

NEXT INC/TN
Form 10-K/A
March 25, 2009

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

[X]

Annual Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Fiscal Year Ended November 28, 2008

Or

[]

Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number 000-25247

NEXT, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

7625 Hamilton Park Drive, Suite 12

Chattanooga, Tennessee 37421

95-4675095
(I.R.S. Employer
Identification No.)

(Address and zip code of principal executive offices)

Registrant's telephone number, including area code: (423) 296-8213

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act: Common Stock, \$.001 par value

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 Securities Exchange Act of 1934. 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 issuer 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 therein, 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. ☐

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 ☐

Smaller reporting company ☒

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

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As of May 30, 2008 the aggregate market value of the registrant's common stock was approximately US \$801,680 which value, solely for the purposes of this calculation, excludes common stock held by the registrant's affiliates, including major shareholders, officers, and directors. Such exclusion should not be deemed a determination or an admission by the issuer that all such individuals are, in fact, affiliates of the registrant.

The number of shares of the registrant's common stock issued and outstanding as of March 2, 2009 was 27,369,055.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement for the registrant's 2009 Annual Meeting of Stockholders (the "2009 Proxy Statement") are incorporated by reference into Part III of this Form 10-K to the extent described herein.

EXPLANATORY NOTE

Next, Inc. (the Company) is filing this Amendment No. 1 on Form 10-K/A to amend its Annual Report on Form 10-K for the fiscal year ended November 28, 2008 that was originally filed with the Securities and Exchange Commission on March 13, 2009 (the Original Filing). This Amendment No. 1 is being filed solely to amend and restate the Report of Independent Registered Public Accounting Firm (the Report) filed under Item 15(a)(1) of the Original Filing and included in Item 8 by reference thereto. The Company inadvertently filed the incorrect document as the Report with the Original Filing. The Report included in this Amendment No. 1 replaces in its entirety the Report previously filed with the Original Filing. In accordance with Rule 12b-15 promulgated under the Securities and Exchange Act of 1934, as amended, new certifications of our principal executive officer and principal financial officer are included as exhibits to this amendment.

Except as described above, no other changes are being made to the Original Filing. This Amendment No. 1 does not amend or update any other information set forth in the Original Filing, and the Company has not updated disclosures contained therein to reflect any events subsequent to the filing of the Original Filing. This Amendment No. 1 consists solely of the amended Report, this explanatory note, the signature page and the certifications required to be filed as exhibits hereto.

ITEM 15.

EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Amendment No. 1 on Form 10-K/A*:

- | | |
|-----|---|
| (1) | Financial Statements; Financial Statement Schedules:
Report of Joseph Decosimo and Company, PLLC, Independent Registered
Public Accounting Firm |
|-----|---|

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- (3) The following documents are filed or incorporated by reference as exhibits to this Amendment No. 1 on Form 10-K/A*:

<u>Exhibit Number</u>	<u>Description</u>
31.1	Certification of chief executive officer.
31.2	Certification of chief financial officer.
32	Section 906 Certifications of chief executive officer and chief financial officer.

*

For a complete list of the exhibits filed with the Original Filing, see Item 15 of the Annual Report on Form 10-K for the fiscal year ended November 28, 2008 filed with the Securities and Exchange Commission on March 13, 2009.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders

NEXT, INC.

We have audited the accompanying consolidated balance sheets of NEXT, INC. and subsidiaries as of November 28, 2008, and November 30, 2007, and the related consolidated statements of operations, changes in stockholders' equity and cash flows for each of the three years in the period ended November 28, 2008. Our audits also include the financial statement schedule Schedule II Valuation and Qualifying Accounts. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of NEXT, INC. and subsidiaries as of November 28, 2008 November 30, 2007, and the results of their operations and their cash flows for each of the three years in the period ended November 28, 2008, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company has suffered recurring losses from operations and has been unable to refinance its line of credit which expires April 30, 2009. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We were not engaged to examine management's assessment of effectiveness of NEXT, INC.'s internal control over financial reporting as of November 28, 2008, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting and, accordingly, we do not express an opinion thereon.

/s/ Joseph Decosimo and Company PLLC

Chattanooga, Tennessee

March 13, 2009

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this Amendment No. 1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chattanooga, State of Tennessee on the 25th day of March, 2009.

NEXT INC.

By: /s/ Robert M. Budd
Robert M. Budd
President and Chief Executive Officer

By: /s/ David O. Cole
David O. Cole
Chief Financial Officer and Secretary
Chief Accounting Officer

EXHIBIT INDEX

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