

OPENTABLE INC  
Form 10-Q  
November 03, 2011  
[Table of Contents](#)

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 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, 2011**

**OR**

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

**Commission File Number: 001-34357**

## OPENTABLE, INC.

(Exact Name of Registrant as Specified in Its Charter)

---

**Delaware**  
(State or Other Jurisdiction of

Incorporation or Organization)

**94-3374049**  
(I.R.S. Employer

Identification No.)

**799 Market Street, 4th Floor, San Francisco, CA**  
(Address of Principal Executive Offices)

**94103**  
(Zip Code)

**(415) 344-4200**

(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 checkmark 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 time 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 definition 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 ☒

Edgar Filing: OPENTABLE INC - Form 10-Q

As of October 31, 2011, 23,751,735 shares of the registrant's common stock were outstanding.

---

Table of Contents

**OPENTABLE, Inc.**

**Table of Contents**

	<b>Page</b>
<b><u>PART I. FINANCIAL INFORMATION</u></b>	
<i><u>Item 1.</u></i>	
<u>Financial Statements (Unaudited)</u>	
<u>Condensed Consolidated Balance Sheets</u>	3
<u>Condensed Consolidated Statements of Operations</u>	4
<u>Condensed Consolidated Statements of Cash Flows</u>	5
<u>Notes to Condensed Consolidated Financial Statements (Unaudited)</u>	7
<i><u>Item 2.</u></i>	
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	16
<i><u>Item 3.</u></i>	
<u>Quantitative and Qualitative Disclosures About Market Risk</u>	25
<i><u>Item 4.</u></i>	
<u>Controls and Procedures</u>	26
<b><u>PART II. OTHER INFORMATION</u></b>	
<i><u>Item 1.</u></i>	
<u>Legal Proceedings</u>	27
<i><u>Item 1A.</u></i>	
<u>Risk Factors</u>	27
<i><u>Item 2.</u></i>	
<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	28
<i><u>Item 3.</u></i>	
<u>Defaults Upon Senior Securities</u>	29
<i><u>Item 4.</u></i>	
<u>[Removed and Reserved]</u>	29
<i><u>Item 5.</u></i>	
<u>Other Information</u>	29
<i><u>Item 6.</u></i>	
<u>Exhibits</u>	29
<u>Signatures</u>	31

Table of Contents

## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

**OPENTABLE, INC.****CONDENSED CONSOLIDATED BALANCE SHEETS**

(Unaudited)

	September 30, 2011	December 31, 2010
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 58,890,000	\$ 33,444,000
Short-term investments	21,021,000	9,080,000
Accounts receivable, net of allowance for doubtful accounts of \$1,025,000, and \$1,260,000 at September 30, 2011 and December 31, 2010	15,216,000	13,292,000
Prepaid expenses and other current assets	3,534,000	2,919,000
Deferred tax asset	7,896,000	7,882,000
Restricted cash		167,000
Total current assets	106,557,000	66,784,000
Property, equipment and software, net	15,566,000	14,612,000
Goodwill	42,732,000	42,347,000
Intangibles, net	17,545,000	20,248,000
Deferred tax asset	5,377,000	5,539,000
Other assets	862,000	366,000
<b>TOTAL ASSETS</b>	<b>\$ 188,639,000</b>	<b>\$ 149,896,000</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 1,595,000	\$ 1,862,000
Accrued expenses	5,392,000	5,804,000
Accrued compensation	4,541,000	4,189,000
Deferred revenue	2,000,000	1,852,000
Dining rewards payable	19,363,000	15,398,000
Total current liabilities	32,891,000	29,105,000
Deferred revenue non-current	2,343,000	2,802,000

# Edgar Filing: OPENTABLE INC - Form 10-Q

Deferred tax liability	4,630,000	5,644,000
Income tax liability	12,758,000	8,577,000
Other long-term liabilities	444,000	1,623,000
Total liabilities	53,066,000	47,751,000
COMMITMENTS AND CONTINGENCIES (Note 5)		
STOCKHOLDERS' EQUITY:		
Common stock, \$0.0001 par value 100,000,000 shares authorized; 23,948,317 and 23,507,765 shares issued, 23,738,070 and 23,297,518 shares outstanding at September 30, 2011 and December 31, 2010	2,000	2,000
Additional paid-in capital	161,749,000	143,292,000
Treasury stock, at cost (210,247 shares at September 30, 2011 and December 31, 2010)	(647,000)	(647,000)
Accumulated other comprehensive income (loss)	(900,000)	(1,305,000)
Accumulated deficit	(24,631,000)	(39,197,000)
Total stockholders' equity	135,573,000	102,145,000
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 188,639,000	\$ 149,896,000

See notes to condensed consolidated financial statements.

Table of Contents

**OPENTABLE, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

(Unaudited)

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2011</b>	<b>2010</b>	<b>2011</b>	<b>2010</b>
<b>REVENUES</b>	\$ 34,356,000	\$ 24,520,000	\$ 102,353,000	\$ 68,224,000
<b>COSTS AND EXPENSES:</b>				
Operations and support	9,916,000	6,769,000	29,074,000	19,095,000
Sales and marketing	7,477,000	5,185,000	21,692,000	14,971,000
Technology	3,748,000	2,967,000	11,326,000	8,707,000
General and administrative	7,407,000	5,045,000	18,417,000	12,947,000
<b>Total costs and expenses</b>	<b>28,548,000</b>	<b>19,966,000</b>	<b>80,509,000</b>	<b>55,720,000</b>
<b>Income from operations</b>	<b>5,808,000</b>	<b>4,554,000</b>	<b>21,844,000</b>	<b>12,504,000</b>
<b>Other income, net</b>	<b>23,000</b>	<b>67,000</b>	<b>68,000</b>	<b>209,000</b>
<b>Income before taxes</b>	<b>5,831,000</b>	<b>4,621,000</b>	<b>21,912,000</b>	<b>12,713,000</b>
<b>Income tax expense</b>	<b>1,775,000</b>	<b>786,000</b>	<b>7,346,000</b>	<b>3,770,000</b>
<b>NET INCOME</b>	<b>\$ 4,056,000</b>	<b>\$ 3,835,000</b>	<b>\$ 14,566,000</b>	<b>\$ 8,943,000</b>
<b>Net income per share (See Note 7):</b>				
Basic	\$ 0.17	\$ 0.17	\$ 0.62	\$ 0.39
Diluted	\$ 0.17	\$ 0.16	\$ 0.59	\$ 0.37
<b>Weighted average shares outstanding:</b>				
Basic	23,695,000	22,706,000	23,530,000	22,471,000
Diluted	24,488,000	24,102,000	24,545,000	23,866,000

See notes to condensed consolidated financial statements.

