UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

(Mark One)

☒ **Quarterly Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934**
For the Quarterly Period Ended September 30, 2009.

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 001-32504

TreeHouse Foods, Inc.

(Exact name of the registrant as specified in its charter)

Delaware	**20-2311383**
(State or other jurisdiction of incorporation or organization)	(I.R.S. employer identification no.)
Two Westbrook Corporate Center, Suite 1070	
Westchester, IL	**60154**
(Address of principal executive offices **)**	**(** Zip Code **)**

(Registrant's telephone number, including area code) **(708) 483-1300**

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

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 ☒

There were 31,928,672 shares of Common Stock, par value $0.01 per share, outstanding as of October 30, 2009.

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Part I — Financial Information

Item 1 . Financial Statements

TREEHOUSE FOODS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	September 30, 2009	December 31, 2008
	(Unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	$ 3,654	$ 2,687
Receivables, net	105,765	86,837
Inventories, net	303,955	245,790
Deferred income taxes	7,418	6,769
Prepaid expenses and other current assets	8,991	10,315
Assets held for sale	4,081	4,081
Total current assets	433,864	356,479
Property, plant and equipment, net	278,702	270,664
Goodwill	576,094	560,874
Identifiable intangible and other assets, net	166,848	167,665
Total assets	$ 1,455,508	$ 1,355,682
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued expenses	$ 176,499	$ 187,795
Current portion of long-term debt	597	475
Total current liabilities	177,096	188,270
Long-term debt	475,477	475,233
Deferred income taxes	44,092	27,485
Other long-term liabilities	38,319	44,563
Total liabilities	734,984	735,551
Commitments and contingencies (Note 16)		
Stockholders' equity:		
Preferred stock, par value $0.01 per share, 10,000,000 shares authorized, none issued	—	—
Common stock, par value $0.01 per share, 90,000,000 and 40,000,000 shares authorized, respectively, 31,928,544 and 31,544,515 shares issued and outstanding, respectively	319	315
Additional paid-in capital	582,348	569,262
Retained earnings	173,173	113,948
Accumulated other comprehensive loss	(35,316)	(63,394)
Total stockholders' equity	720,524	620,131
Total liabilities and stockholders' equity	$ 1,455,508	$ 1,355,682

See Notes to Condensed Consolidated Financial Statements.

TREEHOUSE FOODS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share data)

	Three Months Ended September 30, 2009	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
	(Unaudited)		(Unaudited)	
Net sales	$ 378,865	$ 374,576	$ 1,106,866	$ 1,102,568
Cost of sales	298,347	301,416	874,793	890,390
Gross profit	80,518	73,160	232,073	212,178
Operating expenses:				
Selling and distribution	25,671	29,060	79,969	86,672
General and administrative	20,752	15,959	56,388	46,961
Other operating (income) expense, net	(14,354)	722	(13,929)	12,572
Amortization expense	3,375	3,331	9,954	10,346
Total operating expenses	35,444	49,072	132,382	156,551
Operating income	45,074	24,088	99,691	55,627
Other (income) expense:				
Interest expense	4,807	6,493	14,144	21,785
Interest income	(21)	—	(39)	(107)
Loss (gain) on foreign currency exchange	(2,968)	1,869	(4,772)	3,724
Other income, net	(151)	(87)	(1,416)	(268)
Total other expense	1,667	8,275	7,917	25,134
Income before income taxes	43,407	15,813	91,774	30,493
Income taxes	15,343	4,733	32,553	9,060
Net income	$ 28,064	$ 11,080	$ 59,221	$ 21,433
Weighted average common shares:				
Basic	32,280	31,397	31,797	31,281
Diluted	33,129	31,514	32,387	31,399
Net earnings per common share:				
Basic	$ .87	$ .35	$ 1.86	$ .69
Diluted	$ .85	$ .35	$ 1.83	$ .68

See Notes to Condensed Consolidated Financial Statements.

TREEHOUSE FOODS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Nine Months Ended September 30,	
	2009	2008
	(Unaudited)	
Cash flows from operating activities:		
Net income	$ 59,221	$ 21,433
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	24,978	25,160
Amortization	9,954	10,346
Loss (gain) on foreign currency exchange, intercompany note	(4,465)	3,107
Mark to market adjustment on interest rate swap	(1,229)	—
Excess tax benefits from stock-based payment arrangements	(60)	(325)
Stock-based compensation	9,951	8,795
Write down of impaired assets	—	5,173
Gain on disposition of assets, net	(12,612)	(652)
Deferred income taxes	11,743	7,165
Other	120	393
Changes in operating assets and liabilities, net of acquisitions:		
Receivables	(5,614)	(16,630)
Inventories	(54,083)	6,535
Prepaid expenses and other current assets	1,584	(6,358)
Accounts payable, accrued expenses and other liabilities	(10,561)	28,550
Net cash provided by operating activities	28,927	92,692
Cash flows from investing activities:		
Additions to property, plant and equipment	(30,877)	(40,799)
Insurance proceeds	—	4,800
Acquisitions of businesses	—	(251)
Proceeds from sale of fixed assets	35	1,659
Net cash used in investing activities	(30,842)	(34,591)
Cash flows from financing activities:		
Net repayment of debt	(949)	(69,460)
Proceeds from stock option exercises	3,405	3,965
Excess tax benefits from stock-based payment arrangements	60	325
Cash used to net share settle equity awards	(324)	—
Net cash provided by (used in) financing activities	2,192	(65,170)
Effect of exchange rate changes on cash and cash equivalents	690	(287)
Net increase (decrease) in cash and cash equivalents	967	(7,356)
Cash and cash equivalents, beginning of period	2,687	9,230
Cash and cash equivalents, end of period	$ 3,654	$ 1,874

See Notes to Condensed Consolidated Financial Statements.

TREEHOUSE FOODS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
As of and for the nine months ended September 30, 2009
(Unaudited)

1. Basis of Presentation

The Condensed Consolidated Financial Statements included herein have been prepared by TreeHouse Foods, Inc. without audit, pursuant to the rules and regulations of the Securities and Exchange Commission applicable to quarterly reporting on Form 10-Q. In our opinion, these statements include all adjustments necessary for a fair presentation of the results of all interim periods reported herein. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted as permitted by such rules and regulations. The Condensed Consolidated Financial Statements and related notes should be read in conjunction with the Consolidated Financial Statements and related notes included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008. Results of operations for interim periods are not necessarily indicative of annual results.

The preparation of our Condensed Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires us to use our judgment to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosures of contingent assets and liabilities at the date of the Condensed Consolidated Financial Statements, and the reported amounts of net sales and expenses during the reporting period. Actual results could differ from these estimates.

The Company evaluated subsequent events through the time of filing this Quarterly Report on Form 10-Q on November 4, 2009. We are not aware of any significant events that occurred subsequent to the balance sheet date but prior to the filing of this report that would have a material impact on our Condensed Consolidated Financial Statements.

A detailed description of the Company's significant accounting policies can be found in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008.

Unless otherwise indicated, references in this report to "we," "us," "our," or the "Company" refer to TreeHouse Foods, Inc. and subsidiaries, taken as a whole.

2. Recent Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board ("FASB") issued an accounting pronouncement which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. The provisions of the pronouncement are effective for fiscal years beginning after November 15, 2007. In February 2008, the FASB issued another accounting pronouncement, which delayed the initial effective date for all nonrecurring fair value measurements of nonfinancial assets and nonfinancial liabilities until fiscal years beginning after November 15, 2008. The adoption of the provisions of these pronouncements did not significantly impact our financial statements.

In December 2007, the FASB issued an accounting pronouncement on business combinations. The provisions of this pronouncement establish principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any non-controlling interest acquired and the goodwill acquired. The pronouncement also establishes disclosure requirements that will enable users to evaluate the nature and financial effects of the business combination, and applies to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008, and may not be early adopted. The Company will apply the provisions of this pronouncement for all future acquisitions.

In December 2007, the FASB issued an accounting pronouncement on non-controlling interests in consolidated financial statements. The provisions of this pronouncement outline the accounting and reporting for ownership interests in a subsidiary held by parties other than the parent and is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. This pronouncement is to be applied prospectively as of the beginning of the fiscal year in which it is initially adopted, except for the presentation and disclosure requirements, which are to be applied retrospectively for all periods presented. Adoption of this pronouncement did not have an impact on our financial statements.

In March 2008, the FASB issued an accounting pronouncement regarding disclosures about derivative instruments and hedging activities, which requires increased qualitative, and credit-risk disclosures. This pronouncement is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. Further, entities are encouraged, but not required to provide comparative disclosures for earlier periods. We adopted the provisions of this pronouncement beginning January 1, 2009 and have provided the required disclosures beginning with our first quarterly report on Form 10-Q in 2009.

