledge? And I would say that we had an unknown, uncertain amount based on an activity in the future -- that is, future sales -- that were self-contention on that we had to keep selling and they had to keep posting the products on our site.

So to say that we had the -- so, to say that that was an asset, a 12/31 asset, seems like a real leap to me.

Now, the SEC, at least in their questions, seemed to be saying, well, isn't it true that anything -- and I'm not dissing the SEC. I am dissing [is people on the scene] -- I mean, I think Grant Thornton -- we're not going to be exchanging Christmas cards.

The SEC is just doing its job. They're writing letters and saying tell us about this stuff. That's -- God bless them, that's their right and what they should be doing; I've got no problem. But it seems that they're asking, well, isn't it true that anything that we had collected by the end of March, we should have been able to estimate as a 12/31 asset.

Well, Jonathan?

Jonathan Johnson - *Overstock.com - President*

So, I think that's a fair question to ask.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Yes.

Jonathan Johnson - *Overstock.com - President*

But I think it has to be judged at where we were when we made our end of year filings. Let's just take a look at what the fog of war was like then. We didn't know if this client -- if this partner would continue to post product on our site. We didn't know if we'd be able to continue to sell this product. We didn't know what amount we would reach as a negotiated settlement -- whether it would be \$700,000; \$785,000 -- one of those numbers less \$400,000 plus. It was an un- (multiple speakers) --

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Steve Chesnut - *Overstock.com - SVP of Finance*

Was it going to be a walkaway? Was it just going to be, okay, everybody just --

Jonathan Johnson - *Overstock.com - President*

It was an unknown number. We didn't know if we were walking; we didn't know what we were doing. It was also a time where the economic environment and retail in particular was up in arms. And we saw retailers closing their doors every day.

So, given the thought of war, we felt like using our judgment, we made the best decision we could. Now, all that said, after we filed both our 10-K and then our 10-K/A, we knew we were able to complete negotiations quickly.

Steve Chesnut - *Overstock.com - SVP of Finance*

Quicker than I think that Jonathan and I expected.

Jonathan Johnson - *Overstock.com - President*

Quicker than anyone expected. And thanks to Steve, he negotiated them quickly. So, looking with 20/20 hindsight and the fog of war lifted, I can see why the questions are being asked; that's fair. But we still stand by the way we accounted for it.

Patrick Byrne - *Overstock.com - Chairman and CEO*

So we filed the second 10-K -- the amended 10-K on March --

Jonathan Johnson - *Overstock.com - President*

March 5.

Patrick Byrne - *Overstock.com - Chairman and CEO*

And Steve reached a deal with these people --

Jonathan Johnson - *Overstock.com - President*

In late March.

Patrick Byrne - *Overstock.com - Chairman and CEO*

In late March.

Jonathan Johnson - *Overstock.com - President*

So that's where we were. We stand by our accounting on that. Price Waterhouse continues to think that's the right accounting and (multiple speakers) --



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Patrick Byrne - *Overstock.com - Chairman and CEO*

That says we won't open -- well, that it would be improper to change the 10-K from 2008.

Jonathan Johnson - *Overstock.com - President*

We're (multiple speakers) --

Patrick Byrne - *Overstock.com - Chairman and CEO*

I'm going to add one more thing on just as -- that the idea that this is cookie jar accounting is absurd. It's -- because cookie jar accounting is when people leak something into their earnings, when -- it's really for two reasons -- when they leak something into their earnings when they want to leak it. And in this case, it wasn't leaked in when we wanted; it was -- it showed up on our balance sheet when we actually got the money.

And secondly, cookie jar accounting is opaque. It's -- the whole thing is to be opaque. We disclosed this; when we got this money, we put it all in the Q1, in the Q1 10-Q. I don't think we (multiple speakers) --

Jonathan Johnson - *Overstock.com - President*

And noted it as nonrecurring income.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Yes. So no one could be mistaken, make this as a -- you know, we noted as nonrecurring income. It was discussed on the conference call. It was in the press release. It was in the 10-Q.

So, what the hell. So all that said, now, Jonathan, you go -- Steve, you wanted to jump on that. It looked like you were --

Steve Chesnut - *Overstock.com - SVP of Finance*

No, no. I think you're stating it very, very well in that. I mean, I think Jonathan outlined kind of all the facts behind the decision.