Table of Contents**OPENTABLE, INC.****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(Unaudited)

	<b>Nine Months Ended September 30,</b>	
	<b>2011</b>	<b>2010</b>
<b>OPERATING ACTIVITIES:</b>		
Net income	\$ 14,566,000	\$ 8,943,000
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	5,842,000	4,653,000
Amortization of intangibles	2,986,000	227,000
Provision for doubtful accounts	1,328,000	858,000
Stock-based compensation	8,809,000	5,361,000
Write-off of property, equipment and software	853,000	383,000
Deferred taxes	162,000	(1,728,000)
Excess tax benefit related to stock compensation	(3,934,000)	(4,354,000)
Change in contingent liability	(1,085,000)	
Changes in operating assets and liabilities:		
Accounts receivable	(3,246,000)	(3,087,000)
Prepaid expenses and other current assets	(942,000)	(1,000)
Accounts payable and accrued expenses	3,691,000	5,582,000
Accrued compensation	318,000	835,000
Deferred revenue	(299,000)	(264,000)
Long-term liabilities	3,015,000	664,000
Dining rewards payable	3,958,000	2,473,000
Net cash provided by operating activities	36,022,000	20,545,000
<b>INVESTING ACTIVITIES:</b>		
Purchases of property, equipment and software	(7,297,000)	(6,737,000)
Purchases of investments	(27,325,000)	(24,926,000)
Sales of investments	15,231,000	60,993,000
Acquisition of business		(1,350,000)
Decrease in restricted cash	176,000	
Net cash (used in) provided by investing activities	(19,215,000)	27,980,000
<b>FINANCING ACTIVITIES:</b>		
Excess tax benefit related to stock-based compensation	3,934,000	4,354,000
Proceeds from issuance of common stock upon exercise of employee stock options	4,885,000	2,626,000
Change in cash overdrafts		(988,000)
Net cash provided by financing activities	8,819,000	5,992,000
EFFECT OF EXCHANGE RATES ON CASH	(180,000)	(46,000)



Edgar Filing: OPENTABLE INC - Form 10-Q

NET INCREASE IN CASH AND CASH EQUIVALENTS		25,446,000	54,471,000
CASH AND CASH EQUIVALENTS	Beginning of period	33,444,000	19,807,000
CASH AND CASH EQUIVALENTS	End of period	\$ 58,890,000	\$ 74,278,000

Table of Contents**OPENTABLE, INC.****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)**

(Unaudited)

	<b>Nine Months Ended September 30,</b>	
	<b>2011</b>	<b>2010</b>
<b>SUPPLEMENTAL DISCLOSURE OF OTHER CASH FLOW INFORMATION:</b>		
Cash paid for income taxes	\$ 325,000	\$ 683,000
<b>SUPPLEMENTAL DISCLOSURE OF NONCASH OPERATING ACTIVITIES:</b>		
Contingent liability recorded in other long-term liabilities	\$	\$ 1,526,000
Unpaid portion of acquisition purchase price recorded in accrued expenses	\$	\$ 150,000
<b>SUPPLEMENTAL DISCLOSURE OF NONCASH INVESTING AND FINANCING ACTIVITIES:</b>		
Purchase of property, equipment and software recorded in accounts payable and accrued expenses	\$ 364,000	\$ 629,000
Vesting of early exercised stock options	\$ 543,000	\$ 896,000

See notes to condensed consolidated financial statements.

(Concluded)

Table of Contents

**OPENTABLE, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(UNAUDITED)**

**1. Organization and Description of Business**

OpenTable, Inc. (together with its subsidiaries, "OpenTable" or the "Company"), was incorporated on October 13, 1998, and is a Delaware corporation. The Company provides solutions that form an online network connecting reservation-taking restaurants and people who dine at those restaurants. For restaurant customers, the Company provides a proprietary Electronic Reservation Book, or ERB, and OpenTable Connect, or Connect. The ERB combines proprietary software and computer hardware to deliver a solution that computerizes restaurant host-stand operations and replaces traditional pen-and-paper reservation books. The ERB streamlines and enhances a number of business-critical functions and processes for restaurants, including reservation management, table management, guest recognition and email marketing. For restaurants that do not require the operational benefits of the ERB, the Company provides Connect, which enables restaurants to receive reservations from the OpenTable website and mobile applications as well as the websites of the Company's partners and the restaurant's own website. For diners, the Company operates [www.opentable.com](http://www.opentable.com) and [www.toptable.com](http://www.toptable.com), popular restaurant reservation websites, and also provides a variety of mobile applications. The OpenTable website and mobile applications enable diners to find, choose and book tables at restaurants on the OpenTable network in real time, overcoming the inefficiencies associated with the traditional process of reserving by phone.

*Certain Significant Risks and Uncertainties*

The Company operates in a dynamic industry, and accordingly, can be affected by a variety of factors. For example, management of the Company believes that changes in any of the following areas could have a significant negative effect on the Company's future financial position, results of operations or cash flows: the ability to maintain an adequate rate of growth; the impact of the current economic climate on its business; the ability to effectively manage its growth; the ability to attract new restaurant customers; the ability to increase the number of visitors to its website and convert those visitors into diners; and the ability to retain existing restaurant customers and diners or encourage repeat reservations.

**2. Summary of Significant Accounting Policies**

*Principles of Consolidation*

These condensed consolidated financial statements include the accounts of OpenTable, Inc. and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

***Basis of Presentation***

The accompanying condensed consolidated financial statements are unaudited. These unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ( GAAP ) and applicable rules and regulations of the Securities and Exchange Commission ( SEC ) regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Accordingly, these interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto contained in the Company s Annual Report on Form 10-K for the fiscal year ended December 31, 2010, as filed on March 9, 2011 with the SEC (the 2010 Annual Report ). The condensed consolidated balance sheet as of December 31, 2010 included herein was

Table of Contents

derived from the audited consolidated financial statements as of that date but does not include all disclosures required by GAAP, including notes to the financial statements.

The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and include all adjustments (consisting only of normal recurring adjustments) necessary for the fair presentation of the Company's statement of financial position at September 30, 2011 and December 31, 2010, and the Company's results of operations for the three and nine months ended September 30, 2011 and 2010, and its cash flows for the nine months ended September 30, 2011 and 2010. The results for the three and nine months ended September 30, 2011 are not necessarily indicative of the results to be expected for any future period. All references to September 30, 2011 or to the three or nine months ended September 30, 2011 and 2010 in the notes to the condensed consolidated financial statements are unaudited.

*Use of Estimates*

The preparation of the Company's financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. These estimates are based on information available as of the date of the financial statements; therefore, actual results could differ from those estimates.

*Recently Issued Accounting Standards*

In May 2011, the Financial Accounting Standards Board (FASB) issued Topic 820 Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs (Topic 820). Topic 820 changes the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements to ensure consistency between U.S. GAAP and IFRS. Topic 820 also expands the disclosures for fair value measurements that are estimated using significant unobservable (Level 3) inputs. Topic 820 is effective for interim and annual periods beginning after December 15, 2011 and is applied prospectively. The Company anticipates that the adoption of this standard will not materially expand its consolidated financial statement footnote disclosures.

In June 2011, the FASB issued Topic 220 Presentation of Comprehensive Income (Topic 220). Topic 220 eliminates the option to report other comprehensive income and its components in the statement of changes in equity. Topic 220 requires that all nonowner changes in stockholders equity be presented in either a single continuous statement of comprehensive income or in two separate but consecutive statements. The amended guidance, which must be applied retroactively, is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with earlier adoption permitted. The adoption of this standard will change the presentation of the Company's consolidated financial statements but will have no effect on the reported amounts of comprehensive net income.

In September 2011, the FASB issued guidance on testing goodwill for impairment. The new guidance provides an entity the option to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If an entity determines that this is the case, it is required to perform the currently prescribed two-step goodwill impairment test to identify potential goodwill impairment and measure the amount of goodwill impairment loss to be recognized for that reporting unit (if any). If an entity determines that the fair value of a reporting unit is less than its carrying amount, the two-step goodwill impairment test is not required.

The new guidance will be effective beginning January 1, 2012.

Table of Contents**3. Short-Term Investments and Fair Value Measurements**

Short-term investments are summarized as follows:

	Amortized Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value
<b>At September 30, 2011:</b>				
U.S. government and agency securities	\$ 18,883,000	\$ 5,000	\$ (1,000)	\$ 18,887,000
Certificates of deposit	2,134,000			2,134,000
Total	\$ 21,017,000	\$ 5,000	\$ (1,000)	\$ 21,021,000

	Amortized Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value
<b>At December 31, 2010:</b>				
U.S. government and agency securities	\$ 8,099,000	\$ 1,000	\$	\$ 8,100,000
Certificates of deposit	980,000			980,000
Total	\$ 9,079,000	\$ 1,000	\$	\$ 9,080,000

As of September 30, 2011, certain investments with a total estimated fair value of \$4,421,000 had maturity dates of greater than one year. As of December 31, 2010, there were no investments that had maturity dates of greater than one year.

