

EBAY INC
Form 8-K/A
December 01, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 8-K/A
(Amendment No. 1)
CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): October 14, 2005

eBay Inc.

(Exact name of registrant as specified in its charter)

Delaware

000-24821

77-0430924

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

2145 Hamilton Avenue, San Jose,
California

95125

(Address of principal executive
offices)

(Zip Code)

Registrant's telephone number,
including area code:

(408) 376-7400

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Explanatory Note

This Form 8-K/A is being filed to amend Item 9.01 of the Current Report on Form 8-K filed by eBay Inc. on October 18, 2005. This amendment provides the audited historical financial statements of the businesses acquired as required by Item 9.01(a) and the unaudited pro forma financial information required by Item 9.01(b), which financial statements and information were not included in the Form 8-K filed on October 18, 2005.

Item 2.01 Completion of Acquisition or Disposition of Assets.

On October 14, 2005, eBay Inc. (eBay) completed its previously announced acquisition of the outstanding securities of Skype Technologies S.A., a limited company (société anonyme) registered under the laws of the Grand Duchy of Luxembourg (Skype), pursuant to the terms of the Sale and Purchase Agreement dated September 11, 2005 (the Purchase Agreement) entered into among eBay, Skype and the shareholders and warrant holders of Skype. Pursuant to the terms of the Purchase Agreement, Skype will become an indirect wholly-owned subsidiary of eBay.

In exchange for the share capital and warrants of Skype, eBay made an initial payment to the sellers of such share capital and warrants consisting of approximately 2.1 billion, or approximately \$2.6 billion, which was comprised of approximately \$1.3 billion in cash and approximately 32.8 million shares of eBay common stock with a value of approximately \$1.3 billion. The sellers have the potential to receive earn out payments tied to the achievement of certain performance targets prior to June 30, 2009. The maximum amount potentially payable under the performance-based earn out is approximately 1.1 billion, or approximately \$1.4 billion, and would be payable in cash or eBay stock, at eBay's discretion, with the expected payment dates for any potential payments in 2008 and/or 2009. All dollar amounts herein are based on the Euro-Dollar exchange rate as of October 12, 2005, as compared with the Euro-Dollar exchange rate as of September 9, 2005 used for purposes of calculating the amounts set forth in eBay's Current Report on Form 8-K filed on September 15, 2005 (the Original Form 8-K). The fair value of the stock consideration issued has, however, been based on the average closing price of our common stock surrounding the acquisition announcement date of September 12, 2005. In addition, since the filing of the Original Form 8-K, certain options to acquire ordinary shares of Skype have been exercised and the holders of the shares issuable upon exercise of the options have made either a Fixed Consideration Election or an Earn Out Election as described below. Skype shareholders and warrant holders were offered the choice between several consideration alternatives for their shares and warrants. Shareholders and warrant holders representing approximately 42% of the Skype shares and warrants chose to receive a single payment in cash and eBay stock at the closing of the acquisition (the Fixed Consideration Election). Shareholders and warrant holders representing the remaining 58% of the Skype shares and warrants chose to receive a reduced up-front payment in cash and eBay stock at the closing of the acquisition in return for potential future earn-out payments which are based on performance-based targets for active users, gross profit and net revenue (the Earn Out Election).

The terms and conditions of the earn out payments are set forth in an Earn Out Agreement entered into concurrently with the Purchase Agreement by eBay, Skype and the sellers of the share capital and warrants of Skype who elected to receive the earn out payments. The earn out payments are contingent upon Skype achieving: (a) a net revenue and gross margin-based target; (b) a gross profit-based target; and (c) a target based on the number of active users of Skype's communication products. Base earn out payments of up to an aggregate of approximately 877 million, or approximately \$1.05 billion, weighted equally among the three targets, would be payable if the targets are achieved over any four-quarter period commencing on January 1, 2006 through June 30, 2009. Additional bonus earn out payments of up to an aggregate of approximately 292 million, or approximately \$351 million, weighted equally among the three targets, would be payable if Skype exceeds the targets during calendar year 2008. The Earn Out Agreement also provides that certain persons who were officers and directors of Skype prior to the closing of the transaction will continue to be officers and directors of Skype following the closing of the transaction. However, the earn out payments are not tied to continued employment with Skype or eBay.

The eBay stock issued in connection with the acquisition will be subject to certain contractual and other restrictions on resale. Seventy-five percent of the shares of eBay stock to be issued to persons who made the Fixed Consideration Election that are not otherwise deposited into escrow will be subject to contractual restrictions on transfer that will lapse with respect to one-third of such shares on each of the 180th, 360th and 540th day following the closing of the acquisition. All of the shares of eBay stock to be issued to persons who made the Earn Out Election that are included

Edgar Filing: EBAY INC - Form 8-K/A

in the up-front payment but are not otherwise deposited into escrow will be subject to contractual restrictions on transfer that will lapse with respect to twenty-five percent of such shares on each of the 180th, 360th, 540th and 720th day following the closing of the acquisition. eBay and the sellers of the share capital and warrants of Skype have entered into a Registration Rights Agreement requiring eBay to file a registration statement on Form S-3 covering the resale of such eBay stock within 75 days following the closing of the acquisition.

In addition to the foregoing, eBay agreed to assume the options to acquire ordinary shares of Skype outstanding as of the closing of the transaction (the Skype Options) and convert them into options to acquire approximately 1.9 million shares of eBay stock (the eBay Options) pursuant the terms of Option Assumption Agreements or EMI Rollover Agreements entered into between eBay and the holders of options to acquire ordinary shares of Skype in connection with the closing of the transaction.

