

LIVEPERSON INC
Form 10-Q
August 08, 2008

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-Q

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

For the quarterly period ended JUNE 30, 2008

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: 0-30141

LIVEPERSON, INC.

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE

(State or Other Jurisdiction of
Incorporation or Organization)

13-3861628

(IRS Employer Identification No.)

**462 SEVENTH AVENUE
NEW YORK, NEW YORK**

(Address of Principal Executive
Offices)

10018

(Zip Code)

(212) 609-4200

(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 x 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 x

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

As of August 5, 2008, there were 47,214,501 shares of the issuer's common stock outstanding.

LIVEPERSON, INC.
JUNE 30, 2008
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FORWARD-LOOKING STATEMENTS

STATEMENTS IN THIS REPORT ABOUT LIVEPERSON, INC. THAT ARE NOT HISTORICAL FACTS ARE FORWARD-LOOKING STATEMENTS BASED ON OUR CURRENT EXPECTATIONS, ASSUMPTIONS, ESTIMATES AND PROJECTIONS ABOUT LIVEPERSON AND OUR INDUSTRY. THESE FORWARD-LOOKING STATEMENTS ARE SUBJECT TO RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL FUTURE EVENTS OR RESULTS TO DIFFER MATERIALLY FROM SUCH STATEMENTS. ANY SUCH FORWARD-LOOKING STATEMENTS ARE MADE PURSUANT TO THE SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. IT IS ROUTINE FOR OUR INTERNAL PROJECTIONS AND EXPECTATIONS TO CHANGE AS THE YEAR OR EACH QUARTER IN THE YEAR PROGRESS, AND THEREFORE IT SHOULD BE CLEARLY UNDERSTOOD THAT THE INTERNAL PROJECTIONS AND BELIEFS UPON WHICH WE BASE OUR EXPECTATIONS MAY CHANGE PRIOR TO THE END OF EACH QUARTER OR THE YEAR. ALTHOUGH THESE EXPECTATIONS MAY CHANGE, WE ARE UNDER NO OBLIGATION TO INFORM YOU IF THEY DO. OUR COMPANY POLICY IS GENERALLY TO PROVIDE OUR EXPECTATIONS ONLY ONCE PER QUARTER, AND NOT TO UPDATE THAT INFORMATION UNTIL THE NEXT QUARTER. ACTUAL EVENTS OR RESULTS MAY DIFFER MATERIALLY FROM THOSE CONTAINED IN THE PROJECTIONS OR FORWARD-LOOKING STATEMENTS. FACTORS THAT COULD CAUSE OR CONTRIBUTE TO SUCH DIFFERENCES INCLUDE THOSE DISCUSSED IN PART II, ITEM 1A, "RISK FACTORS."

PART I. FINANCIAL INFORMATION**ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS****LIVEPERSON, INC.****CONDENSED CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)**

	June 30, 2008	December 31, 2007
	(Unaudited)	(Note 1(B))
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 23,450	\$ 26,222
Accounts receivable, net of allowances for doubtful accounts of \$260 and \$208 as of June 30, 2008 and December 31, 2007, respectively	6,665	6,026
Prepaid expenses and other current assets	2,167	1,802
Deferred tax assets, net	2,302	42
Total current assets	34,584	34,092
Property and equipment, net	6,064	3,733
Intangibles, net	5,557	6,953
Goodwill	48,775	51,684
Deferred tax assets, net	4,838	4,202
Security deposits	348	499
Other assets	1,615	1,325
Total assets	\$ 101,781	\$ 102,488
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 4,990	\$ 3,067
Accrued expenses	7,206	9,191
Deferred revenue	4,865	4,000
Deferred tax liabilities, net	-	193
Total current liabilities	17,061	16,451
Other liabilities	1,615	1,325
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.001 par value per share; 5,000,000 shares authorized, 0 shares issued and outstanding at June 30, 2008 and December 31, 2007	—	—
Common stock, \$.001 par value per share; 100,000,000 shares authorized, 47,192,822 shares issued and outstanding at June 30, 2008 and 47,892,128 shares issued and outstanding at December 31, 2007	47	48
Additional paid-in capital	176,850	178,041
Accumulated deficit	(93,761)	(93,358)
Accumulated other comprehensive loss	(31)	(19)
Total stockholders' equity	83,105	84,712
Total liabilities and stockholders' equity	\$ 101,781	\$ 102,488

SEE ACCOMPANYING NOTES TO UNAUDITED CONDENSED

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CONSOLIDATED FINANCIAL STATEMENTS.