The Emerging Issues Task Force ("EITF") issued, in November 2008, an accounting pronouncement regarding equity method investment accounting consideration *s* which is effective for transactions occurring in fiscal years beginning on or after December 15, 2008. The adoption of this pronouncement did not have a significant impact on our financial statements.

On December 30, 2008, the FASB issued an accounting pronouncement regarding employers' disclosures about postretirement benefits. This pronouncement is effective for fiscal years ending after December 15, 2009. This pronouncement does not change current accounting methods, but requires disclosure about investment policies and strategies, the fair value of each major category of plan assets, the methods and inputs used to develop fair value measurements of plan assets, and concentrations of credit risk. As this pronouncement only pertains to disclosures, the Company does not expect its impact upon adoption to be significant.

In April 2009, the FASB issued an accounting pronouncement regarding interim disclosures about the fair value of financial instruments. This pronouncement requires disclosures about the fair value of financial instruments in financial statements for interim reporting periods and in annual financial statements of publicly-traded companies. This pronouncement also requires entities to disclose the method(s) and significant assumptions used to estimate the fair value of financial instruments in financial statements on an interim and annual basis and to highlight any changes from prior periods. The effective date for this pronouncement is interim and annual periods ending after June 15, 2009. We have complied with the disclosure provisions of this pronouncement.

In May 2009, the FASB issued an accounting pronouncement regarding subsequent events, which establishes general standards of accounting for, and requires disclosure of, events that occur after the balance sheet date but before financial statements are issued or are available to be issued. This pronouncement is effective for fiscal years and interim periods ended after June 15, 2009. We adopted the provisions of this pronouncement for the quarter ended June 30, 2009. The adoption of these provisions did not have a material effect on our consolidated financial statements.

In June 2009, the FASB issued an accounting pronouncement regarding the FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles. This pronouncement establishes the FASB Accounting Standards Codification (the "Codification") as the single source of authoritative, nongovernmental U.S. GAAP. The Codification is effective for financial statements for interim or annual reporting periods ending after September 15, 2009. All U.S. GAAP accounting literature is now known as the "Accounting Standard Codification" ("ASC") and updates to the Codification are now issued as "Accounting Standards Updates" ("ASU"). As the Codification was not intended to change or alter existing U.S. GAAP, it did not have any impact on our consolidated financial statements.

In August 2009, the FASB issued ASU 2009-5 which provides additional guidance on measuring the fair value of liabilities under ASC 820. ASU 2009-5 clarifies that the quoted price for the identical liability, when traded as an asset in an active market, is also a Level 1 measurement for that liability when no adjustment to the quoted price is required. This pronouncement also requires that the fair value of a liability is measured using one or more of the following techniques when a quoted price in an active market for the identical liability is not available, (1) a valuation technique that uses the quoted price for the identical liability when traded as an asset, (2) quoted prices for similar liabilities or similar liabilities when traded as assets, or (3) another valuation technique consistent with the guidance in ASC 820, for example, an income approach such as a present value technique. The adoption of ASU 2009-5 is not expected to significantly impact the Company.

3. Income Taxes

Income tax expense was recorded at an effective rate of 35.3% and 35.5% for the three and nine months ended September 30, 2009, respectively, compared to 29.9% and 29.7% for the three and nine months ended September 30, 2008, respectively. The Company's effective tax rate is favorably impacted by an intercompany financing structure entered into in conjunction with the E.D. Smith, Canadian acquisition. For the three and nine months ended September 30, 2009 and 2008, the Company recognized a tax benefit related to this item of approximately $1.3 million and $3.5 million and $1.4 million and $4.2 million, respectively. As consolidated earnings for the three and nine months ended September 30, 2009 were significantly higher than consolidated earnings for the three and nine months ended September 30, 2008, this tax benefit was proportionally much smaller, therefore, increasing the net effective tax rate in the three and nine months ended September 30, 2009 compared to 2008. In addition, in 2009 the Company recorded an additional $0.8 million in Canadian withholding tax related to the closure of our Cambridge, Ontario plant.

As of September 30, 2009, the Company does not believe that the gross recorded unrecognized tax benefits will materially change within the next 12 months.

The Company or one of its subsidiaries files income tax returns in the U.S. federal jurisdiction, Canada and various state jurisdictions. The Internal Revenue Service ("IRS") began an examination of the Company's 2007 federal income tax return in the second quarter of 2009. The IRS has previously examined tax returns filed for years through 2006. The Company has various state tax examinations in process, which are expected to be completed in 2010. The outcome of the IRS examination and the various state tax examinations are unknown at this time.

E.D. Smith and its affiliates are subject to Canadian, U.S. and state tax examinations from 2005 forward. The IRS completed an examination of E.D. Smith's U.S. affiliates tax return for 2005 during the first quarter of 2009. An insignificant tax adjustment was paid to settle the examination. The Canada Revenue Agency (CRA) initiated an income tax audit for the E.D. Smith 2006 and 2007 tax years. The Company expects this audit to conclude during the fourth quarter of 2009. The outcome of this audit is unknown at this time.

4. Other Operating (Income) Expense

The Company had Other operating income of $14.4 million and $13.9 million for the three and nine months ended September 30, 2009, respectively, and expense of $0.7 million and $12.6 million for the three and nine months ended September 30, 2008, respectively. For the three and nine months ended September 30, 2009, income consisted of a gain from insurance proceeds of $14.5 million related to a fire at our non-dairy powdered creamer facility located in New Hampton, Iowa, offset by $0.1 million and $0.6 million, respectively, of executory costs at our closed Portland, Oregon pickle plant. For the three and nine months ended September 30, 2008, expenses consisted of $0.7 million and $12.1 million, respectively, relating to the closing of our Portland, Oregon plant plus $0.5 million in the nine months ended September 30, 2008, relating to the fire at our New Hampton, Iowa plant.

5. Facility Closings

On February 13, 2008, the Company announced plans to close its pickle plant in Portland, Oregon. The Portland plant was the Company's highest cost and least utilized pickle facility. Operations in the plant ceased during the second quarter of 2008. Net costs associated with the plant closure are estimated to be approximately $13.9 million, of which $8.6 million is expected to be in cash, net of estimated proceeds from the sale of assets. The Company has incurred $13.8 million in Portland closure costs since 2008. There are no accrued expenses related to this closure as of September 30, 2009, and insignificant accrued expenses as of December 31, 2008. In connection with the Portland closure, the Company has $4.1 million of assets held for sale, which are primarily land and buildings.

On November 3, 2008, the Company announced plans to close its salad dressings manufacturing plant in Cambridge, Ontario. Manufacturing operations in Cambridge ceased at the end of June 2009. Production has been transitioned to the Company's other manufacturing facilities in Canada and the United States. The change will result in the Company's production capabilities being more aligned with the needs of our customers. The majority of the closure costs were included as costs of the acquisition of E.D. Smith and are not expected to significantly impact earnings. Total costs are expected to be approximately $2.5 million, including severance costs of $1.3 million, and other costs of $1.2 million. As of September 30, 2009, the Company had remaining accruals of approximately $1.0 million for the closure, the components of which include $0.6 million for severance and $0.4 million for closing and other costs. The Company expects payments to be completed by the end of 2009, with all payments expected to be funded with cash from operations. Severance payments during the nine months ended September 30, 2009 were approximately $0.7 million.

6. Insurance Claim – New Hampton

In February 2008, the Company's non-dairy powdered creamer plant in New Hampton, Iowa was damaged by a fire, which left the facility unusable. The Company has repaired the facility and it became operational in the first quarter of 2009. The Company filed a claim with our insurance provider and have received approximately $37.5 million in reimbursements for property damage and incremental expenses incurred to service our customers throughout this period. The claim was finalized in September 2009, and the Company received a final payment of approximately $10.6 million to close our claim in October. As of September 30, 2009, the Company recorded this amount as a receivable and recognized income of approximately $15.4 million, of which $14.5 million is classified in Other operating (income) expense and $0.9 million is classified in Cost of sales. Of the $14.5 million, $13.6 was related to a gain on the fixed assets destroyed in the incident.

7. Inventories

	September 30, 2009	December 31, 2008
	(In thousands)	
Finished goods	$ 229,228	$ 181,311
Raw materials and supplies	95,070	82,869
LIFO reserve	(20,343)	(18,390)
Total	$ 303,955	$ 245,790

Approximately $115.9 million and $83.0 million of our inventory was accounted for under the LIFO method of accounting at September 30, 2009 and December 31, 2008, respectively.