The Company classifies investments within Level 1 of the fair value hierarchy when the fair value is based on quoted prices in active markets for identical assets or liabilities. The Company considers a market to be active when transactions for the asset occur with sufficient frequency and volume to provide pricing information on an ongoing basis.

The Company classifies investments within Level 2 if the investments are valued using quoted prices for identical assets in markets that are not active, using quoted prices for similar assets in an active market, or using model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets.

Investments are classified within Level 3 of the fair value hierarchy if the fair value is determined using unobservable inputs that are not corroborated by market data. The valuation of Level 3 investments requires the use of significant management judgments or estimation.

In accordance with Topic 820 Fair Value Measurements and Disclosures, the following table represents the Company's fair value hierarchy for its financial assets:

	September 30, 2011	December 31, 2010
Aggregate		Aggregate

# Edgar Filing: OPENTABLE INC - Form 10-Q

	Fair Value		Level 1	Level 2	Fair Value		Level 1	Level 2
U.S. government and agency securities	\$	18,887,000	\$	18,887,000	\$	8,100,000	\$	8,100,000
Certificates of deposit		2,134,000		2,134,000		980,000		980,000
Total short-term investments	\$	21,021,000	\$	21,021,000	\$	9,080,000	\$	9,080,000

Subsequent to the issuance of the Company's 2010 consolidated financial statements, the Company determined that the \$8,100,000 of investments in U.S. government and agency securities as of December 31, 2010 should be classified as Level 2 investments (rather than Level 1 investments as



## Table of Contents

originally classified) as these specific securities are not actively traded. Accordingly, the Company has corrected the classification of these securities from Level 1 to Level 2 in the table of fair value measurements as of December 31, 2010.

## 4. Goodwill and Intangible Assets

A summary of the carrying amount of goodwill by business segment as of September 30, 2011 and December 31, 2010 is as follows:

	September 30, 2011	December 31, 2010
North America	\$ 4,561,000	\$ 4,561,000
International	38,171,000	37,786,000
Total Goodwill	\$ 42,732,000	\$ 42,347,000

The increase in goodwill of \$385,000 was due to the change in foreign currency exchange rates.

The Company evaluates goodwill for impairment annually on August 31 at the reporting unit level using a fair value approach. No impairment of goodwill was identified as of August 31, 2011.

A summary of intangible assets as of September 30, 2011 and December 31, 2010 is as follows:

	Gross Carrying Value	September 30, 2011 Accumulated Amortization	Total	Gross Carrying Value	December 31, 2010 Accumulated Amortization	Total
Trademarks	\$ 12,016,000	\$ 44,000	\$ 11,972,000	\$ 11,897,000	\$ 23,000	\$ 11,874,000
Customer relationships	8,172,000	3,299,000	4,873,000	8,098,000	940,000	7,158,000
Developed technology	1,526,000	826,000	700,000	1,515,000	299,000	1,216,000
Total intangible assets	\$ 21,714,000	\$ 4,169,000	\$ 17,545,000	\$ 21,510,000	\$ 1,262,000	\$ 20,248,000

Amortization of intangible assets was \$993,000 and \$79,000 for the three months ended September 30, 2011 and 2010, respectively. Amortization of intangible assets was \$2,986,000 and \$227,000 for the nine months ended September 30, 2011 and 2010, respectively. Based on the current amount of intangibles subject to amortization, estimated future annual amortization expense is as follows: 2011 (remainder): \$967,000; 2012: \$3,317,000; 2013: \$1,312,000; 2014: \$66,000.

## Edgar Filing: OPENTABLE INC - Form 10-Q

### *Unaudited Pro Forma Condensed Combined Financial Information*

In October 2010, the Company acquired toptable.com ( toptable ), a leading restaurant reservation site in the United Kingdom.

The unaudited pro forma financial information provided below, for the three and nine months ended September 30, 2011 and 2010, assumes the acquisition of toptable occurred on January 1, 2010 and includes the impact of amortizing certain purchase accounting adjustments, such as intangible assets and the pay down of outstanding third party debt, as of January 1, 2010.

Table of Contents

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
Revenues	\$ 34,356,000	\$ 27,411,000	\$ 102,353,000	\$ 76,365,000
Income from operations	5,808,000	3,690,000	21,844,000	10,727,000
Net income	4,056,000	2,864,000	14,566,000	6,911,000
Net income per share				
Basic	\$ 0.17	\$ 0.12	\$ 0.62	\$ 0.30
Diluted	\$ 0.17	\$ 0.12	\$ 0.59	\$ 0.29

**5. Commitments and Contingencies**

The Company leases its facilities under operating leases. These leases expire at various dates through 2016. The terms of the lease agreements provide for rental payments on a graduated basis. The Company recognizes rent expense on a straight-line basis over the lease period.

***Litigation***

On May 12, 2009, a patent infringement lawsuit was filed against the Company by Mount Hamilton Partners, LLC ( Mount Hamilton ) in the United States District Court for the Northern District of California, seeking, among other things, a judgment that the Company has infringed a certain patent held by Mount Hamilton, an injunctive order against the alleged infringing activities and an award for damages. The Company denied Mount Hamilton's allegations and asserted counterclaims seeking judicial declarations that the Mount Hamilton patent is not infringed, is unenforceable and is invalid. The Company and Mount Hamilton entered into a settlement agreement, effective as of June 30, 2011, and the claims between the parties were dismissed with prejudice on July 7, 2011.

The Company is also subject to various other legal proceedings and claims arising in the ordinary course of business. Although occasional adverse decisions or settlements may occur, management believes there is no litigation pending that could, individually or in the aggregate, have a material adverse effect on the Company's business, financial position, results of operations or cash flows.

**6. Stockholders' Equity*****Stock-Based Compensation***

The Company accounts for stock-based compensation under Topic 718 Stock Compensation (Topic 718), which requires compensation costs related to share-based transactions, including employee stock options, to be recognized in the financial statements based on fair value.

## Edgar Filing: OPENTABLE INC - Form 10-Q

Under Topic 718, the fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model.

The following table summarizes the assumptions relating to the Company's stock options for the three and nine months ended September 30, 2011 and 2010, respectively:

## Table of Contents

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
Dividend yield	0%	0%	0%	0%
Volatility	53%-54%	52%	53%-54%	52%-53%
Risk-free interest rate	0.79%-1.76%	1.66%-1.68%	0.79%-2.67%	1.66%-2.95%
Expected term, in years	5.0-6.08	6.02-6.08	5.0-6.08	5.50-6.56

The Company granted 16,311 and 47,780 stock options during the three months ended September 30, 2011 and 2010, respectively, and 124,701 and 945,210 stock options during the nine months ended September 30, 2011 and 2010, respectively. The Company recorded stock-based compensation expense related to stock options of \$3,270,000 and \$2,027,000 for three months ended September 30, 2011 and 2010, respectively, and \$7,113,000 and \$5,361,000 for the nine months ended September 30, 2011 and 2010, respectively.

Topic 718 requires the benefits of tax deductions in excess of recognized compensation expense to be reported as a financing cash flow, rather than as an operating cash flow. This requirement reduces net operating cash flows and increases net financing cash flows. For the three months ended September 30, 2011 and 2010, the Company recorded \$2,022,000 and \$1,620,000 respectively, of excess tax benefits from stock-based compensation and \$3,934,000 and \$4,354,000, respectively, for the nine months ended September 30, 2011 and 2010.

## Restricted Stock Units

The Company began granting restricted stock units ( RSUs ) to its employees in November 2010. The cost of RSUs is determined using the fair value of the Company's common stock on the date of grant. RSUs typically vest and become exercisable annually, based on a one to four year total vesting term. Stock-based compensation expense is amortized on a straight-line basis over the requisite service period.