Patrick Byrne - *Overstock.com - Chairman and CEO*

So I would say this is conservative. We had a choice -- you know, this isn't some mistake that slipped under everyone's radar. There was a choice between -- among accounting principles and, at least in this whole broad class of issues we've been talking about on the call, there was a choice between accounting principles, conservative or aggressive, recognize revenue quickly, or recognize it as it came in, and we recognized and we chose conservative.

And even as we made that choice, when we first made that choice about how to deal with this stuff after December 31, we didn't even know when we chose the accounting -- we didn't even know about the \$700,000. The partner had not yet contacted us. They didn't contact us until six weeks into the year to tell us about this \$700,000, which in fact, turned out to be \$785,000.

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Jonathan Johnson - *Overstock.com - President*

And I'd just comment -- we refer to conservative and aggressive. I'd like to say we made the correct accounting call. Given what we knew, yes, it is more conservative, but we felt and continue to feel it was the correct way to account for this -- recovery.

Patrick Byrne - *Overstock.com - Chairman and CEO*

If we had booked that \$700,000 -- well, we -- if we had booked \$700,000, we didn't know about it December 31, but if we had seen it as a subsequent event on March 5, when we didn't know what the number was going to be, what we were going to collect, if we were going to collect it; we had never sued any of these partners; were they going to go off in a huff and walk away? Were we going to go off in a huff and walk away? Were they going to propose let's offset the \$700,000 against the \$400,000?

It was a -- so, if we had booked that number on our balance sheet, that would have been -- I think that people would be able to make -- I mean, you probably could have done it; I think Grant Thornton was telling us we should have done it. But that people would have 10 times the legitimate beef that they have now. And saying, wait a second, you put something on your balance sheet when you really didn't have any knowledge what that was going to be.

Steve, do you --?

Steve Chesnut - *Overstock.com - SVP of Finance*

I mean, this is a -- you take a position, somebody is going to take the opposite position. And I agree with Jonathan. I think we took a position, we believe in it. We believe it was a conservative method and an appropriate method.

Patrick Byrne - *Overstock.com - Chairman and CEO*

And then so we'll skip the other \$300,000.

Jonathan Johnson - *Overstock.com - President*

I would just say the reason that we have not filed a reviewed Q3 10-Q comes down to getting advice from two different accounting firms as to when we should recognize \$785,000. It should have been recognized in Q1 2009, when we did. And when we recovered the money and when we recognized it, it should have been recognized in the fourth quarter or sometime in 2008 as an asset that existed then.

And we have two firms telling us very different things. The opposite things. And one saying, if you don't do it our way, we won't review -- that's Grant Thornton. PWC saying, we don't think it's proper to open up right now. And so, there we are.

(multiple speakers) And ultimately, this will be -- this is a topic of an SEC comment letter. We'll respond back; ultimately, there will be a decision and we'll know the right thing to do.

Patrick Byrne - *Overstock.com - Chairman and CEO*

And ultimately, yes. Their position -- and I can understand their point of view, from the outside, it must look like, gee, anything that you collected in the last 10 days of March should have been something or must have been something you could have estimated when you filed on February 21 or when you amended on March 5.



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That's not true. It's -- I remember being sort of surprised and laughing at Jonathan when Steve Chesnut brought this in quickly. And in a matter of a few weeks, we got to an agreement and by late March, got to an agreement and got this done. I remember Jonathan remarking -- it got done quicker than we thought. But it's -- so I can understand why they would ask that question but it's just not true.

The fact that Steve was able to negotiate and get this done, this part done at the end of March, means that we must have been able to estimate it [either] February 21. And that's all leaving aside this other component, the \$260,000, which turned into \$400,000, which didn't get resolved until August; but which clearly in the course of these business negotiations where there was a possibility of all this being just a walkaway.

So I want to stop talking -- there is one other accounting issue, which is the UPS issue we learned about in March. We got -- they had overcharged us \$300,000 in November/December. We figured that out in March. They paid us in March. And when did we show that revenue?

Steve Chesnut - *Overstock.com - SVP of Finance*

In the first quarter when we recovered it.

Patrick Byrne - *Overstock.com - Chairman and CEO*

So that's -- so we have walked through the principles, the facts of what happened, why we made the decision, why we think of the two courses of action, this was the right thing to do; and if we had taken the other course of action, it would have been -- I think that we would have been much more of a legitimate beef.

Let's stop (multiple speakers) --

Jonathan Johnson - *Overstock.com - President*

Can I comment on one thing before we stop?

Patrick Byrne - *Overstock.com - Chairman and CEO*

No, I'm not going to -- I wanted to say -- I wanted to switch now to the subjects of the auditors. Okay? So why don't you take that, Jonathan and Steve, and how that all played out. Let's just be open.