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LIVEPERSON, INC.**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)
UNAUDITED**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Revenue	\$ 18,588	\$ 11,661	\$ 35,673	\$ 22,630
Operating expenses:				
Cost of revenue	5,234	3,105	10,120	5,894
Product development	3,503	2,044	6,577	3,864
Sales and marketing	6,443	3,512	12,241	6,914
General and administrative	3,455	2,057	6,635	4,079
Amortization of intangibles	391	242	782	483
Total operating expenses	19,026	10,960	36,355	21,234
(Loss) income from operations	(438)	701	(682)	1,396
Other income:				
Interest income	108	212	189	435
(Loss) income before benefit from income taxes	(330)	913	(493)	1,831
Benefit from income taxes	(139)	-	(90)	-
Net (loss) income	\$ (191)	\$ 913	\$ (403)	\$ 1,831
Basic net (loss) income per common share	\$ (0.00)	\$ 0.02	\$ (0.01)	\$ 0.04
Diluted net (loss) income per common share	\$ (0.00)	\$ 0.02	\$ (0.01)	\$ 0.04
Weighted average shares outstanding used in basic net (loss) income per common share calculation	47,182,068	43,011,309	47,537,385	42,159,146
Weighted average shares outstanding used in diluted net (loss) income per common share calculation	47,182,068	46,726,357	47,537,385	45,757,843

Loss from operations for the three and six months ended June 30, 2008 includes stock-based compensation expense related to the adoption of SFAS No. 123(R) in the amount of \$1,204 and \$2,164, respectively. Income from operations for the three and six months ended June 30, 2007 includes stock-based compensation expense related to the adoption of SFAS No. 123(R) in the amount of \$898 and \$1,712, respectively. See Note 1(D).

**SEE ACCOMPANYING NOTES TO UNAUDITED CONDENSED
CONSOLIDATED FINANCIAL STATEMENTS.**

LIVEPERSON, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)
UNAUDITED

	Six Months Ended	
	June 30,	
	2008	2007
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net (loss) income	\$ (403)	\$ 1,831
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Stock-based compensation expense	2,164	1,712
Depreciation	798	438
Amortization of intangibles	1,396	650
Deferred income taxes	(251)	(2,084)
Provision for doubtful accounts	68	20
CHANGES IN OPERATING ASSETS AND LIABILITIES:		
Accounts receivable	(707)	(788)
Prepaid expenses and other current assets	(365)	15
Security deposits	150	27
Accounts payable	1,545	(394)
Accrued expenses	(1,656)	205
Deferred revenue	865	549
Net cash provided by operating activities	3,604	2,181
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment, including capitalized software	(2,988)	(530)
Prepaid acquisition costs	-	(58)
Acquisition of Kasamba	(108)	-
Acquisition of Proficient	(104)	(28)
Net cash used in investing activities	(3,200)	(616)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Excess tax benefit from the exercise of employee stock options	-	1,809
Proceeds from issuance of common stock in connection with the exercise of options	516	1,436
Repurchase of common stock	(3,680)	-
Net cash (used in) provided by financing activities	(3,164)	3,245
Effect of foreign exchange rate changes on cash and cash equivalents	(12)	(5)
Net (decrease) increase in cash and cash equivalents	(2,772)	4,805
Cash and cash equivalents at the beginning of the period	26,222	21,729
Cash and cash equivalents at the end of the period	\$ 23,450	\$ 26,534

Supplemental disclosure of non-cash investing activities:

Cash flows from investing for the six months ended June 30, 2008 does not include the purchases of approximately \$1,400 of capitalized equipment related to the Company's colocation facility as the corresponding invoices are

included in accounts payable at June 30, 2008, and therefore did not have an impact on cash flows for the period.

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During the six months ended June 30, 2007, the Company incurred approximately \$450 of acquisition costs related to its expected acquisition. This amount is included in accrued expenses at June 30, 2007.

During the six months ended June 30, 2007, the Company issued 1,129,571 shares of common stock, valued at \$8,901, in connection with the acquisition of Proficient Systems, Inc. on July 18, 2006.

During the six months ended June 30, 2007, the Company reduced the amount of accrued restructuring costs related to the Proficient acquisition in the amount of approximately \$197.

**SEE ACCOMPANYING NOTES TO UNAUDITED CONDENSED
CONSOLIDATED FINANCIAL STATEMENTS.**

LIVEPERSON, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(1) SUMMARY OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

(A) SUMMARY OF OPERATIONS

LivePerson, Inc. (the “Company” or “LivePerson”) was incorporated in the State of Delaware in 1995. The Company commenced operations in 1996. LivePerson provides online engagement solutions that facilitate real-time assistance and expert advice.

