

VEECO INSTRUMENTS INC
Form 10-Q
November 04, 2013
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

**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 0-16244

VEECO INSTRUMENTS INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of

Incorporation or Organization)

11-2989601
(I.R.S. Employer

Identification Number)

Terminal Drive
Plainview, New York
(Address of Principal Executive Offices)

11803
(Zip Code)

Registrant's telephone number, including area code: **(516) 677-0200**

Website: **www.veeco.com**

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 pursuant 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. (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 the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

39,246,279 shares of common stock were outstanding as of the close of business on October 24, 2013.

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Safe Harbor Statement

This quarterly report on Form 10-Q (the Report) contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Discussions containing such forward-looking statements may be found in Part I. Items 2 and 3 hereof, as well as within this Report generally. In addition, when used in this Report, the words believes, anticipates, expects, estimates, plans, intends, will and similar expressions are intended to identify forward-looking statements. Forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from projected results. These risks and uncertainties include, without limitation, the following:

- Our operating results have been, and may continue to be, adversely affected by unfavorable market conditions;
- Market adoption of light emitting diode (LED) technology for general lighting could be slower than anticipated;
- Our failure to successfully manage our outsourcing activities or failure of our outsourcing partners to perform as anticipated could adversely affect our results of operations and our ability to adapt to fluctuating order volumes;
- The further reduction or elimination of foreign government subsidies and economic incentives may adversely affect the future order rate for our metal organic chemical vapor deposition (MOCVD) equipment;
- Our operating results have been, and may continue to be, adversely affected by tightening credit markets;
- Our backlog is subject to customer cancellation or modification and such cancellation could result in decreased sales and increased provisions for excess and obsolete inventory and/or liabilities to our suppliers for products no longer needed;
- The failure to estimate customer demand accurately could result in excess or obsolete inventory and/or liabilities to our suppliers for products no longer needed, while manufacturing interruptions or delays could affect our ability to meet customer demand;
- The cyclical nature of the industries we serve directly affects our business;
- We rely on a limited number of suppliers, some of whom are our sole source for particular components;
- Our sales to LED and data storage manufacturers are highly dependent on these manufacturers' sales for consumer electronics applications, which can experience significant volatility due to seasonal and other factors, which could materially adversely impact our future results of operations;
- We are exposed to the risks of operating a global business, including the need to obtain export licenses for certain of our shipments and political risks in the countries we operate;
- The timing of our orders, shipments, and revenue recognition may cause our quarterly operating results to fluctuate significantly;
- We operate in industries characterized by rapid technological change;
- We face significant competition;

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- We depend on a limited number of customers, located primarily in a limited number of regions, that operate in highly concentrated industries;
- Our sales cycle is long and unpredictable;
- Our inability to attract, retain, and motivate key employees could have a material adverse effect on our business;
- The price of our common shares may be volatile and could decline significantly;
- We are subject to foreign currency exchange risks;
- The enforcement and protection of our intellectual property rights may be expensive and could divert our limited resources;
- We may be subject to claims of intellectual property infringement by others;
- Our acquisition strategy subjects us to risks associated with evaluating and pursuing these opportunities and integrating these businesses;
- We may be required to take additional impairment charges for goodwill and indefinite-lived intangible assets or definite-lived intangible and long-lived assets;
- Changes in accounting pronouncements or taxation rules or practices may adversely affect our financial results;
- We are subject to internal control evaluations and attestation requirements of Section 404 of the Sarbanes-Oxley Act and any delays or difficulty in satisfying these requirements or negative reports concerning our internal controls could adversely affect our future results of operations and our stock price;
- We are subject to risks of non-compliance with environmental, health and safety regulations;
- We have significant operations in locations which could be materially and adversely impacted in the event of a natural disaster or other significant disruption;
- We have adopted certain measures that may have anti-takeover effects which may make an acquisition of our Company by another company more difficult;
- Our material weaknesses in our internal control which have impeded, and may continue to impede, our ability to file timely and accurate periodic reports may cause us to incur significant additional costs and may continue to affect our stock price;

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- We may be exposed to liabilities under the Foreign Corrupt Practices Act and any determination that we violated these or similar laws could have a material adverse effect on our business;
- If we are subject to cyber-attacks we could incur substantial costs and, if such attacks are successful, could result in significant liabilities, reputational harm and disruption of our operations;
- New regulations related to conflict minerals will force us to incur additional expenses, may make our supply chain more complex, and may result in damage to our relationships with customers; and
- The matters set forth in this Report generally, including the risk factors set forth in *Part II. Item 1A. Risk Factors*.

Consequently, such forward-looking statements should be regarded solely as the current plans, estimates and beliefs of Veeco Instruments Inc. (together with its consolidated subsidiaries, Veeco, the Company, we, us, and our, unless the context indicates otherwise). The Company does not undertake any obligation to update any forward-looking statements to reflect future events or circumstances after the date of such statements.

Explanatory Note

This is our first periodic report since June 30, 2012. Due to the amount of time that has passed since our last periodic report was filed with the Securities and Exchange Commission (SEC) and the changes that have occurred in our business and industry in the interim, the information relating to our business and related matters is focused on our more recent periods and also includes certain information for periods after September 30, 2012. We intend to file our annual report on Form 10-K for the year ended December 31, 2012 and our quarterly reports on Form 10-Q for each of the quarters ended March 31, 2013 and June 30, 2013 as soon as it is practical.