The Company granted 12,733 and 47,979 RSUs, respectively, during the three and nine months ended September 30, 2011. The Company recorded stock-based compensation expense related to RSUs of \$699,000 and \$1,696,000, respectively, for the three and nine months ended September 30, 2011.

## 7. Net Income Per Share

The Company calculates net income per share in accordance with Topic 260 Earnings per Share. Basic and diluted net income per share attributable to common stockholders are presented in conformity with the two-class method required for participating securities. The Company's weighted average unvested shares subject to repurchase and settlement in shares of common stock upon vesting have the non-forfeitable right to receive dividends on an equal basis with common stock and therefore are considered participating securities that must be included in the calculation of net income per share using the two-class method in all presented periods.

## Performance-Based Awards

Non-vested performance-based awards are included in the diluted shares outstanding each period if established performance criteria have been met at the end of the respective periods. 220,000 shares were excluded from the dilutive shares outstanding for the three and nine months ended September 30, 2011, as the performance criteria had not been met as of the end of the respective periods. 220,000 shares were

## Table of Contents

excluded from the dilutive shares outstanding for the three and nine months ended September 30, 2010, as the performance criteria had not been met as of the end of the respective periods. Anti-dilutive shares in the amounts of 198,000 and 111,000 were excluded from the dilutive shares outstanding for the three months ended September 30, 2011 and 2010, respectively. Anti-dilutive shares in the amounts of 99,000 and 71,000 were excluded from the dilutive shares outstanding for the nine months ended September 30, 2011 and 2010, respectively.

The following table sets forth the computation of basic and diluted net income per share for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
<i>Basic net income per common share calculation:</i>				
Net income	\$ 4,056,000	\$ 3,835,000	\$ 14,566,000	\$ 8,943,000
Less: Undistributed earnings allocated to participating securities		(33,000)	(18,000)	(105,000)
Net income attributable to common shares - basic	4,056,000	3,802,000	14,548,000	8,838,000
Basic weighted average common shares outstanding	23,695,000	22,706,000	23,530,000	22,471,000
Basic net income per share	\$ 0.17	\$ 0.17	\$ 0.62	\$ 0.39
<i>Diluted net income per common share calculation:</i>				
Net income	\$ 4,056,000	\$ 3,835,000	\$ 14,566,000	\$ 8,943,000
Less: Undistributed earnings allocated to participating securities		(20,000)	(11,000)	(68,000)
Net income attributable to common shares - diluted	4,056,000	3,815,000	14,555,000	8,875,000
Weighted average shares used to compute basic net income per share	23,695,000	22,706,000	23,530,000	22,471,000
Effect of potentially dilutive securities:				
Unvested common shares subject to repurchase		126,000	18,000	181,000
Employee stock options	784,000	1,270,000	989,000	1,214,000
Employee stock awards	9,000		8,000	
Weighted average shares used to compute diluted net income per share	24,488,000	24,102,000	24,545,000	23,866,000
Diluted net income per share	\$ 0.17	\$ 0.16	\$ 0.59	\$ 0.37

## 8. Income Taxes

During the three and nine months ended September 30, 2011, the Company recorded income tax expense of \$1,775,000 and \$7,346,000, respectively, which resulted in an effective tax rate of 30% and 34%, respectively. During the three and nine months ended September 30, 2010, the Company recorded income tax expense of \$786,000 and \$3,770,000, respectively, which resulted in an effective tax rate of 17% and 30%, respectively. The expected tax provision (derived from applying the federal statutory rate to the Company's income before income tax provision for the three and nine months ended September 30, 2011) differed from the Company's recorded income tax provision primarily due to benefits resulting from the recognition of current year federal and state research and development credits, the federal Domestic Manufacturing Deduction

## Edgar Filing: OPENTABLE INC - Form 10-Q

and the re-measurement of deferred taxes previously recorded upon the acquisition of toptable (resulting from the change in the statutory income tax rate in the three months ended September 30, 2011), which were partially offset by the tax impact of certain stock-based compensation charges.

Topic 740 Income Taxes prescribes that a tax position is required to meet a minimum recognition threshold before being recognized in the financial statements. The Company's gross unrecognized tax benefits as of September 30, 2011 and December 31, 2010 were \$17,100,000 and \$17,585,000, respectively. As of September 30, 2011 and December 31, 2010, the Company recorded \$172,000 and \$124,000, respectively, of accrued interest. No significant penalties have been recorded to date.



Table of Contents

**9. Comprehensive Income (Loss)**

In accordance with Topic 220 Comprehensive Income, the Company reports by major components and, as a single total, the change in its net assets during the period from non-owner sources. Comprehensive income (loss) consists of net income and accumulated other comprehensive income (loss), which includes certain changes in equity that are excluded from net income. Specifically, it includes cumulative foreign currency translation and the unrealized gain (loss) from investments. Comprehensive income for the three months ended September 30, 2011 was \$2,421,000 and comprehensive income for the three months ended September 30, 2010 was \$3,973,000.

Accumulated other comprehensive loss of \$900,000 as of September 30, 2011 was comprised of \$904,000 of foreign currency translation losses and \$4,000 of unrealized gain on investments. Accumulated other comprehensive loss of \$1,305,000 as of December 31, 2010 was comprised of \$1,306,000 of foreign currency translation losses and \$1,000 of unrealized gain on investments.

**10. Segment Information**

The Company operates in one industry online restaurant reservations and guest management solutions for restaurants. The Company has two reportable segments: North America and International, as defined by Topic 280 Segment Reporting. Reportable segments have been identified based on how management makes operating decisions, assesses performance and allocates resources. The Chief Executive Officer acts as the chief operating decision maker on behalf of both segments. The Company does not allocate assets discretely by reportable segments, and reviews asset information on a global basis, not by segment.

# Table of Contents

Summarized financial information concerning the reportable segments is as follows:

	North America Segment(1)	International Segment	Total Consolidated
<i>Three months ended September 30, 2011</i>			
Revenues subscription	\$ 11,406,000	\$ 1,531,000	\$ 12,937,000
Revenues reservations	15,154,000	2,861,000	18,015,000
Revenues installation and other	2,521,000	883,000	3,404,000
Income (loss) from operations	8,532,000	(2,724,000)	5,808,000
Interest income	25,000		25,000
Depreciation and amortization expense	1,726,000	1,321,000	3,047,000
Purchases of property, equipment and software	2,036,000	609,000	2,645,000
<i>Three months ended September 30, 2010</i>			
Revenues subscription	\$ 9,868,000	\$ 1,146,000	\$ 11,014,000
Revenues reservations	11,059,000	323,000	11,382,000
Revenues installation and other	2,101,000	23,000	2,124,000
Income (loss) from operations	6,646,000	(2,092,000)	4,554,000
Interest income	59,000		59,000
Depreciation and amortization expense	1,546,000	163,000	1,709,000
Purchases of property, equipment and software	1,601,000	153,000	1,754,000
<i>Nine months ended September 30, 2011</i>			
Revenues subscription	\$ 33,117,000	\$ 4,400,000	\$ 37,517,000
Revenues reservations	45,690,000	8,228,000	53,918,000
Revenues installation and other	8,290,000	2,628,000	10,918,000
Income (loss) from operations	30,857,000	(9,013,000)	21,844,000
Interest income	57,000	2,000	59,000
Depreciation and amortization expense	5,162,000	3,666,000	8,828,000
Purchases of property, equipment and software	5,332,000	1,965,000	7,297,000
<i>Nine months ended September 30, 2010</i>			
Revenues subscription	\$ 28,409,000	\$ 3,118,000	\$ 31,527,000
Revenues reservations	31,325,000	825,000	32,150,000
Revenues installation and other	4,474,000	73,000	4,547,000
Income (loss) from operations	17,592,000	(5,088,000)	12,504,000
Interest income	196,000		196,000
Depreciation and amortization expense	4,444,000	436,000	4,880,000
Purchases of property, equipment and software	6,161,000	576,000	6,737,000

(1) A significant majority of the Company's Technology costs are incurred in the United States and as such are allocated to the North America segment. There are no internal revenue transactions between the Company's reporting segments.