8. Goodwill and Intangible Assets

Changes in the carrying amount of goodwill for the nine months ended September 30, 2009 are as follows:

	North American Retail Grocery	Food Away From Home	Industrial and Export	Total
	(In thousands)			
Balance at December 31, 2008	$ 343,651	$ 83,641	$ 133,582	$ 560,874
Currency exchange adjustment	13,754	1,466	—	15,220
Balance at September 30, 2009	$ 357,405	$ 85,107	$ 133,582	$ 576,094

The gross carrying amount and accumulated amortization of our intangible assets other than goodwill as of September 30, 2009 and December 31, 2008 are as follows:

	September 30, 2009			December 31, 2008		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
	(In thousands)					
Intangible assets with indefinite lives:						
Trademarks	$ 30,566	$ —	$ 30,566	$ 27,824	$ —	$ 27,824
Intangible assets with finite lives:						
Customer-related	145,177	(32,296)	112,881	137,693	(23,430)	114,263
Non-compete agreement	2,620	(1,977)	643	2,620	(1,422)	1,198
Trademarks	17,610	(2,079)	15,531	17,610	(1,385)	16,225
Formulas/recipes	1,719	(659)	1,060	1,583	(378)	1,205
Total	$ 197,692	$ (37,011)	$ 160,681	$ 187,330	$ (26,615)	$ 160,715

Amortization expense on intangible assets for the three months ended September 30, 2009 and 2008 was $3.4 million and $3.3 million, respectively and $10.0 million and $10.3 million for the nine months ended September 30, 2009 and 2008, respectively. Estimated aggregate intangible asset amortization expense for the next five years is as follows:

	(In thousands)
2010	$12,857
2011	$10,965
2012	$10,664
2013	$10,422
2014	$10,402

9. Long-Term Debt

	September 30, 2009	December 31, 2008
	(In thousands)	
Revolving credit facility	$ 371,600	$ 372,000
Senior notes	100,000	100,000
Tax increment financing and other	4,474	3,708
	476,074	475,708
Less current portion	(597)	(475)
Total long-term debt	$ 475,477	$ 475,233

Revolving Credit Facility — The Company maintains an unsecured revolving credit agreement with an aggregate commitment of $600 million, of which $219.6 million was available as of September 30, 2009, that expires August 31, 2011. In addition, as of September 30, 2009, there were $8.8 million in letters of credit under the revolver that were issued but undrawn. The credit facility contains various financial and other restrictive covenants and requires that the Company maintain certain financial ratios, including a leverage and interest coverage ratio. The Company is in compliance with all applicable covenants as of September 30, 2009. The Company believes that, given our cash flow from operating activities and our available credit capacity, we can comply with the current terms of the credit facility and meet foreseeable financial requirements. Our average interest rate on debt outstanding under our credit agreement at September 30, 2009 was 0.82%.

Senior Notes — The Company also maintains a private placement of $100 million in aggregate principal of 6.03% senior notes due September 30, 2013, pursuant to a Note Purchase Agreement among the Company and a group of purchasers. The Note Purchase Agreement contains covenants that will limit the ability of the Company and its subsidiaries to, among other things, merge with other entities, change the nature of the business, create liens, incur additional indebtedness or sell assets. The Note Purchase Agreement also requires the Company to maintain certain financial ratios. We are in compliance with the applicable covenants as of September 30, 2009.

Swap Agreements — During 2008, the Company entered into a $200 million long term interest rate swap agreement with an effective date of November 19, 2008 to lock into a fixed LIBOR interest base rate. Under the terms of the agreement, $200 million in floating rate debt was swapped for a fixed 2.9% interest base rate for a period of 24 months, amortizing to $50 million for an additional nine months at the same 2.9% interest rate. Under the terms of the Company's revolving credit agreement and in conjunction with our credit spread, this will result in an all-in borrowing cost on the swapped principal being no more than 3.8% during the life of the swap agreement. The Company did not apply hedge accounting to this swap.

In July 2006, the Company entered into a forward interest rate swap transaction for a notional amount of $100 million as a hedge of the forecasted private placement of $100 million senior notes. The interest rate swap transaction was terminated on August 31, 2006, which resulted in a pre-tax loss of $1.8 million. The unamortized loss is reflected, net of tax, in Accumulated other comprehensive loss in our Condensed Consolidated Balance Sheets. The total loss will be reclassified ratably to our Condensed Consolidated Statements of Income as an increase to Interest expense over the term of the senior notes, providing an effective interest rate of 6.29% over the term of our senior notes. In the nine months ended September 30, 2009, $0.2 million of the loss was taken into interest expense. We anticipate that $0.3 million of the loss will be reclassified to interest expense in 2009.

Tax Increment Financing —As part of the acquisition of the soup and infant feeding business in 2006, the Company assumed the payments related to redevelopment bonds pursuant to a Tax Increment Financing Plan. The Company has agreed to make certain payments with respect to the principal amount of the redevelopment bonds through May 2019. As of September 30, 2009, $2.7 million remains outstanding.

10. Earnings Per Share

Basic earnings per share is computed by dividing net income by the number of weighted average common shares outstanding during the reporting period. The weighted average number of common shares used in the diluted earnings per share calculation is determined using the treasury stock method and includes the incremental effect related to outstanding options, restricted stock, restricted stock units and performance units.

Certain restricted stock unit and restricted stock awards are subject to market conditions for vesting. For the three months ended September 30, 2009 and 2008, none of the conditions for vesting were met for the restricted stock awards. During the three months ended September 30, 2009, the conditions for vesting were met for the restricted stock unit awards, and the awards vested. The Company has included their dilutive impact for the period of time during which they were not vested. For the three months ended September 30, 2008, the restricted stock unit conditions were not met and were excluded from the diluted shares calculation.

For the nine months ended September 30, 2009, the conditions pertaining to the restricted stock and restricted stock unit awards were met and these awards were included in the diluted earnings per share calculation. For the nine months ended September 30, 2008, none of the conditions for vesting were met for either the restricted stock awards or restricted stock unit awards, and they were excluded from the diluted earning per share calculation.

The Company's performance unit awards contain both service and performance criteria. For the three and nine months ended September 30, 2009, the performance criteria for a portion of the performance awards were met and, therefore, have been included in the diluted earnings per share calculation. For the three months and nine months ended September 30, 2008, none of the performance criteria were met and these awards were excluded from the diluted earnings per share calculation.

The following table summarizes the effect of the share-based compensation awards on the weighted average number of shares outstanding used in calculating diluted earnings per share:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Weighted average common shares outstanding	32,280,059	31,396,886	31,797,354	31,281,338
Assumed exercise of stock options (1)	494,237	116,854	127,794	117,446
Assumed vesting of restricted stock, restricted stock units and performance units (1)	354,444	—	462,319	—
Weighted average diluted common shares outstanding	33,128,740	31,513,740	32,387,467	31,398,784

(1) Incremental shares from stock options, restricted stock, restricted stock units, and performance units are computed by the treasury stock method. Stock options, restricted stock, restricted stock units, and performance units excluded from our computation of diluted earnings per share because they were anti-dilutive, 8,175 and 1,585,412 for the three and nine months ended September 30, 2009, respectively and 2,225,111 for the three and nine months ended September 30, 2008.

11. Stock-Based Compensation

Income before income taxes for the three and nine month periods ended September 30, 2009 and 2008 includes share-based compensation expense of $3.9 million, $10.0 million, $3.4 million and $8.8 million, respectively. The tax benefit recognized related to the compensation cost of these share-based awards was approximately $1.5 million and $3.8 million for the three and nine month periods ended September 30, 2009, respectively, and $1.3 million and $3.5 million for the three and nine month periods ended September 30, 2008, respectively.

The following table summarizes stock option activity during the nine months ended September 30, 2009. Options are granted under our long-term incentive plan, and have a three year vesting schedule, which vest one-third on each of the first three anniversaries of the grant date. Options expire 10 years from the grant date.

	Employee Options	Director Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (yrs)	Aggregate Intrinsic Value
Outstanding, December 31, 2008	2,485,937	126,117	$ 27.21	7.4	$ 3,394,930
Granted	2,400	—	$ 26.69		—
Forfeited	(18,787)	—	$ 25.53		—
Exercised	(125,514)	—	$ 26.82		—
Outstanding, September 30, 2009	2,344,036	126,117	$ 27.24	6.7	$ 20,816,981
Vested/expected to vest, at September 30, 2009	2,300,746	126,117	$ 27.28	6.6	$ 20,373,503
Exercisable, September 30, 2009	1,896,310	111,981	$ 27.77	6.3	$ 15,873,304

Compensation cost related to unvested options totaled $2.8 million at September 30, 2009 and will be recognized over the remaining vesting period of the grants, which averages 1.5 years. The average grant date fair value of the options granted in the nine months ended September 30, 2009 was $8.97. The Company uses the Black-Scholes option pricing model to value its stock option awards. The aggregate intrinsic value of stock options exercised during the three and nine months ended September 30, 2009 was approximately $1.1 million.