The foregoing description of the transactions consummated pursuant to the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, the Earn Out Agreement and the Registration Rights Agreement, which are filed as Exhibits 2.1, 2.2 and 10.1, respectively, hereto and are incorporated herein by reference, and the Option Assumption Agreements and EMI Rollover Agreements, forms of which are filed as Exhibits 2.3 and 2.4, respectively, hereto and are incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth in Item 2.01 above is hereby incorporated herein by reference. The eBay stock issued to the sellers of the share capital and warrants of Skype in connection with the Purchase Agreement, as well as the eBay Options into which the Skype Options were converted or exchanged pursuant to the terms of the Option Assumption Agreements or EMI Rollover Agreements, were issued in reliance upon the exemptions from the registration requirements under the Securities Act of 1933, as amended (the Securities Act), pursuant to Section 4(2) thereof and Regulation D and Regulation S thereunder. eBay relied upon representations, warranties, certifications and agreements of the sellers of the share capital and warrants of Skype and the holders of Skype Options, including their agreement with respect to restrictions on resale, in support of the satisfaction of the conditions contained in Section 4(2) of the Securities Act or Regulation D or Regulation S under the Securities Act.

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

The required audited financial statements of Skype as of and for the years ended December 31, 2004 and 2003 are attached hereto as Exhibit 99.2 and are incorporated in their entirety herein by reference.

The required unaudited interim financial statements of Skype as of and for the six months ended June 30, 2005 and 2004 are attached hereto as Exhibit 99.3 and are incorporated in their entirety herein by reference.

(b) Pro Forma Financial Information.

The required pro forma financial information as of and for the six months ended June 30, 2005 and for the twelve months ended December 31, 2004 is attached hereto as Exhibit 99.4 and is incorporated in its entirety herein by reference.

The required pro forma financial information as of and for the nine months ended September 30, 2005 is attached hereto as Exhibit 99.5 and is incorporated in its entirety herein by reference.

(d) Exhibits.

EXHIBIT

NO.	DESCRIPTION
2.1	Sale and Purchase Agreement dated as of September 11, 2005, by and among eBay Inc., Skype Technologies S.A. and the parties identified on Schedule 1 thereto.*
2.2	Earn Out Agreement dated as of September 11, 2005, by and among eBay Inc., Skype Technologies S.A. and the parties identified on Schedule I thereto.*
2.3	Form of Option Assumption Agreement.**
2.4	Form of EMI Rollover Agreement.**
10.1	Registration Rights Agreement dated as of September 11, 2005, by and among eBay Inc. and the parties identified on Schedule I thereto.*

Edgar Filing: EBAY INC - Form 8-K/A

- 23.1 Consent of PricewaterhouseCoopers S.à r.l., Independent Accountants.
- 99.1 Press Release dated October 14, 2005.**
- 99.2 Consolidated audited financial statements of Skype Technologies S.A. and Subsidiaries as of and for the years ended December 31, 2004 and 2003 and Report of Independent Auditors therein.
- 99.3 Consolidated unaudited interim financial statements of Skype Technologies S.A. and Subsidiaries as of and for the six months ended June 30, 2005 and 2004.
- 99.4 Pro forma financial information as of and for the six months ended June 30, 2005 and for the twelve months ended December 31, 2004.
- 99.5 Pro forma financial information as of and for the nine months ended September 30, 2005.

* Previously filed as an exhibit to eBay's Current Report on Form 8-K filed on September 15, 2005

** Previously filed as an exhibit to eBay's Current Report on Form 8-K filed on October 18, 2005

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 hereunto duly authorized.

eBay Inc.

November 30, 2005

By: /s/ Michael R. Jacobson

Name: Michael R. Jacobson

*Title: Senior Vice President, Legal Affairs,
General Counsel and Secretary*

EXHIBIT INDEX

EXHIBIT

NO.	DESCRIPTION
2.1	Sale and Purchase Agreement dated as of September 11, 2005, by and among eBay Inc., Skype Technologies S.A. and the parties identified on Schedule 1 thereto.*
2.2	Earn Out Agreement dated as of September 11, 2005, by and among eBay Inc., Skype Technologies S.A. and the parties identified on Schedule I thereto.*
2.3	Form of Option Assumption Agreement.**
2.4	Form of EMI Rollover Agreement.**
10.1	Registration Rights Agreement dated as of September 11, 2005, by and among eBay Inc. and the parties identified on Schedule I thereto.*
23.1	Consent of PricewaterhouseCoopers S.à r.l, Independent Accountants.
99.1	Press Release dated October 14, 2005.**
99.2	Consolidated audited financial statements of Skype Technologies S.A. and Subsidiaries as of and for the years ended December 31, 2004 and 2003 and Report of Independent Auditors therein.
99.3	Consolidated unaudited interim financial statements of Skype Technologies S.A. and Subsidiaries as of and for the six months ended June 30, 2005 and 2004.
99.4	Pro forma financial information as of and for the six months ended June 30, 2005 and for the twelve months ended December 31, 2004.
99.5	Pro forma financial information as of and for the nine months ended September 30, 2005.

* Previously filed as an exhibit to eBay's Current Report on Form 8-K filed on September 15, 2005

** Previously filed as an exhibit to eBay's Current Report on Form 8-K filed on October 18, 2005