Table of Contents**Geographical Information**

The Company is domiciled in the United States and has international operations in Canada, Germany, Japan, Mexico and the United Kingdom. Information regarding the Company's operations by geographic area is presented below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
<b>Revenues:</b>				
United States	\$ 27,249,000	\$ 21,693,000	\$ 81,771,000	\$ 60,413,000
United Kingdom	4,297,000	871,000	12,569,000	2,400,000
International all others	2,810,000	1,956,000	8,013,000	5,411,000
Total revenues	\$ 34,356,000	\$ 24,520,000	\$ 102,353,000	\$ 68,224,000

	As of September 30, 2011	As of December 31, 2010
<i>Long-lived assets(1):</i>		
United States	\$ 12,602,000	\$ 12,034,000
United Kingdom	2,293,000	1,229,000
International all others	1,533,000	1,715,000
Total long-lived assets	\$ 16,428,000	\$ 14,978,000

---

(1) Includes all non-current assets except deferred tax assets, goodwill and intangible assets.

The Company had no customers that individually, or in the aggregate, exceeded 10% of revenues or accounts receivable as of and for any of the periods presented above.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Forward Looking Statements

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and our 2010 Annual Report.*

## Edgar Filing: OPENTABLE INC - Form 10-Q

This quarterly report on Form 10-Q contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. The statements contained in this Quarterly Report on Form 10-Q that are not purely historical are 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 (the Exchange Act ). Forward-looking statements are often identified by the use of words such as, but not limited to, anticipate, believe, can, continue, could, estimate, expect, intend, may, will, plan, project, seek, should, target, would and similar expressions to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on

Table of Contents

information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled *Risk Factors* included below and in our 2010 Annual Report. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

**Overview**

We provide solutions that form an online network connecting reservation-taking restaurants and people who dine at those restaurants. Our solutions for restaurants include our proprietary Electronic Reservation Book, or ERB, and OpenTable Connect, or Connect. Our solutions for diners include [www.opentable.com](http://www.opentable.com), our popular restaurant reservation website, as well as a variety of mobile applications. The OpenTable network includes more than 20,000 OpenTable restaurant customers spanning all 50 states as well as select markets outside of the United States. Since our inception in 1998, we have seated more than 250 million diners through OpenTable reservations, and during the three months ended September 30, 2011, we seated an average of nearly 8 million diners per month, including diners seated by [toptable.com](http://toptable.com) ( *toptable* ), which we acquired in October 2010. Restaurants that use our ERB pay us a one-time installation fee for onsite installation and training, a monthly subscription fee for the use of our software and hardware and a fee for each restaurant guest seated through online reservations. Restaurants that use Connect pay us a fee for each restaurant guest seated through online reservations. Diners can use our online restaurant reservation service for free. For the three months ended September 30, 2011 and 2010, our net revenues were \$34.4 million and \$24.5 million, respectively. For the nine months ended September 30, 2011 and 2010, our net revenues were \$102.4 million and \$68.2 million, respectively. For the three months ended September 30, 2011 and 2010, our subscription revenues accounted for 38% and 45% of our total revenues, respectively, and 37% and 46% of total revenues for the nine months ended September 30, 2011 and 2010, respectively. For the three months ended September 30, 2011 and 2010, our reservation revenues accounted for 52% and 46% of our total revenues, respectively, and 53% and 47% of total revenues for the nine months ended September 30, 2011 and 2010, respectively.

In 2004, we began to selectively expand outside of North America into countries that are characterized by large numbers of online consumer transactions and reservation-taking restaurants. To date, we have concentrated our international efforts in Germany, Japan and the United Kingdom. Our revenues outside of North America for the three and nine months ended September 30, 2011 and 2010 represented 15% and 6% of our total revenues, respectively. On October 1, 2010, we acquired *toptable*, a leading restaurant reservation site in the United Kingdom, which contributed \$2.9 million and \$8.7 million to revenues for the three and nine months ended September 30, 2011, respectively. We intend to continue to incur substantial expenses in advance of recognizing material related revenues as we attempt to further penetrate our existing international markets and selectively enter new markets. Some international markets may fail to meet our expectations, and we may decide to realign our focus, as we did when we closed our offices in Spain and France in the fourth quarter of 2008.

**Basis of Presentation**

***General***

We report consolidated operations in U.S. dollars and operate in two geographic segments: North America and International. The North America segment is comprised of all of our operations in the United States, Canada and Mexico, and the International segment is comprised of all non-North America operations, which includes operations in Europe and Asia.



Table of Contents

***Revenues***

We generate substantially all of our revenues from our restaurant customers. Our revenues include installation fees for our ERB (including training), monthly subscription fees and a fee for each restaurant guest seated through online reservations. Installation fees are recognized on a straight-line basis over an estimated customer life of approximately four to six years. Subscription revenues are recognized on a straight-line basis during the contractual period over which the service is delivered to our restaurant customers. Revenues from online reservations are recognized on a transaction basis as the diners are seated by the restaurant. Revenues are shown net of redeemable Dining Points issued to diners. See Management's Discussion and Analysis of Financial Condition and Results of Operations Critical Accounting Policies and Estimates Dining Rewards Loyalty Program in our 2010 Annual Report.

***Costs and Expenses***

*Operations and support.* Our operations and support expenses consist primarily of payroll and related costs, including bonuses and stock-based compensation, for those employees associated with installation, support and maintenance for our restaurant customers, as well as costs related to our outsourced call center. Operations and support expenses also include restaurant equipment costs, such as depreciation on restaurant-related hardware, shipping costs related to restaurant equipment, restaurant equipment costs that do not meet the capitalization threshold, referral payments and website connectivity costs. Operations and support expenses also include amortization of capitalized website and internal use software development costs (see Management's Discussion and Analysis of Financial Condition and Results of Operations Critical Accounting Policies and Estimates Website and Software Development Costs in our 2010 Annual Report) and amortization of intangible assets. Also included in operations and support expenses are travel and related expenses incurred by the employees providing installation and support services for our restaurant customers, plus allocated facilities costs.

*Sales and marketing.* Our sales and marketing expenses consist primarily of salaries, benefits and incentive compensation for sales and marketing employees, including stock-based compensation. Also included are expenses for trade shows, public relations and other promotional and marketing activities, travel and entertainment expenses and allocated facilities costs.

*Technology.* Our technology expenses consist primarily of salaries and benefits, including bonuses and stock-based compensation, for employees and contractors engaged in the development and ongoing maintenance of our website, infrastructure and software, as well as allocated facilities costs.

*General and administrative.* Our general and administrative costs consist primarily of salaries and benefits, including stock-based compensation, for general and administrative employees and contractors involved in executive, finance, accounting, risk management, human resources and legal roles. In addition, general and administrative costs include consulting, legal, accounting and other professional fees. Bad debt, third party payment processor, credit card, bank processing fees and allocated facilities costs are also included in general and administrative expenses.

Headcount consists of full-time equivalent employees, including full-time equivalent temporary employees, in all of the sections noted below.

*Other Income, Net*

Other income, net consists primarily of the interest income earned on our cash, cash equivalents and short-term investments. Foreign exchange gains and losses are also included in other income, net.



Table of Contents

***Income Taxes***

We are subject to income tax in the United States as well as other tax jurisdictions in which we conduct business. Earnings from our non-U.S. activities are subject to local country income tax and may also be subject to current U.S. income tax.