In addition to stock options, the Company also grants restricted stock, restricted stock units and performance unit awards. These awards are granted under our long-term incentive plan. Employee restricted stock and restricted stock unit awards granted during the nine months ended September 30, 2009 vest based on the passage of time. These awards generally vest one-third on each anniversary of the grant date. Director restricted stock units granted during the nine months ended September 30, 2009 vest over thirteen months. A description of the restricted stock and restricted stock unit awards previously granted is presented in the Company's annual report on Form 10-K for the year ended December 31, 2008. The following table summarizes the restricted stock and restricted stock unit activity during the nine months ended September 30, 2009:

	Employee Restricted Stock	Weighted Average Grant Date Fair Value	Employee Restricted Stock Units	Weighted Average Grant Date Fair Value	Director Restricted Stock Units	Weighted Average Grant Date Fair Value
Outstanding, at December 31, 2008	1,412,322	$ 24.15	598,939	$ 25.28	22,200	$ 24.06
Granted	59,340	$ 26.36	187,550	$ 28.65	26,900	$ 28.95
Vested	(260,009)	$ 24.06	(4,688)	$ 24.10	(3,700)	$ 24.06
Forfeited	(8,117)	$ 24.74	(2,020)	$ 27.02	—	—
Outstanding, at September 30, 2009	1,203,536	$ 24.28	779,781	$ 26.09	45,400	$ 26.96

Future compensation cost related to restricted stock and restricted stock units is approximately $16.6 million as of September 30, 2009, and will be recognized on a weighted average basis, over the next 2.0 years. The grant date fair value of the awards granted in 2009 was equal to the Company's closing stock price on the grant date.

Performance unit awards were granted to certain members of management. These awards contain service and performance conditions. For each of the three performance periods, one third of the units will accrue, multiplied by a predefined percentage between 0% and 200%, depending on the achievement of certain operating performance measures. Additionally, for the cumulative performance period, a number of units will accrue, equal to the number of units granted multiplied by a predefined percentage between 0% and 200%, depending on the achievement of certain operating performance measures, less any units previously accrued. Accrued units will be converted to stock or cash, at the discretion of the compensation committee on the third anniversary of the grant date. The Company intends to settle these awards in stock and has the shares available to do so. The following table summarizes the performance unit activity during the nine months ended September 30, 2009:

	Performance Units	Weighted Average Grant Date Fair Value
Unvested, at December 31, 2008	72,900	$ 24.06
Granted	54,900	$ 28.92
Vested	—	—
Forfeited	—	—
Unvested, at September 30, 2009	127,800	$ 26.15

Future compensation cost related to the performance units is estimated to be approximately $7.8 million as of September 30, 2009, and is expected to be recognized over the next 2.2 years.

12. Employee Retirement and Postretirement Benefits

Pension, Profit Sharing and Postretirement Benefits — Certain of our employees and retirees participate in pension and other postretirement benefit plans. Employee benefit plan obligations and expenses included in the Condensed Consolidated Financial Statements are determined based on plan assumptions, employee demographic data, including years of service and compensation, benefits and claims paid, and employer contributions.

Defined Benefit Plans — The benefits under our defined benefit plans are based on years of service and employee compensation.

Components of net periodic pension expense are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Service cost	$ 490	$ 430	$ 1,470	$ 1,290
Interest cost	524	430	1,572	1,290
Expected return on plan assets	(440)	(358)	(1,320)	(1,074)
Amortization of unrecognized net loss	149	—	447	—
Amortization of prior service costs	145	120	435	360
Effect of settlements	—	75	—	225
Net periodic pension cost	$ 868	$ 697	$ 2,604	$ 2,091

We contributed $8.9 million to the pension plans in the first nine months of 2009. No additional contributions are required in 2009.

Postretirement Benefits — We provide healthcare benefits to certain retirees who are covered under specific group contracts.

Components of net periodic postretirement expenses are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Service cost	$ 63	$ 59	$ 189	$ 177
Interest cost	64	58	192	174
Amortization of prior service credit	(18)	(18)	(54)	(54)
Amortization of unrecognized net loss	5	6	15	18
Net periodic postretirement cost	$ 114	$ 105	$ 342	$ 315

We expect to contribute approximately $0.1 million to the postretirement health plans during 2009.

13. Comprehensive Income

The following table sets forth the components of comprehensive income:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Net income	$ 28,064	$ 11,080	$ 59,221	$ 21,433
Foreign currency translation adjustment	15,396	(6,647)	27,439	(13,230)
Amortization of pension and postretirement prior service costs and net loss, net of tax	171	67	512	201
Amortization of swap loss, net of tax	41	40	122	120
Other	—	10	5	10
Comprehensive income	$ 43,672	$ 4,550	$ 87,299	$ 8,534

We expect to amortize $0.7 million of prior service costs and net loss, net of tax and $0.2 million of swap loss, net of tax from other comprehensive income into earnings during 2009.

14. Fair Value of Financial Instruments

Cash and cash equivalents and accounts receivable are financial assets with carrying values that approximate fair value. Accounts payable are financial liabilities with carrying values that approximate fair value. As of September 30, 2009, the carrying value of the Company's fixed rate senior notes was $100.0 million and fair value was estimated to be $102.6 million based on Level 2 inputs. The fair value of the Company's variable rate debt (revolving credit facility), with an outstanding balance of $371.6 million as of September 30, 2009, was $350.0 million, using Level 2 inputs. Level 2 inputs are inputs other than quoted prices that are observable for an asset or liability, either directly or indirectly.

The fair value of the Company's interest rate swap agreement as described in Notes 9 and 15 as of September 30, 2009 was a liability of approximately $5.8 million. The fair value of the swap was determined using Level 2 inputs.

15. Derivative instruments

The Company is exposed to certain risks relating to its ongoing business operations. The primary risks managed by derivative instruments are the interest rate risk and foreign currency risk. Interest rate swaps are entered into to manage interest rate risk associated with the Company's $600 million revolving credit facility. Interest on our credit facility is variable and use of the interest rate swap establishes a fixed rate over the term of a portion of the facility. The Company's objective in using an interest rate swap is to establish a fixed interest rate, thereby enabling the Company to predict and manage interest expense and cash flows in a more efficient and effective manner. The Company did not apply hedge accounting to the interest rate swap, and it is recorded at fair value on the Company's Condensed Consolidated Balance Sheets. See Note 9 for more details of the interest rate swap, including the notional amount, interest rate and term. Note 14 discusses the fair value of the interest rate swap.

The Company enters into foreign currency contracts to manage the risk associated with foreign currency cash flows. The Company's objective in using foreign currency contracts is to establish a fixed foreign currency exchange rate for certain Canadian raw material purchases that are denominated in U.S. dollars, thereby enabling the Company to manage its foreign currency exchange rate risk. In May 2009, the Company entered into three foreign currency contracts for the purchase of $5.0 million U.S. dollars, in exchange for $5.6 million Canadian dollars. These contracts expired during the third quarter and are no longer outstanding. We did not apply hedge accounting to these foreign currency contracts.

As of September 30, 2009, the Company had no other derivative instruments.

The following table identifies the derivative, its fair value, and location on the Condensed Consolidated Balance Sheet:

	Liability Derivatives			
	September 30, 2009		December 31, 2008	
	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
	(In thousands)			
Derivatives not designated as hedging instruments				
Interest rate swap	Other long-term liabilities	$5,752	Other long-term liabilities	$6,981

The Company recognized a gain of $1.2 million relating to the change in the fair value of its interest rate swap derivative for the nine months ended September 30, 2009. This gain is recorded in the Other income, net line of our Condensed Consolidated Statements of Income.

The Company recognized a loss of $0.2 million relating to the settlement of its foreign currency contracts for the nine months ended September 30, 2009. This loss is recorded in the Loss (gain) on foreign currency exchange line of our Condensed Consolidated Statements of Income.

The Company does not use derivatives for speculative or trading purposes.

16. Commitments and Contingencies

Litigation, Investigations and Audits — We are party in the ordinary course of business to certain claims, litigation, audits and investigations. We believe that we have established adequate reserves to satisfy any liability we may incur in connection with any such currently pending or threatened matters. In our opinion, the settlement of any such currently pending or threatened matters is not expected to have a material adverse impact on our financial position, annual results of operations or cash flows.

17. Supplemental Cash Flow Information

Cash payments for interest were $15.0 million and $23.4 million for the nine months ended September 30, 2009 and 2008, respectively. Cash payments for income taxes were $9.6 million and $10.0 million for the nine months ended September 30, 2009 and 2008, respectively. As of September 30, 2009, the Company had accrued property, plant and equipment of approximately $1.8 million. For the nine months ended September 30, 2009, the Company entered into capital leases totaling approximately $1.3 million. Noncash financing activities for the three and nine months ended September 30, 2009 include the gross issuance of 284 and 268,397 shares, respectively, and the repurchase of 94 and 11,219 shares, respectively, to satisfy the minimum statutory withholding requirements associated with the lapse of restrictions on restricted stock and restricted stock unit awards. The weighted average price of the issuance and repurchase of these shares for the three and nine months ended September 30, 2009 was $33.05 and $29.12, respectively.