The Company’s primary revenue source is the sale of the LivePerson services under the brand names Timpani and LivePerson. The Company also facilitates online transactions between service providers (“experts”) who provide expert online advice to consumers (“users”). Headquartered in New York City, the Company’s product development staff, help desk, online sales support and the Kasamba operations are located in Israel. The Company also maintains offices in Atlanta and the United Kingdom.

(B) UNAUDITED CONDENSED CONSOLIDATED FINANCIAL INFORMATION

The accompanying condensed consolidated financial statements as of June 30, 2008 and for the three and six months ended June 30, 2008 and 2007 are unaudited. In the opinion of management, the unaudited condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the consolidated financial position of LivePerson as of June 30, 2008, and the consolidated results of operations and cash flows for the interim periods ended June 30, 2008 and 2007. The financial data and other information disclosed in these notes to the condensed consolidated financial statements related to these periods are unaudited. The results of operations for any interim period are not necessarily indicative of the results of operations for any other future interim period or for a full fiscal year. The condensed consolidated balance sheet at December 31, 2007 has been derived from audited consolidated financial statements at that date.

Certain information and note disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). These unaudited interim condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and notes thereto for the year ended December 31, 2007, included in the Company’s Annual Report on Form 10-K filed with the SEC on March 14, 2008.

(C) REVENUE RECOGNITION

The majority of the Company’s revenue is generated from monthly service revenues and related professional services from the sale of the LivePerson services. Because the Company provides its application as a service, the Company follows the provisions of SEC Staff Accounting Bulletin No. 104, “Revenue Recognition” and Emerging Issues Task Force Issue No. 00-21, “Revenue Arrangements with Multiple Deliverables”. The Company charges a monthly fee, which varies by service and client usage. The majority of the Company’s larger clients also pay a professional services fee related to implementation. The Company may also charge professional service fees related to additional training, business consulting and analysis in support of the LivePerson services.

The Company also sells certain of the LivePerson services directly via Internet download. These services are marketed as LivePerson Pro and LivePerson Contact Center for small and mid-sized businesses (“SMBs”), and are paid for almost exclusively by credit card. Credit card payments accelerate cash flow and reduce the Company’s collection risk, subject to the merchant bank’s right to hold back cash pending settlement of the transactions. Sales of LivePerson Pro and LivePerson Contact Center may occur with or without the assistance of an online sales representative, rather than through face-to-face or telephone contact that is typically required for traditional direct sales.

The Company recognizes monthly service revenue based upon the fee charged for the LivePerson services, provided that there is persuasive evidence of an arrangement, no significant Company obligations remain, collection of the resulting receivable is probable and the amount of fees to be paid is fixed or determinable. The Company's service agreements typically have twelve month terms and are terminable upon 30 to 90 days' notice without penalty. When professional service fees provide added value to the customer on a standalone basis and there is objective and reliable evidence of the fair value of each deliverable, the Company recognizes professional service fees upon completion and customer acceptance of key milestones within each of the professional services engagements. If a professional services arrangement does not qualify for separate accounting, the Company recognizes the fees, and the related labor costs, ratably over a period of 36 months, representing the Company's current estimate of the term of the client relationship.

For revenue generated from online transactions between experts and consumers, the Company applies Emerging Issues Task Force ("EITF") 99-19, "Reporting Revenue Gross as a Principle versus Net as an Agent" due to the fact that the Company performs as an agent without any risk of loss for collection. The Company collects a fee from the consumer and retains a portion of the fee, and then remits the balance to the expert. Revenue from these transactions is recognized when there is persuasive evidence of an arrangement, no significant Company obligations remain, collection of the resulting receivable is probable and the amount of fees to be paid is fixed or determinable.

(D) STOCK-BASED COMPENSATION

The Company adopted Statement of Financial Accounting Standards No. 123(R) ("SFAS No. 123(R)") using the modified prospective transition method, which requires the application of the accounting standard as of January 1, 2006, the first day of the Company's fiscal year. The Company's Consolidated Financial Statements as of and for the three and six months ended June 30, 2008 and 2007 reflect the impact of SFAS No. 123(R). In accordance with the modified prospective transition method, the Company's Consolidated Financial Statements for prior periods have not been restated to reflect, and do not include, the impact of SFAS No. 123(R).

The following table summarizes stock-based compensation expense related to employee stock options under SFAS No. 123(R) included in Company's Statements of Operations for the three and six months ended June 30, 2008 and 2007:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2008	2007	2008	2007
Cost of revenue	\$ 161	\$ 113	\$ 275	\$ 209
Product development expense	422	286	714	