During the three and nine months ended September 30, 2011, we recorded income tax expense of \$1.8 million and \$7.3 million, respectively, which resulted in an effective tax rate of 30% and 34%, respectively. During the three and nine months ended September 30, 2010, we recorded income tax expense of \$0.8 million and \$3.8 million, respectively, which resulted in an effective tax rate of 17% and 30%, respectively. The tax provision and the effective tax rate for the three and nine months ended September 30, 2011 differed from those of the same period ended September 30, 2010, primarily due to the benefits resulting from the recognition of certain pre-2010 Federal and California research and development tax credits during the three months ended September 30, 2010.

Factors that impact our income tax provision include, but are not limited to, the compensation expense related to non-deductible share-based payments, recognition of research and development tax benefits and the federal Domestic Manufacturing Deduction and discrete tax benefits arising from the disqualified disposition of certain stock-based compensation awards.

**Critical Accounting Policies and Estimates**

In presenting our financial statements in conformity with accounting principles generally accepted in the United States of America, we are required to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures.

Some of the estimates and assumptions we are required to make relate to matters that are inherently uncertain as they pertain to future events. We base these estimates and assumptions on historical experience or on various other factors that we believe to be reasonable and appropriate under the circumstances. On an ongoing basis, we reconsider and evaluate our estimates and assumptions. Our future estimates may change if the underlying assumptions change. Actual results may differ significantly from these estimates.

There have been no material changes to our critical accounting policies described in our 2010 Annual Report. For further information on our critical and other significant accounting policies, see our 2010 Annual Report.

We believe that the following critical accounting policies involve our more significant judgments, assumptions and estimates and, therefore, could have the greatest potential impact on our consolidated financial statements:

- Revenue Recognition;

## Edgar Filing: OPENTABLE INC - Form 10-Q

- Dining Rewards Loyalty Program;
- Website and Software Development Costs;
- Income Taxes; and
- Stock-Based Compensation.

### Results of Operations

The following tables set forth our results of operations for the periods presented and as a percentage of our revenues for those periods. The period-to-period comparison of financial results is not necessarily indicative of future results.

Edgar Filing: OPENTABLE INC - Form 10-Q

Table of Contents

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2011	2010	2011	2010
	(In thousands, except per share amounts)			
REVENUES	\$ 34,356	\$ 24,520	\$ 102,353	\$ 68,224
COSTS AND EXPENSES:				
Operations and support (1)	9,916	6,769	29,074	19,095
Sales and marketing (1)	7,477	5,185	21,692	14,971
Technology (1)	3,748	2,967	11,326	8,707
General and administrative (1)	7,407	5,045	18,417	12,947
Total costs and expenses	28,548	19,966	80,509	55,720
Income from operations	5,808	4,554	21,844	12,504
Other income, net	23	67	68	209
Income before taxes	5,831	4,621	21,912	12,713
Income tax expense	1,775	786	7,346	3,770
NET INCOME	\$ 4,056	\$ 3,835	\$ 14,566	\$ 8,943
Net income per share:				
Basic	\$ 0.17	\$ 0.17	\$ 0.62	\$ 0.39
Diluted	\$ 0.17	\$ 0.16	\$ 0.59	\$ 0.37
Weighted average shares outstanding:				
Basic	23,695	22,706	23,530	22,471
Diluted	24,488	24,102	24,545	23,866

(1) Stock-based compensation included in above line items:

Operations and support	\$ 431	\$ 229	\$ 1,289	\$ 648
Sales and marketing	571	494	1,574	1,359
Technology	431	416	1,319	1,059
General and administrative	2,536	888	4,627	2,295
	\$ 3,969	\$ 2,027	\$ 8,809	\$ 5,361

**Other Operational Data:**

Installed restaurants (at period end):				
North America	16,237	13,025	16,237	13,025
International	7,629	2,221	7,629	2,221
Total	23,866	15,246	23,866	15,246

Seated diners (in thousands):				
North America	21,818	15,368	64,884	44,591
International	1,768	531	4,939	1,403
Total	23,586	15,899	69,823	45,994

Headcount (at period end):				
North America	403	302	403	302

Edgar Filing: OPENTABLE INC - Form 10-Q

International	165	74	165	74
Total	568	376	568	376

**Additional Financial Data:**

Revenues:

North America	\$	29,081	\$	23,028	\$	87,097	\$	64,208
International		5,275		1,492		15,256		4,016
Total	\$	34,356	\$	24,520	\$	102,353	\$	68,224

Income (loss) from operations:

North America	\$	8,532	\$	6,646	\$	30,857	\$	17,592
International		(2,724)		(2,092)		(9,013)		(5,088)
Total	\$	5,808	\$	4,554	\$	21,844	\$	12,504

Depreciation and amortization:

North America	\$	1,726	\$	1,546	\$	5,162	\$	4,444
International		1,321		163		3,666		436
Total	\$	3,047	\$	1,709	\$	8,828	\$	4,880

Stock-based compensation:

North America	\$	3,295	\$	1,932	\$	6,176	\$	5,100
International		674		95		2,633		261
Total	\$	3,969	\$	2,027	\$	8,809	\$	5,361

# Edgar Filing: OPENTABLE INC - Form 10-Q

## Table of Contents

	Three Months Ended September 30, 2011	2010 (as a percentage of revenue)	Nine Months Ended September 30, 2011	2010
REVENUES	100%	100%	100%	100%
COSTS AND EXPENSES:				
Operations and support	29	28	29	28
Sales and marketing	22	21	21	22
Technology	11	12	11	13
General and administrative	21	20	18	19
Total costs and expenses	83	81	79	82
Income from operations	17	19	21	18
Other income, net				
Income before taxes	17	19	21	18
Income tax expense	5	3	7	5
NET INCOME	12%	16%	14%	13%

## Revenues

	Three Months Ended September 30, 2011	2010 (Dollars in thousands)	Nine Months Ended September 30, 2011	2010	Three Month % Change	Nine Month % Change
Revenues by Type:						
Subscription	\$ 12,937	\$ 11,014	\$ 37,517	\$ 31,527	17%	19%
Reservation	18,015	11,382	53,918	32,150	58%	68%
Installation and other	3,404	2,124	10,918	4,547	60%	140%
Total	\$ 34,356	\$ 24,520	\$ 102,353	\$ 68,224	40%	50%
Percentage of Revenues by Type:						
Subscription	38%	45%	37%	46%		
Reservation	52%	46%	53%	47%		
Installation and other	10%	9%	10%	7%		
Total	100%	100%	100%	100%		
Revenues by Location:						
North America	\$ 29,081	\$ 23,028	\$ 87,097	\$ 64,208	26%	36%
International	5,275	1,492	15,256	4,016	254%	280%
Total	\$ 34,356	\$ 24,520	\$ 102,353	\$ 68,224	40%	50%
Percentage of Revenues by Location:						
North America	85%	94%	85%	94%		
International	15%	6%	15%	6%		
Total	100%	100%	100%	100%		

Total revenues increased \$9.8 million, or 40%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010 and \$34.1 million, or 50%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010. Subscription revenues increased \$1.9 million, or 17%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010 and \$6.0 million, or 19%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010. Subscription revenues increased as a result of the increase in installed restaurants. Reservation revenues increased \$6.6 million, or 58%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010 and \$21.8 million, or 68%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010. Reservation revenues increased as a result of the increase in seated diners, plus the addition of \$2.0 million and \$6.2 million for the three and nine months ended September 30, 2011, respectively, of reservation revenues resulting from the acquisition of toptable. Installation and other revenues increased \$1.3 million, or 60%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010 primarily as a result of an increase in revenue from other product

## Table of Contents

offerings, including advertising sales, web service licensing and third-party restaurant coupon sales, plus the addition of \$0.9 million of other revenues resulting from the acquisition of toptable. Installation and other revenues increased \$6.4 million, or 140%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010 primarily as a result of an increase in revenue from other product offerings, including advertising sales, web service licensing, featured private dining listings and third-party restaurant coupon sales, plus the addition of \$2.5 million of other revenues resulting from the acquisition of toptable.