18. Foreign Currency

The Company enters into foreign currency contracts due to the exposure to Canadian/U.S. dollar currency fluctuations on cross border transactions. The Company does not apply hedge accounting to these contracts and records them at fair value on the Condensed Consolidated Balance Sheets, with changes in fair value being recorded through the Condensed Consolidated Statements of Income, within Loss (gain) on foreign currency exchange. In May 2009, the Company entered into three foreign currency contracts for the purchase of $5.0 million U.S. dollars. The contracts were entered into for the purchase of U.S. dollar denominated raw materials by our Canadian subsidiary. These contracts expired during the third quarter of 2009. Prior to these contracts, the Company had similar contracts that had expired by December 31, 2008. For the three and nine months ended September 30, 2009, the Company recorded a loss on these contracts totaling approximately $0.4 million and $0.2 million, respectively. For the three and nine months ended September 30, 2008, the Company recorded a loss on these contracts totaling approximately $12 thousand and a gain of $32 thousand, respectively.

The Company has an intercompany note denominated in Canadian dollars, which is eliminated during consolidation. A portion of the note is considered to be permanent, with the remaining portion considered to be temporary. Foreign currency fluctuations on the permanent portion are recorded through Accumulated other comprehensive loss, while foreign currency fluctuations on the temporary portion are recorded in the Company's Condensed Consolidated Statements of Income, within Loss (gain) on foreign currency exchange.

The Company accrues interest on the intercompany note, which is also considered temporary. Changes in the balance due to foreign currency fluctuations are also recorded in the Company's Condensed Consolidated Statements of Income within Loss (gain) on foreign currency exchange.

For the three and nine months ended September 30, 2009 and 2008, the Company recorded a gain of $3.0 million, $4.8 million, and a loss of $1.9 million and $3.7 million, respectively, recorded in Loss (gain) on foreign currency exchange related to foreign currency fluctuations. For the three and nine months ended September 30, 2009 and 2008, the Company recorded a gain of $15.4 million and $27.4 million and a loss of $6.6 million and $13.2 million, respectively, in Accumulated other comprehensive loss related to foreign currency fluctuations on the permanent portion of the note and translation of E.D. Smith financial statements from Canadian dollars to U.S. dollars.

19. Business and Geographic Information and Major Customers

The Company manages operations on a company-wide basis, thereby making determinations as to the allocation of resources in total rather than on a segment-level basis. We have designated our reportable segments based on how management views our business. We do not segregate assets between segments for internal reporting. Therefore, asset-related information has not been presented.

The Company evaluates the performance of our segments based on net sales dollars, gross profit and direct operating income (gross profit less freight out, sales commissions and direct selling and marketing expenses). The amounts in the following tables are obtained from reports used by our senior management team and do not include allocated income taxes. There are no significant non-cash items reported in segment profit or loss other than depreciation and amortization. Restructuring charges are not allocated to our segments, as we do not include them in the measure of profitability as reviewed by our chief operating decision maker. Also excluded from the determination of direct operating income are warehouse distribution facility start up costs of approximately $0.2 million and $3.2 million incurred during the three and nine months ended September 30, 2009, respectively, as we did not include them in the measure of profitability as reviewed by our chief operating decision maker. These costs are included in the Company's cost of sales as presented in the Condensed Consolidated Statements of Income. The accounting policies of our segments are the same as those described in the summary of significant accounting policies set forth in Note 1 to our 2008 Consolidated Financial Statements contained in our Annual Report on Form 10-K.

	Three Months Ended September 30, 2009	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
	(In thousands)			
Net sales to external customers:				
North American Retail Grocery	$ 238,891	$ 221,814	$ 705,426	$ 664,334
Food Away From Home	78,982	77,189	220,764	224,756
Industrial and Export	60,992	75,573	180,676	213,478
Total	$ 378,865	$ 374,576	$ 1,106,866	$ 1,102,568
Direct operating income:				
North American Retail Grocery	$ 36,894	$ 28,713	$ 107,127	$ 79,258
Food Away From Home	9,025	8,200	24,128	24,335
Industrial and Export	9,856	8,189	26,466	24,602
Direct operating income	55,775	45,102	157,721	128,195
Unallocated warehouse start-up costs (1)	(173)	—	(3,223)	—
Unallocated selling and distribution expenses	(755)	(1,002)	(2,394)	(2,689)
Unallocated corporate expense	(9,773)	(20,012)	(52,413)	(69,879)
Operating income	45,074	24,088	99,691	55,627
Other (expense) income	(1,667)	(8,275)	(7,917)	(25,134)
Income before income taxes	$ 43,407	$ 15,813	$ 91,774	$ 30,493

(1) Included in Cost of sales in the Condensed Consolidated Statements of Income.

Geographic Information — We had revenues to customers outside of the United States of approximately 13.7% and 14.6% of total consolidated net sales in the nine months ended September 30, 2009 and 2008, respectively, with 13.1% and 13.8% going to Canada, respectively.

Major Customers — Wal-Mart Stores, Inc. and affiliates accounted for approximately 14.4% and 14.7% of our consolidated net sales in the nine months ended September 30, 2009 and 2008, respectively. No other customer accounted for more than 10% of our consolidated net sales.

Product Information — The following table presents the Company's net sales by major products for the three and nine months ended September 30, 2009 and 2008:

	Three Months Ended September 30, 2009	Three Months Ended September 30, 2008	Nine Months Ended September 30, 2009	Nine Months Ended September 30, 2008
	(In thousands)			
Products:				
Pickles	$ 82,164	$ 79,305	$ 240,268	$ 251,329
Non-dairy powdered creamer	75,620	84,249	236,229	251,536
Soup and infant feeding	85,606	87,740	232,607	232,616
Salad dressing	46,249	33,103	146,012	121,087
Jams and other	42,319	45,109	113,616	114,254
Aseptic	22,052	21,393	62,722	63,144
Mexican sauces	16,118	13,830	48,942	38,154
Refrigerated	8,737	9,847	26,470	30,448
Total net sales	$ 378,865	$ 374,576	$ 1,106,866	$ 1,102,568

Item 2 . Management's Discussion and Analysis of Financial Condition and Results of Operations

Business Overview

We believe we are the largest manufacturer of non-dairy powdered creamer and pickles in the United States, and the largest manufacturer of private label salad dressings in the United States and Canada, based upon total sales volumes. We believe we are also the leading retail private label supplier of non-dairy powdered creamer, soup and pickles in the United States, and jams in Canada. We sell our products primarily to the retail grocery and foodservice channels.

The following discussion and analysis presents the factors that had a material effect on our results of operations for the three and nine months ended September 30, 2009 and 2008. Also discussed is our financial position, as of the end of those periods. This should be read in conjunction with the Condensed Consolidated Financial Statements and the Notes to those Condensed Consolidated Financial Statements included elsewhere in this report. This Management's Discussion and Analysis of Financial Condition and Results of Operations contain forward-looking statements. See "Cautionary Statement Regarding Forward-Looking Statements" for a discussion of the uncertainties, risks and assumptions associated with these statements.

We discuss the following segments in this Management's Discussion and Analysis of Financial Condition and Results of Operations: North American Retail Grocery, Food Away From Home, and Industrial and Export. The key performance indicators of our segments are net sales dollars, gross profit and direct operating income, which is gross profit less the cost of transporting products to customer locations (referred to in the tables below as "freight out"), commissions paid to independent sales brokers, and direct sales and marketing expenses.

Our current operations consist of the following:

- Our North American Retail Grocery segment sells branded and private label products to customers within the United States and Canada. These products include pickles, peppers, relishes, Mexican sauces, condensed and ready to serve soup, broths, gravies, jams, salad dressings, sauces, non-dairy powdered creamer, aseptic products, and infant feeding products.

- Our Food Away From Home segment sells pickle products, non-dairy powdered creamers, Mexican sauces, aseptic and refrigerated products, and sauces to food service customers, including restaurant chains and food distribution companies, within the United States and Canada.

- Our Industrial and Export segment includes the Company's co-pack business and non-dairy powdered creamer sales to industrial customers for use in industrial applications, including for repackaging in portion control packages and for use as an ingredient by other food manufacturers. Export sales are primarily to industrial customers outside of North America.

Current economic conditions continue to remain constrained. During these times, the Company has focused its efforts not only on protecting its volume, but also on cost containment, pricing and margin improvement. This strategy has resulted in direct operating income growth of 23.7% for the three months ended September 30, 2009 when compared to the three months ended September 30, 2008. Likewise, direct operating income increased 23.0% for the nine months ended September 30, 2009 when compared to the nine months ended September 30, 2008.