During 2012, the Company commenced an internal investigation in response to information it received concerning certain issues, including contract documentation issues, related to a limited number of customer transactions in South Korea. During the review of information in connection with the internal investigation, questions were raised that prompted the Company to conduct a comprehensive and extensive review of its revenue recognition accounting for certain multiple element arrangements. The Company retained experienced counsel, assisted by an experienced outside accounting consulting firm, to oversee the accounting review undertaken by the Company. The Company completed that review in October 2013.

The delay in filing our periodic reports began with an announcement, on November 15, 2012, regarding our accounting review of our application of accounting principles related to the Company's sales of multiple element arrangements of MOCVD systems in certain transactions originating in 2009 and 2010. We conducted examinations of our MOCVD transactions to determine whether the revenue and related expenses were recognized in the appropriate accounting period. Subsequently, we expanded our accounting review to other relevant transactions of similar multiple element arrangements arising since 2009. In the course of our accounting review, we have examined more than 100 multiple element arrangements.

The primary focus of the Company's accounting review concerned whether the Company correctly interpreted and applied generally accepted accounting principles in the United States (U.S. GAAP) relating to revenue recognition for multiple element arrangements as set forth in Securities and Exchange Commission Staff Accounting Bulletin No. 104: Revenue Recognition, and ASC 605-25 - Revenue Recognition:

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Multiple Element Arrangements (formerly known as EITF 00-21 and EITF 08-01), to certain sales of Veeco products.

We often enter into large orders with our customers consisting of several elements. For accounting purposes, these are called multiple element arrangements, and can include systems, upgrades, spare parts, service, as well as certain other items. Our accounting review examined the selected sales transactions to determine whether the Company appropriately: (1) identified all of the elements in its arrangements with customers; (2) determined the proper units of accounting as part of the arrangements; and (3) allocated the arrangements' consideration to each of the units of accounting under the applicable accounting standards. As a result of our accounting review we identified errors in the consolidated financial statements related to prior periods. The errors were primarily attributable to the misapplication of U.S. GAAP for recognizing revenue and related costs under multiple element arrangements and accounting for warranties. We assessed the materiality of these errors, both quantitatively and qualitatively, and concluded that these errors were not material, individually or in the aggregate, to our consolidated financial statements in this or any other prior periods. During the course of our review, we identified net cumulative errors which overstated cumulative net income from continuing operations through December 31, 2011 by \$0.6 million and net cumulative errors that understated net income from continuing operations in the six month period ended June 30, 2012 by \$1.1 million. As a result, in the third quarter of 2012, we recorded adjustments to correct all prior periods resulting in an increase in revenues of \$5.4 million and an increase in income from continuing operations of \$0.5 million.

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While performing the foregoing accounting review, our Chief Executive Officer and the Chief Financial Officer supervised and participated in conducting an evaluation of the effectiveness of our internal control over financial reporting based on the criteria in Internal Control Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based upon that evaluation, management identified material weaknesses in the Company s internal control over financial reporting and therefore management concluded that we did not maintain effective internal control over financial reporting through the date of this report based on the criteria established by COSO.

Notwithstanding the material weaknesses discussed in *Part I. Item 4. Controls and Procedures* in this report and based upon our accounting review performed during the delayed filing periods, our management has concluded that our condensed consolidated financial statements included in this report on Form 10-Q have been prepared in accordance with U.S. GAAP for interim financial information.

Available Information

We file annual, quarterly and current reports, information statements and other information with the SEC. The public may obtain information by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of that site is www.sec.gov. For quarterly and annual reports, only those reports that were required to be filed through September 30, 2012 are available as of the date of this Report.

Internet Address

We maintain a website where additional information concerning our business and various upcoming events can be found. The address of our website is www.veeco.com. We provide a link on our website, under Investors Financial Information SEC Filings, through which investors can access our filings with the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to such reports. These filings are posted to our website as soon as reasonably practicable after we electronically file such material with the SEC. For quarterly and annual reports, only those reports that were required to be filed through September 30, 2012 are available as of the date of this Report.

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	For the three months ended September 30,		For the nine months ended September 30,	
	2012	2011	2012	2011
Net sales	\$ 132,715	\$ 267,959	\$ 409,171	\$ 787,450
Cost of sales	82,831	143,025	232,765	396,204
Gross profit	49,884	124,934	176,406	391,246
Operating expenses (income):				
Selling, general and administrative	13,892	23,569	54,558	73,966
Research and development	25,775	26,404	72,991	69,927
Amortization	1,477	1,277	3,877	3,519
Restructuring	2,014		2,077	
Other, net	(737)	(199)	(626)	(228)
Total operating expenses	42,421	51,051	132,877	147,184
Operating income	7,463	73,883	43,529	244,062
Interest income (expense), net	176	244	708	(1,142)
Loss on extinguishment of debt				(3,349)
Income from continuing operations before income taxes	7,639	74,127	44,237	239,571
Income tax (benefit) provision	(59)	21,510	9,066	72,657
Income from continuing operations	7,698	52,617	35,171	166,914
Discontinued operations:				
Income (loss) from discontinued operations before income taxes	5,396	(23,839)	6,534	(91,574)
Income tax provision (benefit)	1,341	(7,085)	1,722	(32,371)
Income (loss) from discontinued operations	4,055	(16,754)	4,812	(59,203)
Net income	\$ 11,753	\$ 35,863	\$ 39,983	\$ 107,711