## Costs and Expenses

### Operations and Support

	Three Months Ended September 30, 2011		September 30, 2010		Nine Months Ended September 30, 2011		September 30, 2010		Three Month % Change	Nine Month % Change

Our sales and marketing expenses increased \$2.3 million, or 44%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010, and \$6.7 million, or 45%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010. The increase in sales and marketing expenses for both the three and nine month periods was primarily attributable to increases of \$1.4 million for the three months and \$4.4 million for the nine months in headcount-related costs, including stock-based compensation expense, plus the addition of \$0.5 million for the three months and \$1.2 million for the nine months of pay-per-click marketing expenses incurred by toptable.



Table of Contents*Technology*

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Month	Nine Month
	2011	2010	2011	2010	% Change	% Change
	(Dollars in thousands)					
Technology	\$ 3,748	\$ 2,967	\$ 11,326	\$ 8,707	26%	30%
Headcount (at period end):						
North America	93	81	93	81	15%	15%
International	14	0	14	0	100%	100%
Total	107	81	107	81	32%	32%

Our technology expenses increased \$0.8 million, or 26%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010, and \$2.6 million, or 30%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010. The increase in technology expenses for both the three and nine month periods was primarily attributable to increases in headcount-related costs, including stock-based compensation expense.

*General and Administrative*

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Month	Nine Month
	2011	2010	2011	2010	% Change	% Change
	(Dollars in thousands)					
General and administrative	\$ 7,407	\$ 5,045	\$ 18,417	\$ 12,947	47%	42%
Headcount (at period end):						
North America	58	46	58	46	26%	26%
International	22	9	22	9	144%	144%
Total	80	55	80	55	45%	45%

Our general and administrative expenses increased \$2.4 million, or 47%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010, and \$5.5 million, or 42%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010. The increase in general and administrative expenses was primarily attributable to an increase of \$2.3 million for the three months and \$3.1 million for the nine months in headcount-related costs, including stock-based compensation expense, an increase of \$0.1 million for the three months and \$0.5 million for the nine months in credit card processing fees and a decrease of \$0.4 million for the three months and an increase of \$0.5 million for the nine months in legal fees. The decrease in legal fees for the three months reflects acquisition related expenses incurred during the third quarter of 2010 and the increase in legal fees for the nine months includes a one-time legal settlement expensed in the second quarter of 2011.

*Other Income, Net*

# Edgar Filing: OPENTABLE INC - Form 10-Q

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Month	Nine Month
	2011	2010	2011	2010	% Change	% Change
	(Dollars in thousands)					

Other income, net	\$	23	\$	67	\$	68	\$	209	-66%	-67%
-------------------	----	----	----	----	----	----	----	-----	------	------

Other income, net consisted primarily of interest income earned on cash, cash equivalents and short-term investments and remained relatively consistent for the three months ended September 30, 2011 compared to the three months ended September 30, 2010. Other income, net decreased \$0.1 million for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010 primarily

## Table of Contents

resulting from a lower average short-term investment balance in the nine months ended September 30, 2011 compared to the same period in the prior year.

## Income Taxes

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Month	Nine Month
	2011	2010	2011	2010	% Change	% Change
	(Dollars in thousands)					
Income tax expense	\$ 1,775	\$ 786	\$ 7,346	\$ 3,770	126%	95%

Income tax expense increased \$1.0 million, or 126%, for the three months ended September 30, 2011 compared to the three months ended September 30, 2010, and increased \$3.6 million, or 95%, for the nine months ended September 30, 2011 compared to the nine months ended September 30, 2010. Our effective tax rate increased in 2011 as compared to 2010 due to the recognition of certain pre-2010 Federal and California research and development tax credit benefits during the three months ended September 30, 2010.

## Liquidity and Capital Resources

	2011	Nine Months Ended September 30, (in thousands)	2010
Condensed Consolidated Statements of Cash Flows Data:			
Purchases of property, equipment and software	7,297		6,737
Depreciation and amortization			
North America	5,162		4,444
International	3,666		436
Total depreciation and amortization	8,828		4,880
Cash provided by operating activities	36,022		20,545
Cash (used in) provided by investing activities	(19,215)		27,980
Cash provided by financing activities	8,819		5,992

As of September 30, 2011, we had cash and cash equivalents of \$58.9 million and short-term investments of \$21.0 million. Cash and cash equivalents consist of cash and money market accounts. Short-term investments consist of U.S. government and agency securities and certificates of deposit. To date we have experienced no loss or lack of access to our invested cash or cash equivalents; however, we can provide no assurances that access to our invested cash, cash equivalents and short-term investments will not be impacted by adverse conditions in the financial markets.

Amounts deposited with third party financial institutions exceed the Federal Deposit Insurance Corporation, or FDIC, and Securities Investor Protection Corporation, or SIPC, insurance limits, as applicable. These cash, cash equivalents and short-term investment balances could be

## Edgar Filing: OPENTABLE INC - Form 10-Q

impacted if the underlying financial institutions fail or are subjected to other adverse conditions in the financial markets. To date we have experienced no loss or lack of access to our cash, cash equivalents or short-term investments.

We have a \$5.0 million line of credit to fund working capital under which we had no amounts drawn down as of September 30, 2011. This line of credit expires in July 2012.

Since 2005, we have been able to finance our operations, including international expansion, through cash from operating activities and proceeds from stock sales, including our initial public offering in 2009 and the ongoing exercise of employee stock options. We had cash and cash equivalents of \$58.9

Table of Contents

million at September 30, 2011 and we believe we will have sufficient cash to support our operating activities for at least the next twelve months.

**Operating Activities**

For the nine months ended September 30, 2011, operating activities provided \$36.0 million in cash, primarily as a result of net income of \$14.6 million, \$8.8 million in stock-based compensation, \$8.8 million in depreciation and amortization, and a \$4.0 million increase in dining rewards payable.

For the nine months ended September 30, 2010, operating activities provided \$20.5 million in cash, as a result of net income of \$9.0 million, plus \$4.9 million in depreciation and amortization, \$5.4 million in stock-based compensation and a \$6.8 million increase in accrued expenses and compensation. These amounts were offset by a cash usage of \$3.1 million as a result of an increased accounts receivable balance.

**Investing Activities**

Our primary investing activities have consisted of purchases and maturities of short-term investments and purchases of property, equipment and software and the investment in business acquisitions. We expect to have ongoing capital expenditure requirements to support our growing restaurant installed base and other infrastructure needs. We expect to fund this investment with our existing cash, cash equivalents and short-term investments.

In addition to purchases of property, equipment and software, we purchased \$12.1 million (net of sales) of short-term investments in the nine months ended September 30, 2011 and sold \$36.1 million (net of purchases) of short-term investments in the nine months ended September 30, 2010.

**Financing Activities**

Our primary financing activities consist of proceeds from the issuance of common stock pursuant to equity awards and the excess tax benefit related to stock-based compensation plus the repayment of cash overdrafts during the nine months ended September 30, 2010.

**Off Balance Sheet Arrangements**

As of September 30, 2011, we did not have any off balance sheet arrangements.

**Contractual Obligations**

As of September 30, 2011, there were no significant changes to our contractual obligations.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risks in the ordinary course of our business. These risks include primarily interest rate and foreign exchange risks.

**Interest Rate Fluctuation Risk**

We do not have any long-term borrowings.

Our investments include cash, cash equivalents and short-term investments. Cash and cash equivalents consist of cash and money market accounts. Short-term investments consist of U.S. government

Table of Contents

and agency securities and certificates of deposit. The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. We do not enter into investments for trading or speculative purposes. Our investments are exposed to market risk due to a fluctuation in interest rates, which may affect our interest income and the fair market value of our investments. Due to the short-term nature of our investment portfolio, we do not believe an immediate 10% increase in interest rates would have a material effect on the fair market value of our portfolio, and therefore we do not expect our operating results or cash flows to be materially affected to any degree by a sudden change in market interest rates.