Recent Developments

During the fourth quarter of 2009, the Company will begin implementation of an Enterprise Resource Planning ("ERP") system. The Company will utilize a combination of internal and external resources and plans for certain modules to be completed during 2011 with final completion in 2012. The Company expects cash flows from operations will be sufficient to fund the estimated project costs.

Results of Operations

The following table presents certain information concerning our financial results, including information presented as a percentage of net sales:

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2009		2008		2009		2008	
	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent
	(Dollars in thousands)							
Net sales	$ 378,865	100.0%	$ 374,576	100.0%	$ 1,106,866	100.0%	$ 1,102,568	100.0%
Cost of sales	298,347	78.7	301,416	80.5	874,793	79.0	890,390	80.8
Gross profit	80,518	21.3	73,160	19.5	232,073	21.0	212,178	19.2
Operating expenses:								
Selling and distribution	25,671	6.8	29,060	7.7	79,969	7.2	86,672	7.9
General and administrative	20,752	5.5	15,959	4.3	56,388	5.1	46,961	4.3
Other operating (income) expense, net	(14,354)	(3.8)	722	0.2	(13,929)	(1.2)	12,572	1.1
Amortization expense	3,375	0.9	3,331	0.9	9,954	0.9	10,346	0.9
Total operating expenses	35,444	9.4	49,072	13.1	132,382	12.0	156,551	14.2
Operating income	45,074	11.9	24,088	6.4	99,691	9.0	55,627	5.0
Other (income) expense:								
Interest expense	4,807	1.2	6,493	1.7	14,144	1.2	21,785	2.0
Interest income	(21)	—	—	—	(39)	—	(107)	—
Loss (gain) on foreign currency exchange	(2,968)	(0.8)	1,869	0.5	(4,772)	(0.4)	3,724	0.3
Other income, net	(151)	—	(87)	—	(1,416)	(0.1)	(268)	—
Total other expense	1,667	0.4	8,275	2.2	7,917	0.7	25,134	2.3
Income before income taxes	43,407	11.5	15,813	4.2	91,774	8.3	30,493	2.7
Income taxes	15,343	4.1	4,733	1.2	32,553	2.9	9,060	0.8
Net income	$ 28,064	7.4%	$ 11,080	3.0%	$ 59,221	5.4%	$ 21,433	1.9%

Three Months Ended September 30, 2009 Compared to Three Months Ended September 30, 2008

Net Sales — Third quarter net sales increased 1.1% to $378.9 million in 2009 compared to $374.6 million in the third quarter of 2008. The increase is primarily due to price increases taken in the second half of 2008, which more than offset the volume declines in the quarter and reduced revenues from the impact of foreign currency fluctuations. Net sales by segment are shown in the following table:

	Three Months Ended September 30,			
	2009	2008	$ Increase/ (Decrease)	% Increase/ (Decrease)
	(Dollars in thousands)			
North American Retail Grocery	$ 238,891	$ 221,814	$ 17,077	7.7%
Food Away From Home	78,982	77,189	1,793	2.3%
Industrial and Export	60,992	75,573	(14,581)	(19.3)%
Total	$ 378,865	$ 374,576	$ 4,289	1.1%

Cost of Sales — All expenses incurred to bring a product to completion are included in cost of sales. These costs include raw materials, ingredient and packaging costs, labor costs, facility and equipment costs, including costs to operate and maintain our warehouses, and costs associated with transporting our finished products from our manufacturing facilities to our own distribution centers. Cost of sales as a percentage of net sales was 78.7% in the third quarter of 2009 compared to 80.5% in 2008. Although we have experienced increases in certain costs such as metal caps, cans and lids, glass and meat products in the third quarter of 2009 compared to 2008, these increases have been more than offset by decreases in the cost of casein, oils and plastic containers. Raw material, ingredient and packaging costs continue to be volatile, and we anticipate this trend to continue. The combination of price increases and the changes in commodity costs in the third quarter of 2009 versus 2008, have resulted in improvement in our consolidated gross margins.

Operating Expenses — Total operating expenses were $35.4 million during the third quarter of 2009 compared to $49.1 million in 2008. Selling and distribution expenses decreased $3.4 million or 11.7% in the third quarter of 2009 compared to the third quarter of 2008 primarily due to a reduction in freight costs related to reduced volume and a reduction in freight rates. General and administrative expenses increased $4.8 million in the third quarter of 2009 compared to 2008. The increase was primarily related to incentive based compensation expense and stock based compensation related to the Company's performance. Other operating expense decreased $15.1 million during the third quarter of 2009 compared to 2008 due to the gain related to our insurance settlement related to the fire at our New Hampton, Iowa plant.

Operating Income — Operating income for the third quarter of 2009 was $45.1 million, an increase of $21.0 million, or 87.1%, from operating income of $24.1 million in the third quarter of 2008. Our operating margin was 11.9% in the third quarter of 2009 compared to 6.4% in 2008 due to favorable pricing, cost reductions and the gain related to our insurance settlement related to the fire at our New Hampton, Iowa plant.

Interest Expense — Interest expense decreased to $4.8 million in the third quarter of 2009, compared to $6.5 million in 2008 due to lower average interest rates and lower debt levels.

Foreign Currency — The Company's foreign currency gain was $3.0 million for the three months ended September 30, 2009 compared to a loss of $1.9 million in 2008, due to fluctuations in currency exchange rates between the U.S. and Canadian dollar.

Income Taxes — Income tax expense was recorded at an effective rate of 35.3% in the third quarter of 2009 compared to 29.9% in the prior year's quarter. The Company's effective tax rate is favorably impacted by an intercompany financing structure entered into in conjunction with the E.D. Smith, Canadian acquisition. As consolidated earnings for the three months ended September 30, 2009 were significantly higher than consolidated earnings for the three months ended September 30, 2008, this tax benefit was proportionally much smaller, therefore, increasing the net effective rate in the third quarter of 2009 compared to 2008. In addition, in 2009 the Company recorded an additional $0.8 million in Canadian withholding tax related to the closure of our Cambridge, Ontario plant.

Three Months Ended September 30, 2009 Compared to Three Months Ended September 30, 2008 — Results by Segment

North American Retail Grocery —

	Three Months Ended September 30,			
	2009		2008	
	Dollars	Percent	Dollars	Percent
	(Dollars in thousands)			
Net sales	$ 238,891	100.0%	$ 221,814	100.0%
Cost of sales	183,240	76.8	172,309	77.7
Gross profit	55,651	23.2	49,505	22.3
Freight out and commissions	12,019	5.0	14,677	6.6
Direct selling and marketing	6,738	2.8	6,115	2.8
Direct operating income	$ 36,894	15.4%	$ 28,713	12.9%

Net sales in the North American Retail Grocery segment increased by $17.1 million, or 7.7% in the third quarter of 2009 compared to the third quarter of 2008. This change in net sales from 2008 to 2009 was due to the following:

	Dollars	Percent
	(Dollars in thousands)	
2008 Net sales	$ 221,814	
Volume	5,493	2.5%
Pricing	17,765	8.0
Foreign currency	(4,022)	(1.8)
Mix/other	(2,159)	(1.0)
2009 Net sales	$ 238,891	7.7%

The increase in net sales from 2008 to 2009 resulted primarily from higher unit sales and the carryover effect of price increases taken in the second half of 2008. Overall volume is higher in the third quarter of 2009 compared to that of 2008, primarily due to new customers and line extensions in the pickle, Mexican sauces and salad dressings product lines. These increases were partially offset by declines in our infant feeding products. Also negatively impacting net sales are foreign currency fluctuations.

Cost of sales as a percentage of net sales decreased from 77.7% in the third quarter of 2008 to 76.8% in 2009 primarily as a result of price increases taken in the second half 2008 to offset the commodity, material and certain packaging cost increases previously incurred by the Company. Also contributing to the decrease were several cost reduction initiatives, a shift in sales mix and moving away from certain low margin customers over the past year and net declines in raw material and packaging costs.

Freight out and commissions paid to independent sales brokers were $12.0 million in the third quarter of 2009 compared to $14.7 million in 2008, a decrease of 18.1%, primarily due to lower freight costs, as fuel prices have decreased since last year.

Direct selling and marketing increased $0.6 million, or 10.2% from 2008 primarily due to increased levels of incentive based compensation associated with the Company's overall performance.

