

LUNA INNOVATIONS INC
Form 10-K/A
April 06, 2007

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A
Amendment No. 1

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2006

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 000-52008

LUNA INNOVATIONS INCORPORATED

(Exact name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization)

1703 South Jefferson Street, SW, Suite 400

Roanoke, VA 24016

(Address of Principal Executive Offices)

54-1560050
(I.R.S. Employer Identification Number)

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(540) 769-8400

(Registrant's Telephone Number, Including Area Code)

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

| Title of Each Class: | Name of Each Exchange on which Registered |
|---|--|
| Common Stock, par value \$0.001 per share | The NASDAQ Stock Market LLC |
| Securities registered pursuant to Section 12(g) of the Act: None | |

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

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

Large accelerated filer Accelerated filer Non-accelerated filer

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant on June 30, 2006, based upon the closing sale price of the registrant's common stock on such date as reported by the NASDAQ Global Market (formerly the NASDAQ National Market), was approximately \$40.1 million. Shares of the registrant's common stock held by each officer and director of the registrant, and each entity or person that, to the registrant's knowledge, owned 10% or more of the registrant's outstanding common stock as of June 30, 2006, have been excluded in that such persons or entities may be deemed to be affiliates. This determination regarding affiliate status is not necessarily a conclusive determination for other purposes.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date: As of March 15, 2007, there were 10,002,686 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Specified portions of the registrant's Proxy Statement with respect to its 2007 annual meeting of stockholders are incorporated by reference in Part III of this annual report on Form 10-K.

EXPLANATORY NOTE

This amendment is filed solely to attach Exhibit 10.21 (Asset Transfer and License Agreement by and between Luna Innovations Incorporated and Coherent, Inc.), which was inadvertently omitted from the initial filing of the report and for which confidential treatment is requested, and to correct the incorporation by reference information for Exhibit 10.22 (Form of Stock Sale Restriction Letter Agreement). No other changes to the Annual Report on Form 10-K of Luna Innovations Incorporated, originally filed on March 30, 2007, have been made.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Annual Report on Form 10-K, as amended:

- (1) Financial Statements. See Index to Consolidated Financial Statements at Item 8 of this Report on Form 10-K.
- (2) All other schedules are omitted as the required information is inapplicable or the information is presented in the Consolidated Financial Statements and notes thereto in Item 8 of Part II of this Annual Report on Form 10-K.
- (3) Exhibits. The exhibits filed as part of this report are listed under Exhibits at subsection (b) of this Item 15, as amended:

(b) Exhibits

EXHIBIT INDEX

| Exhibit No. | Exhibit Document |
|--------------------|---|
| 3.1(1) | Amended and Restated Certificate of Incorporation of the Registrant (Exhibit 3.2) |
| 3.2(2) | Amended and Restated Bylaws of the Registrant (Exhibit 3.4) |
| 4.1(3) | Specimen Common Stock certificate of the Registrant (Exhibit 4.1) |
| 4.2(2) | 2003 Stock Plan (Exhibit 10.7) |
| 4.3(4) | 2006 Equity Incentive Plan (Exhibit 10.9) |
| 4.4(2) | Form of Senior Convertible Promissory Note (Exhibit 4.2) |
| 4.5(2) | Warrant to Purchase 1,047 Shares of Class B Common Stock of Luna Innovations Incorporated, issued on September 30, 2005 (Exhibit 4.3) |
| 4.6(2) | Warrant to Purchase 2,636 Shares of Class B Common Stock of Luna Innovations Incorporated, issued on November 11, 2005 (Exhibit 4.4) |
| 4.7(2) | Warrant to Purchase 2,554 Shares of Class B Common Stock of Luna Innovations Incorporated, issued on September 30, 2005 (Exhibit 4.5) |
| 4.8(2) | Form of Warrant to Purchase Shares of Common Stock of Luna Innovations Incorporated (Exhibit 4.6) |
| 4.9(2) | Form of Stock Option Agreement (Exhibit 4.7) |
| 10.1(2) | Form of Indemnification Agreement for directors and executive officers (Exhibit 10.1) |
| 10.2(5) | Employment Agreement by and between the Company and Kent A. Murphy (Exhibit 10.1) |
| 10.3(6) | Employment Agreement by and between the Company and Dale E. Messick (Exhibit 10.1) |
| 10.4(5) | Employment Agreement by and between the Company and John T. Goehrke (Exhibit 10.2) |
| 10.5(7) | Amended and Restated Employment Agreement by and between the Company and Scott A. Graeff (Exhibit 10.1) |
| 10.6(3) | Amended Loan Agreement, dated as of May 12, 2006, by and between Luna Innovations Incorporated and First National Bank (Exhibit 10.6) |
| 10.7(2) | Amended and Restated Investor Rights Agreement, dated December 30, 2005, by and among Luna Innovations Incorporated, Carilion Health System and certain stockholders (Exhibit 10.8) |
| 10.8(8) | Amended Lease, dated July 20, 2006, by and between Carilion Medical Center and Luna Innovations Incorporated. (Riverside Center, Roanoke, Virginia) (Exhibit 10.1) |
| 10.9(9) | Industrial Lease Agreement, dated March 21, 2006, by and between Luna Innovations Incorporated and the Industrial Development Authority of Montgomery County, Virginia (3157 State Street, Blacksburg, Virginia) (Exhibit 10.27) |
| 10.10(3) | First Amendment to Industrial Lease Agreement, dated May 11, 2006, by and between Luna Innovations Incorporated and the Industrial Development Authority of Montgomery County, Virginia (3150 State Street, Blacksburg, Virginia) (Exhibit 10.34) |
| 10.11(2) | Commercial Lease, dated March 17, 2003, between Canvasback Real Estate & Investments LLC and Luna Innovations Incorporated (705 Dale Avenue, Charlottesville, Virginia) (Exhibit 10.14) |
| 10.12(2) | Full Service Office Lease, dated August 2003, between Hampton R&D Properties, LLC and Luna Innovations Incorporated (130 Research Drive, Hampton, Virginia) (Exhibit 10.15) |

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| Exhibit No. | Exhibit Document |
|--------------------|---|
| 10.13(2) | Lease, effective as of January 1, 2005, between the Industrial Development Authority of Danville and Luna Innovations Incorporated (521 Bridge Street, Danville, Virginia) (Exhibit 10.17) |
| 10.14(2) | Grant Agreement, dated March 25, 2004, by and between the City of Danville, Virginia, and Luna Innovations Incorporated (Exhibit 10.21) |
| 10.15(3) | License Agreement No. DN-982, dated June 10, 2002, by and between the National Aeronautics and Space Administration (NASA) and Luna Innovations Incorporated; Modification No. 1 to License Agreement No. DN-982, dated January 23, 2006, by and between NASA and Luna Innovations Incorporated (Exhibit 10.22) |
| 10.16(3) | License Agreement No. DN-951, dated December 20, 2000, by and between NASA and Luna Technologies, Inc. (Exhibit 10.23) |
| 10.17(3) | License Agreement No. DE-384, dated October 28, 2004, by and between NASA and Luna Technologies, Inc. (Exhibit 10.24) |
| 10.18(3) | Fiber Optic Patent License, dated September 22, 2003, by and between United Technologies Corporation and Luna Innovations Incorporated (Exhibit 10.25) |
| 10.19(3) | Amended and Restated License Agreement, dated March 19, 2004, by and between Virginia Tech Intellectual Properties, Inc. and Luna Innovations Incorporated (Exhibit 10.26) |
| 10.20(10) | Co-Operation Agreement, dated August 10, 2006, by and between Luna Technologies, Inc. and Acterna France SAS (Exhibit 10.6) |
| 10.21 | Asset Transfer and License Agreement by and between Luna Innovations Incorporated and Coherent, Inc. |
| 10.22(9) | Form of Stock Sale Restriction Letter Agreement |
| 10.23(11) | Amended and Restated Stock Sale Restriction Agreement by and between Luna Innovations Incorporated and Kent A. Murphy, dated as of January 23, 2007. (Exhibit 10.1) |
| 10.24(11) | Amended and Restated Stock Sale Restriction Agreement by and between Luna Innovations Incorporated and Dale E. Messick, dated as of January 23, 2007. (Exhibit 10.2) |
| 10.25(11) | Amended and Restated Stock Sale Restriction Agreement by and between Luna Innovations Incorporated and Scott A. Graeff, dated as of January 23, 2007. (Exhibit 10.3) |
| 10.26(11) | Amended and Restated Stock Sale Restriction Agreement by and between Luna Innovations Incorporated and Robert P. Lenk, dated as of January 23, 2007. (Exhibit 10.4) |
| 10.27(11) | Amended and Restated Stock Sale Restriction Agreement by and between Luna Innovations Incorporated and Scott A. Meller, dated as of January 23, 2007. (Exhibit 10.5) |
| 10.28(11) | Amended and Restated Stock Sale Restriction Agreement by and between Luna Innovations Incorporated and Michael F. Gunther, dated as of January 23, 2007. (Exhibit 10.6) |
| 21.1* | List of Subsidiaries |
| 23.1* | Consent of Grant Thornton LLP, Independent Registered Public Accounting Firm |
| 24.1* | Power of Attorney (see signature page) |
| 31.1* | Certification of the Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |

| Exhibit No. | Exhibit Document |
|--------------------|--|
| 31.2* | Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-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. |

- (1) Incorporated by reference to the exhibit to the Registrant's Current Report on Form 8-K, Commission File No. 000-52008, dated June 2, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form 8-K.
 - (2) Incorporated by reference to the exhibit to the Registrant's Registration Statement on Form S-1, Commission File No. 333-131764, filed on February 10, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form S-1.
 - (3) Incorporated by reference to the exhibit to Amendment No. 5 of the Registrant's Registration Statement on Form S-1, Commission File No. 333-131764, filed on May 19, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form S-1.
 - (4) Incorporated by reference to the exhibit to Amendment No. 3 of the Registrant's Registration Statement on Form S-1, Commission File No. 333-131764, filed on April 28, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form S-1.
 - (5) Incorporated by reference to the exhibit to the Registrant's Current Report on Form 8-K, Commission File No. 000-52008, dated July 14, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form 8-K.
 - (6) Incorporated by reference to the exhibit to the Registrant's Current Report on Form 8-K, Commission File No. 000-52008, dated August 29, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form 8-K.
 - (7) Incorporated by reference to the exhibit to the Registrant's Current Report on Form 8-K, Commission File No. 000-52008, dated December 20, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form 8-K.
 - (8) Incorporated by reference to the exhibit to the Registrant's Current Report on Form 8-K, Commission File No. 000-52008, dated July 20, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form 8-K.
 - (9) Incorporated by reference to the exhibit to Amendment No. 2 of the Registrant's Registration Statement on Form S-1, Commission File No. 333-131764, filed on April 10, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form S-1.
 - (10) Incorporated by reference to the exhibit to the Registrant's Quarterly Report on Form 10-Q, Commission File No. 000-52008, dated November 13, 2006. The number given in parentheses indicates the corresponding exhibit number in such Form 10-Q.
 - (11) Incorporated by reference to the exhibit to the Registrant's Current Report on Form 8-K, Commission File No. 000-52008, dated January 23, 2007. The number given in parentheses indicates the corresponding exhibit number in such Form 8-K.
- * Previously filed.
Confidential treatment is requested.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

LUNA INNOVATIONS INCORPORATED

By: /s/ DALE E. MESSICK
Dale E. Messick
Chief Financial Officer

April 5, 2007