Jonathan Johnson - *Overstock.com - President*

Well, we filed our 10-K last year using Price Waterhouse. They were aware of both the partnered underbilling and the partner recovery issues.

Patrick Byrne - *Overstock.com - Chairman and CEO*

We filed in February.

Jonathan Johnson - *Overstock.com - President*

In February. But they were aware of these and agreed with how we accounted and we moved forward.



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Then after we filed our 10-K for 2008, we conducted an RFP to look at changing auditors. And Patrick, you've said for a long time you felt like it's good practice to occasionally change your auditors so things don't get too cozy.

Patrick Byrne - *Overstock.com - Chairman and CEO*

That's correct. Price gave us great service. We didn't have any beef with Price. They participated in the RFP. We -- they --

Jonathan Johnson - *Overstock.com - President*

Any way, they were -- it was -- it had nothing -- the RFP had nothing to do with being dissatisfied with the auditing services. We wound up -- our Audit Committee wound up engaging Grant Thornton.

Prior to the engagement, Grant Thornton reviewed our 2008 10-K; told us that they were comfortable -- comfortable with the accounting. And then each quarter of this year through the first and second quarters, they've reviewed our financial statements, and we have filed and reviewed 10-Q's for each of the first two quarters. At no time was this issue brought up by them. And -- I'm going to keep going -- they, in October (multiple speakers) --

Patrick Byrne - *Overstock.com - Chairman and CEO*

Whoa -- before you [talk] October, I know every Audit Committee call includes a question -- do you see any accounting that we're doing that you would do differently? Was that ever asked of Grant Thornton?

Jonathan Johnson - *Overstock.com - President*

Our Audit Committee has a private session with the auditors twice a quarter. And they asked that question. And each time they were asked, the answer was no; we see nothing wrong or nothing that we would do differently.

In October, we received a comment letter from the SEC -- not uncommon; we've received comment letters before and it's part of standard practice when you're a public company. And in responding to that comment letter, this partner recovery issue was one of the things that was asked about and we addressed in our response.

Both PWC and Grant Thornton reviewed our response, commented on our response -- and Steve, do you want to give any color as to what they said -- what Grant said about our response?

Steve Chesnut - *Overstock.com - SVP of Finance*

Yes, they acknowledged that when we filed that 16th response letter to the SEC that, given the circumstance and the judgment of the Company, the accounting choice was a reasonable choice to make. So we actually submitted the response to the SEC with PWC, Grant Thornton, and our outside SEC counsel, having reviewed that comment letter -- or the response to the comment letter.

Jonathan Johnson - *Overstock.com - President*

Then on November 3, we got a follow-up comment letter from the SEC asking for some more details on some of the issues it had raised in its initial comment letter. Grant Thornton then, by their account, dug a little deeper into this issue. And with 20/20 hindsight -- I think viewing everything through the spectacles of 20/20 hindsight -- determined that we had accounted for this partner recovery incorrectly.

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We were notified of that last week at a time when even had we wanted to, even had we thought it was correct to reopen last year, which we don't, we wouldn't have been able to make our filings on time.

Patrick Byrne - *Overstock.com - Chairman and CEO*

As I recall, that was actually last Saturday, was the first --

Jonathan Johnson - *Overstock.com - President*

We got inklings of it, but the decision wasn't until late last week.

Patrick Byrne - *Overstock.com - Chairman and CEO*

So, it could not have been possible to, in eight days or three days, amend two 10-Q's and rip up and amend the 10-K, especially given the auditor on that 10-K wouldn't consent -- or said it was improper. So we didn't -- and so we -- Jonathan?

Jonathan Johnson - *Overstock.com - President*

So there we are. So we were faced with the choice of filing nothing, leaving our investors in the dark, or taking the unorthodox but not unprecedented step of filing an unreviewed 10-Q. We thought the latter was a much better choice.

People could see what our numbers are; they can see our disclosures; we know that we will have to file an amendment to that 10-Q once the issues in the SEC comment letter are resolved and we have new auditors. They can review it and move forward.

We intend to do that as quickly as we can, but in the meantime, we're trying to be transparent and let people know what our Q3 numbers look like.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Steve, what would you add to that?

Steve Chesnut - *Overstock.com - SVP of Finance*

I think that's right. Now we're focused very heavily on responding to the SEC comment letter so we get that behind us.