Food Away From Home —

	Three Months Ended September 30,			
	2009		2008	
	Dollars	Percent	Dollars	Percent
	(Dollars in thousands)			
Net sales	$ 78,982	100.0%	$ 77,189	100.0%
Cost of sales	65,702	83.2	64,050	83.0
Gross profit	13,280	16.8	13,139	17.0
Freight out and commissions	2,627	3.3	3,469	4.5
Direct selling and marketing	1,628	2.1	1,470	1.9
Direct operating income	$ 9,025	11.4%	$ 8,200	10.6%

Net sales in the Food Away From Home segment increased by $1.8 million, or 2.3%, in the third quarter of 2009 compared to the prior year. The change in net sales from 2008 to 2009 was due to the following:

	Dollars	Percent
	(Dollars in thousands)	
2008 Net sales	$ 77,189	
Volume	(104)	(0.1)%
Pricing	1,986	2.5
Foreign currency	(69)	(0.1)
Mix/other	(20)	—
2009 Net sales	$ 78,982	2.3%

Net sales increased during the third quarter of 2009 compared to 2008 primarily due to increased pricing in response to commodity cost increases over the past year. Price increases and new customers partially offset lower volumes resulting from the recent economic downturn, which led consumers to reduce their spending on dining and eating out. While overall volume contracted slightly in the third quarter of 2009 across most of the products sold within the segment, the Company experienced modest sales and volume increases in the aseptic and Mexican sauces products.

Cost of sales as a percentage of net sales increased from 83.0% in the third quarter of 2008 to 83.2% in 2009, due to costs associated with re-work of certain products, offset by net declines in raw material and packaging costs.

Freight out and commissions paid to independent sales brokers were $2.6 million in the third quarter of 2009 compared to $3.5 million in 2008, a decrease of 24.3%, primarily due to lower freight costs, as fuel costs have decreased since last year.

Direct selling and marketing increased $0.2 million in the third quarter of 2009 compared to 2008, an increase of 10.7% primarily due to higher levels of incentive based compensation associated with the Company's overall performance.

Industrial and Export —

	Three Months Ended September 30,			
	2009		2008	
	Dollars	Percent	Dollars	Percent
	(Dollars in thousands)			
Net sales	$ 60,992	100.0%	$ 75,573	100.0%
Cost of sales	49,232	80.7	65,057	86.1
Gross profit	11,760	19.3	10,516	13.9
Freight out and commissions	1,396	2.3	2,087	2.8
Direct selling and marketing	508	0.8	240	0.3
Direct operating income	$ 9,856	16.2%	$ 8,189	10.8%

Net sales in the Industrial and Export segment decreased $14.6 million or 19.3% in the third quarter of 2009 compared to the prior year. The change in net sales from 2008 to 2009 was due to the following:

	Dollars	Percent
	(Dollars in thousands)	
2008 Net sales	$ 75,573	
Volume	(18,874)	(25.0)%
Pricing	(2,502)	(3.3)
Foreign currency	443	0.6
Mix/other	6,352	8.4
2009 Net sales	$ 60,992	(19.3)%

The decrease in net sales is primarily due to reduced volumes resulting from a decline in co-pack sales of branded products for other food companies. While the decline in net sales included the majority of the products sold within this segment, the most significant declines were in the non-dairy powdered creamer, soup and infant feeding categories. Partially offsetting the volume declines was a shift in product sales mix.

Cost of sales as a percentage of net sales decreased from 86.1% in the third quarter of 2008 to 80.7% in 2009 reflecting productivity improvements realized in the quarter and net declines in raw material and packaging costs.

Freight out and commissions paid to independent sales brokers were $1.4 million in the third quarter of 2009 compared to $2.1 million in 2008, a decrease of 33.1%, primarily due to reduced volumes and lower freight costs, as fuel costs have decreased since last year.

Direct selling and marketing was $0.5 million in the third quarter of 2009 compared to $0.2 million in the third quarter of 2008, an increase of $0.3 million, primarily due to higher levels of incentive based compensation associated with the Company’s overall performance.

Nine Months Ended September 30, 2009 Compared to Nine Months Ended September 30, 2008

Net Sales — Net sales increased $4.3 million to $1,106.9 million in the first nine months of 2009 compared to $1,102.6 million in the first nine months of 2008. Reduced volume, the impact of foreign currency and a shift in sales mix were offset by increased pricing. Net sales by segment are shown in the following table:

	Nine Months Ended September 30,			
	2009	2008	$ Increase/ (Decrease)	% Increase/ (Decrease)
	(Dollars in thousands)			
North American Retail Grocery	$ 705,426	$ 664,334	$ 41,092	6.2%
Food Away From Home	220,764	224,756	(3,992)	(1.8)%
Industrial and Export	180,676	213,478	(32,802)	(15.4)%
Total	$ 1,106,866	$ 1,102,568	$ 4,298	0.4%

Cost of Sales — All expenses incurred to bring a product to completion are included in cost of sales. These costs include raw materials, ingredient and packaging costs, labor costs, facility and equipment costs, including costs to operate and maintain our warehouses, and costs associated with transporting our finished products from our manufacturing facilities to our own distribution centers. Cost of sales as a percentage of net sales was 79.0% in the first nine months of 2009 compared to 80.8% in 2008. We have experienced increases in certain costs, such as metal cans, metal caps, glass, meat products, sweeteners and cucumbers in the first nine months of 2009 compared to 2008. These increases have been more than offset by decreases in the cost of casein, oils and plastic containers. The combination of price increases, which have now caught up with the commodity cost increases experienced last year, and the net decrease in ingredient and packaging costs in the first nine months of 2009 versus 2008, have resulted in improvement in our consolidated gross margins.

Operating Expenses — Total operating expenses were $132.4 million during the first nine months of 2009 compared to $156.6 million in 2008. Selling and distribution expenses decreased $6.7 million or 7.7% in the third quarter of 2009 compared to the first nine months of 2008 primarily due to a reduction in freight costs related to lower unit volume and a reduction in freight rates. General and administrative expenses increased $9.4 million in the third quarter of 2009 compared to 2008. This increase was primarily related to incentive based compensation expense and stock based compensation related to the Company's performance. Other operating income was $13.9 million during the first nine months of 2009, compared to operating expense of $12.6 million in 2008. Income in 2009 was related to the gain on our insurance settlement relating to a fire at our New Hampton, Iowa plant, while the expense in 2008 reflected the initial Portland plant closing costs of $12.1 million and $0.5 million related to the New Hampton fire.

Operating Income — Operating income for the first nine months of 2009 was $99.7 million, an increase of $44.1 million, or 79.2%, from operating income of $55.6 million in the first nine months of 2008. Our operating margin was 9.0% in the first nine months of 2009 compared to 5.0% in 2008 due to higher profit margins resulting from favorable pricing and cost reductions, significantly lower costs in 2009 related to the Portland plant closure and the gain relating to the insurance settlement of the New Hampton fire.

Interest Expense — Interest expense decreased to $14.1 million in the first nine months of 2009, compared to $21.8 million in 2008 due to lower average interest rates and lower debt levels.

Foreign Currency — Foreign currency gains were $4.8 million for the nine months ended September 30, 2009 compared to a loss of $3.7 million for the nine months ended September 30, 2008, due to fluctuations in currency exchange rates between the U.S. and Canadian dollar.

Other (Income) Expense, Net — Other income increased for the nine months ended September 30, 2009 by $1.1 million, primarily reflecting the gain associated with the Company's fair value adjustment of its interest rate swap.

Income Taxes — Income tax expense was recorded at an effective rate of 35.5% in the first nine months of 2009 compared to 29.7% in 2008. The Company's effective tax rate is favorably impacted by an intercompany financing structure entered into in conjunction with the E.D. Smith, Canadian acquisition. As consolidated earnings for the nine months ended September 30, 2009 were significantly higher than consolidated earnings for the nine months ended September 30, 2008, this tax benefit was proportionally much smaller, therefore, increasing the net effective rate in the first nine months of 2009 compared to 2008. In addition, in 2009 the Company recorded an additional $0.8 million in Canadian withholding tax related to the closure of our Cambridge, Ontario plant.

Nine Months Ended September 30, 2009 Compared to Nine Months Ended September 30, 2008 — Results by Segment

North American Retail Grocery —

	Nine Months Ended September 30,			
	2009		2008	
	Dollars	Percent	Dollars	Percent
	(Dollars in thousands)			
Net sales	$ 705,426	100.0%	$ 664,334	100.0%
Cost of sales	539,451	76.5	523,921	78.9
Gross profit	165,975	23.5	140,413	21.1
Freight out and commissions	37,558	5.3	43,446	6.5
Direct selling and marketing	21,290	3.0	17,709	2.7
Direct operating income	$ 107,127	15.2%	$ 79,258	11.9%

Net sales in the North American Retail Grocery segment increased by $41.1 million, or 6.2% in the first nine months of 2009 compared to the first nine months of 2008. This change in net sales from 2008 to 2009 was due to the following:

	Dollars	Percent
	(Dollars in thousands)	
2008 Net sales	$ 664,334	
Volume	(16,055)	(2.4)%
Pricing	76,029	11.4
Foreign currency	(23,821)	(3.5)
Mix/other	4,939	0.7
2009 Net sales	$ 705,426	6.2%

The increase in net sales from 2008 to 2009 resulted from the carryover effect of price increases taken in the second half of 2008 to cover the rising raw material and packaging costs, partially offset by lower case sales of infant feeding products and retail branded pickles, and the impact of foreign currency. While overall case sales decreased in this segment, the Company experienced modest volume increases in soups, Mexican sauces and salad dressings.