**Foreign Currency Exchange Risk**

We have foreign currency risks related to our revenues and operating expenses denominated in currencies other than the U.S. dollar, principally the British pound sterling, the euro, the Japanese yen, the Canadian dollar and the Mexican peso. We do not believe movements in the foreign currencies in which we transact will significantly affect future net earnings. Foreign currency risk can be quantified by estimating the change in cash flows resulting from a hypothetical 10% adverse change in foreign exchange rates. We believe such a change would not have a material impact on our results of operations.

**Inflation Risk**

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.

**ITEM 4. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2011. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Based on the evaluation of our disclosure controls and procedures as of September 30, 2011, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

**Changes in Internal Control over Financial Reporting**

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.



Table of Contents

**Inherent Limitations on Effectiveness of Controls**

Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. 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 limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been 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. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost effective control system, misstatements due to error or fraud may occur and not be detected.

**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

On May 12, 2009, a patent infringement lawsuit was filed against us by Mount Hamilton in the United States District Court for the Northern District of California, seeking, among other things, a judgment that we have infringed a certain patent held by Mount Hamilton, an injunctive order against the alleged infringing activities and an award for damages. We denied Mount Hamilton's allegations and asserted counterclaims seeking judicial declarations that the Mount Hamilton patent is not infringed, is unenforceable and is invalid. We subsequently entered into a settlement agreement with Mount Hamilton, effective as of June 30, 2011, and the claims between the parties were dismissed with prejudice on July 7, 2011.

We are also subject to various other legal proceedings and claims arising in the ordinary course of business. Although occasional adverse decisions or settlements may occur, management believes that there is no litigation pending that could, individually or in the aggregate, have a material adverse effect on our business, financial position, results of operations or cash flows.

**ITEM 1A. RISK FACTORS**

In addition to the other information set forth in this Quarterly Report, you should carefully consider the risk factors previously disclosed in Part 1, Item 1A of our 2010 Annual Report. The risks described in our 2010 Annual Report are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

**Assertions by third parties of infringement by us of their intellectual property rights could result in significant costs and substantially harm our business and operating results.**

Other parties have asserted, and may in the future assert, that we have infringed their intellectual property rights. Such litigation may involve patent holding companies or other adverse patent owners who have no relevant product revenue, and therefore our own issued and pending patents may provide little or no deterrence. For example, on May 12, 2009, Mount Hamilton Partners, LLC, or Mount Hamilton, filed a

Table of Contents

patent infringement lawsuit against us in the United States District Court for the Northern District of California, seeking, among other things, a judgment that we have infringed a certain patent held by Mount Hamilton, an injunctive order against the alleged infringing activities and an award for damages. We subsequently entered into a settlement agreement with Mount Hamilton, effective as of June 30, 2011, and the claims between the parties were dismissed with prejudice on July 7, 2011.

Furthermore, we cannot predict whether assertions of third-party intellectual property rights or claims arising from such assertions will substantially harm our business and operating results. The defense of any infringement claims of a third party, whether they are with or without merit or are determined in our favor, may result in costly litigation and diversion of technical and management personnel. Furthermore, an adverse outcome of a dispute may require us to pay damages, potentially including treble damages and attorneys' fees, if we are found to have willfully infringed a party's patent or copyright rights; cease making, licensing or using solutions that are alleged to incorporate the intellectual property of others; expend additional development resources to redesign our solutions; and enter into potentially unfavorable royalty or license agreements in order to obtain the right to use necessary technologies. Royalty or licensing agreements, if required, may be unavailable on terms acceptable to us, or at all. In any event, we may need to license intellectual property which would require us to pay royalties or make one-time payments.

**Our directors, executive officers and principal stockholders have substantial control over us and could delay or prevent a change in corporate control.**

As of September 30, 2011, our directors and executive officers, together with their affiliates, beneficially owned approximately 5% of our outstanding common stock. In addition, as of September 30, 2011, approximately 32% of our outstanding common stock was held by other holders of more than 5% of our common stock and their affiliates.

These stockholders, acting together, have the ability to control, or have significant influence over, the outcome of matters submitted to our stockholders for approval, including the election of directors and any merger, consolidation or sale of all or substantially all of our assets. In addition, these stockholders, acting together, have the ability to control, or have significant influence over, the management and affairs of our company. Accordingly, this concentration of ownership might harm the market price of our common stock by:

- delaying, deferring or preventing a change in corporate control;
- impeding a merger, consolidation, takeover or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

**Unregistered Sales of Equity Securities**

None.

**Use of Proceeds**

On May 21, 2009, our registration statement on Form S-1 (File No. 333-157034) was declared effective for our initial public offering.

The net offering proceeds have been invested into short-term investment-grade securities and money market accounts.

Table of Contents

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. [REMOVED AND RESERVED]

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibits

3.1 (1)	Amended and Restated Certificate of Incorporation of OpenTable, Inc.
3.2 (2)	Amended and Restated Bylaws of OpenTable, Inc.
10.1 (3)	Offer Letter Agreement, dated August 1, 2011, by and between OpenTable, Inc. and Duncan Robertson.
10.2	Amended and Restated Loan and Security Agreement, dated July 30, 2011, by and between Comerica Bank and OpenTable, Inc.
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

## Edgar Filing: OPENTABLE INC - Form 10-Q

### Table of Contents

101.INS (4)	XBRL Instance Document.
101.SCH (4)	XBRL Taxonomy Extension Schema Document.
101.CAL (4)	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF (4)	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB (4)	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE (4)	XBRL Taxonomy Extension Presentation Linkbase Document.

---

(1) Filed as Exhibit 3.3 to Amendment No. 4 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on May 6, 2009, (File No. 333-157034), and incorporated herein by reference.

(2) Filed as Exhibit 3.5 to Amendment No. 4 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on May 6, 2009, (File No. 333-157034), and incorporated herein by reference.

(3) Filed as Exhibit 99.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2011, and incorporated herein by reference.

(4) Pursuant to Rule 406T of SEC Regulation S-T, these interactive data files are deemed not filed or part of a registration statement or prospectus for purposes of Section 11 or 12 of the Securities Act of 1933, as amended, and are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under these sections.

Table of Contents

**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.

**OPENTABLE, INC.**

/s/ DUNCAN ROBERTSON

Duncan Robertson

*Chief Financial Officer*

*(Principal Financial Officer and Duly Authorized Signatory)*

Date: November 3, 2011

Table of Contents

INDEX TO EXHIBITS

3.1 (1)	Amended and Restated Certificate of Incorporation of OpenTable, Inc.
3.2 (2)	Amended and Restated Bylaws of OpenTable, Inc.
10.1 (3)	Offer Letter Agreement, dated August 1, 2011, by and between OpenTable, Inc. and Duncan Robertson.
10.2	Amended and Restated Loan and Security Agreement, dated July 30, 2011, by and between Comerica Bank and OpenTable, Inc.
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS (4)	XBRL Instance Document.
101.SCH (4)	XBRL Taxonomy Extension Schema Document.
101.CAL (4)	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF (4)	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB (4)	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE (4)	XBRL Taxonomy Extension Presentation Linkbase Document.

---

(1) Filed as Exhibit 3.3 to Amendment No. 4 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on May 6, 2009, (File No. 333-157034), and incorporated herein by reference.

(2) Filed as Exhibit 3.5 to Amendment No. 4 to the Company's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on May 6, 2009, (File No. 333-157034), and incorporated herein by reference.

(3) Filed as Exhibit 99.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2011, and incorporated herein by reference.

(4) Pursuant to Rule 406T of SEC Regulation S-T, these interactive data files are deemed not filed or part of a registration statement or prospectus for purposes of Section 11 or 12 of the Securities Act of 1933, as amended, and are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under these sections.