Patrick Byrne - *Overstock.com - Chairman and CEO*

In a perfect world, I want to say what will happen in a perfect world from here in the weeks ahead. Stand by just a moment, please.

In a perfect world, over the next four to six weeks, we will work with -- through the comment letter from the SEC. As I recall, it started off with about 28 comments. It's down to a small number of comments. I think there's four substantive, of which this issue is the substantive, the most substantive.

And in a perfect world, we'll work through -- they'll see that the correctness of our position and how we booked this, at which point we will get a new auditor; they will cert it and there are -- not to put too fine a point on it -- there are people who want to be our auditors. Is that fair to say?



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Jonathan Johnson - *Overstock.com - President*

That is fair to say.

Patrick Byrne - *Overstock.com - Chairman and CEO*

And I just took a look at the participants on this call. I see a number of accounting firms whose names I recognize. So -- but we have to -- no one's going to sign on until we get through this with the SEC. We get through it; we'll get a new auditor; hopefully, they'll audit -- review the Q3; we'll file the amended Q3; they'll be up to speed by the end of Q4, audit Q4 and we sail on smoothly.

The other possibility -- the --

Jonathan Johnson - *Overstock.com - President*

In a less than perfect world from our perspective, we will continue to work through the comment letter with the SEC. The SEC will disagree with the accounting courses of action that we took, and they will say, do it another way. If they do that, we will engage new auditors and we will go back and fix for as far back as we have to.

Patrick Byrne - *Overstock.com - Chairman and CEO*

And raise 2008 revenue [eight-one hundredths of 1%] is about what this is.

Jonathan Johnson - *Overstock.com - President*

It depends on where all these (multiple speakers). But it's -- we're really talking about mostly Q1 income being moved back to last year. This does not affect our go-forward prospects at all.

Patrick Byrne - *Overstock.com - Chairman and CEO*

In fact, we, as I understand it, this doesn't change any positive quarter to a negative quarter or any negative quarter to a positive quarter.

Steve Chesnut - *Overstock.com - SVP of Finance*

That's -- you're absolutely right, Patrick.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Okay. So we've got through all the issues. Let's take questions. Christina?

QUESTIONS AND ANSWERS

Operator

(Operator Instructions). Willis Taylor.

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Willis Taylor - *Gagnon Securities - Analyst*

Since you've dismissed your auditor for a very specific accounting choice, when you go to select a new auditor, how do you prevent yourself from being accused of opinion shopping?

Jonathan Johnson - *Overstock.com - President*

That's a great question, Louis, and that's part of the reason that we've decided not to select a new auditor until this -- until we resolve this issue with the SEC.

We do not want to be accused of opinion shopping. We'd like the SEC to help us figure out -- we'd like them to say we've done it the right way or we've done it the wrong way. Once they say one of those two, we don't need to opinion shop.

Patrick Byrne - *Overstock.com - Chairman and CEO*

But, so, I would even say to the point that when people have contacted us, we have discouraged any communication on the grounds that we got -- for just that reason -- well, I have the -- no matter who we talk to now, then whoever we ultimately pick, people are going to say, well, you did this because you opinion shop.

So we're really not having discussions with anybody. It's nice to get phone calls, but we're not talking to anybody until we get through this just to prevent -- just as a prophylactic measure.

Thank you, Willis. Did you have another question?

Willis Taylor - *Gagnon Securities - Analyst*

Yes, if I may. Do any of these under or overbillings in your mind constitute material weaknesses? And regardless of that answer, how are you going to prevent this from happening in the future?

Steve Chesnut - *Overstock.com - SVP of Finance*

Yes. I think -- in fact, Willis, we did constitute this as a material weakness. And so we have gone back as part of a systems development process was to ramp up and make sure that there's lots of accounting thought process that's going into our systems development.

So we've had, really over the last nine months, a big effort, concerted effort with our IT development process to make sure that we've got, in fact, accounting folks present during all of those development processes.

Patrick Byrne - *Overstock.com - Chairman and CEO*

And you know, it's not like this stuff spilled out and then we said, gee, we'd better go and tighten the screws. It's more like Steve said, we better go -- let's go tighten the screws, and as you tighten the screws, this stuff spilled out. Is that --?

Steve Chesnut - *Overstock.com - SVP of Finance*

That's fair.

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Willis Taylor - Gagnon Securities - Analyst

Okay, thank you very much.

Steve Chesnut - Overstock.com - SVP of Finance

Next question, please.

Operator

(Operator Instructions).

