

OMNICELL, Inc
Form 10-K/A
June 25, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

Amendment No. 1

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

For the fiscal year ended December 31, 2007

OR

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

For the transition period from to

Commission File No. 000-33043

OMNICELL, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

94-3166458
(I.R.S. Employer
Identification Number)

1201 Charleston Road

Mountain View, CA 94043

(650) 251-6100

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class

Common Stock, \$0.001 par value

Name of Each Exchange on Which Registered

The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

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

The aggregate market value of the registrant's common stock, \$0.001 par value, held by non-affiliates of the registrant as of June 29, 2007 was \$674.0 million (based upon the closing sales price of such stock as reported on the NASDAQ Stock Market on such date). Excludes an aggregate of 1,473,900 shares of the registrant's common stock held by officers, directors and affiliated stockholders. For purposes of determining whether a stockholder was an affiliate of the registrant at June 29, 2007, the registrant has assumed that a stockholder was an affiliate of the registrant at June 29, 2007 if such stockholder (i) beneficially owned 10% or more of the registrant's common stock and/or (ii) was affiliated with an executive officer or director of the registrant at June 29, 2007. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant.

As of March 7, 2008, there were 34,988,137 shares of the registrant's common stock, \$0.001 par value, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2008 Annual Meeting of Stockholders filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Form 10-K are incorporated by reference in Part III, Items 10-14 of this Form 10-K.

Explanatory Note to this Amendment No. 1

This Amendment No. 1 on Form 10-K/A (the "Amendment") amends the Annual Report on Form 10-K (the "Original Annual Report") for the year ended December 31, 2007, which was originally filed with the Securities and Exchange Commission (the "SEC") on March 17, 2008. We are filing this Amendment in response to a comment letter received from the SEC in connection with its review of our Original Annual Report and our Definitive Proxy Statement filed on March 25, 2008 (the "Comment Letter"). We have modified Part II Item 9A, "Controls and Procedures," in this Amendment in response to the Comment Letter to include a statement that based on their evaluation our chief executive officer and chief financial officer have concluded that, as of December 31, 2007, our disclosure controls and procedures are effective. In addition, we are also including Exhibits 31.1 and 31.2 required by the filing of the Amendment.

Except as described above, no attempt has been made in this Amendment to modify or update other disclosures presented in the Original Annual Report. This Amendment does not reflect events occurring after the filing of the Original Annual Report or modify or update those disclosures, including the exhibits to the Original Annual Report affected by subsequent events. Accordingly, this Amendment should be read in conjunction with our filings with the SEC subsequent to the filing of the Original Annual Report, including any amendments to those filings.

**OMNICELL, INC.
2007 Form 10-K/A**

Amendment No. 1

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ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act) as of the end of the period covered by this Annual Report. Based on such evaluation, our chief executive officer and chief financial officer have concluded that, as of December 31, 2007, the company's disclosure controls and procedures are effective.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Securities Exchange Act Rules 13a-15(f) and 15d-15(f). Our internal control system is designed to provide reasonable assurance regarding the preparation and fair presentation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles. All internal control systems, no matter how well designed, have inherent limitations and can provide only reasonable assurance that the objectives of the internal control system are met.

Under the supervision and with the participation of management, including our chief executive officer and chief financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2007 using the criteria for effective internal control over financial reporting as described in Internal Control Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, management concluded that, as of December 31, 2007, our internal control over financial reporting was effective and that the material weakness in our internal control over financial reporting related to our financial reporting process identified in our Annual Report on Form 10-K for the year ended December 31, 2006 has been remediated.

Our independent registered public accounting firm, Ernst & Young, LLP, has issued an audit report on our internal control over financial reporting. Their audit report included elsewhere in this Annual Report on Form 10-K.

Remediation of Prior Year Material Weakness

As previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2006 and our quarterly reports on Form 10-Q for the quarters ended September 30, 2007, June 30, 2007 and March 31, 2007, our management concluded that our internal control over financial reporting, relating to our financial statement close process, was not effective as of December 31, 2006. Controls pertaining to the timely review of reconciliations and account balances performed during the preparation of financial statements were not effective, impacting a number of accounts including lease receivables, prepaid and other current assets, inventories, accrued liabilities, product revenue and share-based compensation. The largest error was interest income associated with leases, resulting in a revision of quarterly financial data for 2006. The adjustments associated with these errors were recorded in the consolidated financial statements for the year ended December 31, 2006.

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During fiscal 2007, we implemented the following remediation actions designed to address this material weakness: (a) added additional reconciliations and recalculations of lease receivable data; (b) continued to strengthen personnel through training of existing staff and hiring additional qualified personnel; (c) defined roles and responsibilities throughout the accounting/finance organization; and (d) improved processes and procedures to ensure timely reconciliations of all major balance sheet items.

We believe these actions have strengthened our internal control over financial reporting and addressed the material weakness identified above. Based on our testing of these enhanced procedures, management determined that, as of December 31, 2007, we have remediated the material weakness in internal control over financial reporting as disclosed in the Annual Report on Form 10-K for December 31, 2006.

Changes in Internal Control over Financial Reporting

Other than as described above, there were no changes made to our internal control during the fourth quarter of 2007 that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

Attestation Report of the Registered Public Accounting Firm

The report required by this item is set forth at pages F-1 and F-2.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(2) Exhibits required by Item 601 of Regulation S-K.

The information required by this item is set forth on the exhibit index which follows the signature page of this report.

SIGNATURES

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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.

OmniceCell, Inc.

Date: June 24, 2008

By: /s/ Robin G. Seim
Robin G. Seim
Vice President of Finance and
Chief Financial 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.

Signatures	Title	Date
/s/ Randall A. Lipps Randall A. Lipps	Chief Executive Officer, President and Chairman of the Board (<i>Principal Executive Officer</i>)	June 24, 2008
/s/ Robin G. Seim Robin G. Seim	Vice President of Finance, Chief Financial Officer (<i>Principal Accounting and Financial Officer</i>)	June 24, 2008
*/s/ MARY E. FOLEY Mary E. Foley	Director	June 24, 2008
*/s/ JAMES T. JUDSON James T. Judson	Director	June 24, 2008
*/s/ WILLIAM H. YOUNGER, JR. William H. Younger, Jr.	Director	June 24, 2008
*/s/ RANDY D. LINDHOLM Randy D. Lindholm	Director	June 24, 2008
*/s/ GARY S. PETERSMEYER Gary S. Petersmeyer	Director	June 24, 2008
*/s/ DONALD C. WEGMILLER Donald C. Wegmiller	Director	June 24, 2008
*/s/ SARA J. WHITE Sara J. White	Director	June 24, 2008
*/s/ JOSEPH E. WHITTERS Joseph E. Whitters	Director	June 24, 2008
/s/ RANDALL A. LIPPS Randall A. Lipps *Attorney-in-Fact		June 24, 2008

INDEX TO EXHIBITS

Exhibit Number	Description
31.1	Certification by Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification by Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.