Jonathan Johnson - Overstock.com - President

Okay. Well, I -- you know --

Steve Chesnut - Overstock.com - SVP of Finance

We have one question. Whose it from?

Operator

[Steve Lamur].

Steve Lamur - - Analyst

I am wondering if the fact that you guys haven't filed a 10-Q that's been reviewed, if this is going to have any impact on any of your listing requirements? Or whether any of your lines of credit or your debt may be have problems to covenants?

Jonathan Johnson - Overstock.com - President

Great. Let me -- another good question. Things that we've have been looking at. We have communicated with the NASDAQ. We let them know ahead of time that we would be filing an unreviewed 10-Q.

There is a process that's in place. I think it's a 180-day period before any delisting notification or process would start. We do think we'll get everything wrapped up within that 180-day period. If that's the case, I don't think we have any problem with our listing with the NASDAQ.

We have talked to our lenders and we've talked to Wells, and they don't have concerns with this. It does affect or it may affect our shelf registration statement. We noted that in our filings on Monday. So certainly, there are consequences to this but there's nothing that we think is insurmountable or that can't be worked out, at least at this point.

Steve Lamur - - Analyst

Okay. And how about the cost of all of this as far as your audit costs? And also you mentioned the reworking of your accounting systems with your IP. Is this going to be -- materially change what your margins look like in the next few quarters?

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Steve Chesnut - *Overstock.com - SVP of Finance*

On the IT involvement, I think that's just a standard practice, so there's really no incremental cost on that.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Yes, and again, it isn't like we're now turning around and saying, gee, we'd better go through the fine tooth comb. It's more like Steve started going through with a fine tooth, and our systems just got much more granular over the last year or two. And as they got more granular, he was able to tighten down. And it's more like, as you tighten down last year, this stuff started showing up. So it isn't like there's a new, a great new project we're going to do in IT or something.

Jonathan Johnson - *Overstock.com - President*

And I don't think it will affect margins at all. We are incurring legal and accounting fees to get through this, so there will be something in G&A that hits there. I've (multiple speakers) --

Steve Lamur - *Analyst*

Couldn't it be as much as the \$785,000?

Jonathan Johnson - *Overstock.com - President*

Well, I've joked with Steve that if someone comes to tell us that we overpaid them \$700,000, next time say, you can just keep it. I say that in all jest; we don't intend to overpay people.

Patrick Byrne - *Overstock.com - Chairman and CEO*

I know if I made a joke like that, it would be on the cover of Fortune.

Jonathan Johnson - *Overstock.com - President*

But there will be some additional G&A, but I don't think it will be significant.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Yes. It's in the hundreds of thousands so far, isn't it? Already?

Jonathan Johnson - *Overstock.com - President*

Yes, yes.

Steve Lamur - *Analyst*

Okay. And then I guess one last question. When you say that Price Waterhouse didn't want -- didn't think it was appropriate to open up the 2008 books again, were they saying it wasn't appropriate for them to comment on it because they're not your

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auditor? Or they were actually then again reaffirming that they thought it was accounted for properly? Were they basically saying it's not our business any more? Or were they reaffirming what they'd already done?

Steve Chesnut - *Overstock.com - SVP of Finance*

Well, first of all, to reopen 2008, they have to be involved. And they are still concurring and agreeing with our position of how we've accounted for this. And I think the other thing, until the SEC comment letter is resolved, they see no point in going back and doing that.

Jonathan Johnson - *Overstock.com - President*

So, just to summarize, they continue to agree with the accounting that we did in 2008, and they have been involved in our response to the SEC, and as we've worked through this unreviewed 10-Q.

Patrick Byrne - *Overstock.com - Chairman and CEO*

Yes, they've been, I would say intensely involved again for a month or so, haven't they? Or at least a few weeks. They've been in all of this process involved and forming their decisions and -- stand by a second --

Jonathan Johnson - *Overstock.com - President*

Yes. I guess I'd just say Price Waterhouse has been strongly supportive of the positions that we've taken with the SEC.

Steve Lamur - *Analyst*

Okay, thank you. Good luck with all this.

Jonathan Johnson - *Overstock.com - President*

All right. Well, we don't have any other questions lined up. We're going to -- Q4 is a busy time for us to run the business. So unfortunately, we've gotten tied up in this accounting issue; we're going to go back to running the business this afternoon.

Thanks, all.

Steve Chesnut - *Overstock.com - SVP of Finance*

Do your Christmas shopping here.

Operator

This concludes today's conference call. You may now disconnect.

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