Cost of sales as a percentage of net sales decreased from 78.9% in for the first nine months of 2008 to 76.5% in 2009 primarily as price increases have now caught up to the raw material and packaging cost increases experienced by the Company in earlier periods. Also contributing to the decrease were several cost reduction initiatives and moving away from certain low margin customers over the past year and net declines in raw material and packaging costs.

Freight out and commissions paid to independent sales brokers were $37.6 million in the first nine months of 2009 compared to $43.4 million in 2008, a decrease of 13.6%, primarily due to reduced volumes and lower freight costs, as fuel prices have decreased since last year.

Direct selling and marketing was $21.3 million in the first nine months of 2009 compared to $17.7 million in 2008, an increase of $3.6 million or 20.2%, primarily due to increased levels of incentive based compensation associated with the Company's overall performance. Also contributing to the increase are costs related to new label designs.

Food Away From Home —

	Nine Months Ended September 30,			
	2009		2008	
	Dollars	Percent	Dollars	Percent
	(Dollars in thousands)			
Net sales	$ 220,764	100.0%	$ 224,756	100.0%
Cost of sales	183,615	83.2	184,914	82.3
Gross profit	37,149	16.8	39,842	17.7
Freight out and commissions	7,755	3.5	10,639	4.7
Direct selling and marketing	5,266	2.4	4,868	2.2
Direct operating income	$ 24,128	10.9%	$ 24,335	10.8%

Net sales in the Food Away From Home segment decreased by $4.0 million, or 1.8%, in the first nine months of 2009 compared to the prior year. The change in net sales from 2008 to 2009 was due to the following:

	Dollars	Percent
	(Dollars in thousands)	
2008 Net sales	$ 224,756	
Volume	(9,990)	(4.4)%
Pricing	10,787	4.7
Foreign currency	(2,925)	(1.3)
Mix/other	(1,864)	(0.8)
2009 Net sales	$ 220,764	(1.8)%

Net sales decreased during the first nine months of 2009 compared to 2008 primarily due to reduced volumes resulting from the recent economic down turn, as consumers reduced their spending on dining and eating out. This segment also experienced a decrease in net sales due to both a shift in the sales mix and the impact of foreign currency changes. Increased pricing in response to commodity cost increases over the past year and modest increases in sales units of aseptic products and Mexican sauces, offset the volume declines in pickles and other products.

Cost of sales as a percentage of net sales increased from 82.3% in the first nine months of 2008 to 83.2% in 2009, due to a shift in mix from higher margin food distributors to lower margin national account quick serve customers, partially offset by sales price increases. Also increasing cost of sales were costs associated with the re-work of certain products, offset by net declines in raw material and packaging costs.

Freight out and commissions paid to independent sales brokers were $7.8 million in the first nine months of 2009 compared to $10.6 million in 2008, a decrease of 27.1%, primarily due to reduced volumes and lower freight costs, as fuel costs have decreased since last year.

Direct selling and marketing was $5.3 million in the first nine months of 2009 compared to $4.9 million in 2008, primarily due to higher levels of incentive compensation associated with the Company’s overall performance.

Industrial and Export —

	Nine Months Ended September 30,			
	2009		2008	
	Dollars	Percent	Dollars	Percent
	(Dollars in thousands)			
Net sales	$ 180,676	100.0%	$ 213,478	100.0%
Cost of sales	148,504	82.2	181,555	85.0
Gross profit	32,172	17.8	31,923	15.0
Freight out and commissions	4,279	2.4	6,666	3.1
Direct selling and marketing	1,427	0.8	655	0.3
Direct operating income	$ 26,466	14.6%	$ 24,602	11.6%

Net sales in the Industrial and Export segment decreased $32.8 million or 15.4% in the first nine months of 2009 compared to the prior year. The change in net sales from 2008 to 2009 was due to the following:

	Dollars	Percent
	(Dollars in thousands)	
2008 Net sales	$ 213,478	
Volume	(49,156)	(23.0)%
Pricing	1,912	0.9
Foreign currency	(411)	(0.2)
Mix/other	14,853	6.9
2009 Net sales	$ 180,676	(15.4)%

The decrease in net sales is primarily due to reduced volumes resulting from lower co-pack sales of branded products for other food companies. While the decline in net sales included the majority of the products sold within this segment, the most significant were in the non-dairy powdered creamer, soup and infant feeding products. Partially offsetting the volume declines were price increases taken since last year in an effort to offset the increases in input costs and a positive mix variance.

Cost of sales as a percentage of net sales decreased from 85.0% in the first nine months of 2008 to 82.2% in 2009 as price increases have caught up to input cost increases experienced in prior periods. Also contributing to the reduction were productivity improvements realized in the first half of 2009 and net decreases in raw material and packaging costs.

Freight out and commissions paid to independent sales brokers were $4.3 million in the first nine months of 2009 compared to $6.7 million in 2008, a decrease of 35.8%, primarily due to reduced volumes and lower freight costs, as fuel costs have decreased since last year.

Direct selling and marketing was $1.4 million in the first nine months of 2009 compared to $0.7 million in 2008, an increase of $0.7 million, primarily due to higher levels of incentive compensation associated with the Company’s overall performance.

Liquidity and Capital Resources

Cash Flow

Management assesses the Company’s liquidity in terms of its ability to generate cash to fund its operating, investing and financing activities. The Company continues to generate positive cash flow from operating activities and remains in a strong financial position, with resources available for reinvestment in existing businesses, acquisitions and managing its capital structure on a short and long-term basis. If additional borrowing is needed to finance future acquisitions, approximately $219.6 million was available under the revolving credit facility as of September 30, 2009. This facility expires in 2011. We believe that, given our cash flow from operating activities and our available credit capacity, we can comply with the current terms of the credit facility and meet foreseeable financial requirements.

The Company’s cash flows from operating, investing and financing activities, as reflected in the Condensed Consolidated Statements of Cash Flows is summarized in the following tables:

	Nine Months Ended September 30,	
	2009	2008
	(In thousands)	
Cash flows from operating activities:		
Net income	$ 59,221	$ 21,433
Depreciation and amortization	34,932	35,506
Stock-based compensation	9,951	8,795
Loss (gain) on foreign currency exchange	(4,465)	3,107
Mark to market adjustment on interest rate swap	(1,229)	—
Write-down of impaired assets	—	5,173
Gain on disposition of assets, net	(12,612)	(652)
Deferred income taxes	11,743	7,165
Changes in operating assets and liabilities, net of acquisitions		
Receivables	(5,614)	(16,630)
Inventories	(54,083)	6,535
Prepaid expenses and other current assets	1,584	(6,358)
Accounts payable, accrued expenses and other liabilities	(10,561)	28,550
Other	60	(584)
Net cash provided by operating activities	$ 28,927	$ 92,692

Our cash from operations decreased from $92.7 million in the first nine months of 2008 to $28.9 million in 2009. Higher net income achieved in the first nine months of 2009 was more than offset by a decrease in accounts payable from the high level in 2008, and a build in inventories due to higher pickle production resulting from the strong 2009 cucumber crop, the closing of the Cambridge facility and the forward purchase of certain commodities.

Cash flows from investing activities:	Nine Months Ended September 30, 2009	2008
	(In thousands)	
Additions to property, plant and equipment	$ (30,877)	$ (40,799)
Insurance proceeds	—	4,800
Other	35	1,408
Net cash used in investing activities	$ (30,842)	$ (34,591)

In the first nine months of 2009, cash used in investing activities decreased by $3.7 million compared to 2008. Capital additions were $30.9 million for the first nine months of 2009, compared to $40.8 million in 2008 ($36.0 million net of insurance proceeds) as the Company had several large projects that were initiated in 2008 and completed in 2009, including the repair of our New Hampton, Iowa facility which was damaged by fire in February 2008. Capital spending in 2009 included upgrades to our Pittsburgh plant water and power systems, capacity expansion at our North East, Pennsylvania facility, completion of the repair of our New Hampton, Iowa facility, and routine upgrades and improvements to our other plants.

We expect capital spending programs to be approximately $37.2 million in 2009. Capital spending in the balance of 2009 will focus on productivity improvements and routine equipment upgrades or replacements at all of our facilities, which number 16 across the United States and Canada.

Cash flows from financing activities:	Nine Months Ended September 30, 2009	2008
	(In thousands)	
Net repayment of debt	$ (949)	$ (69,460)
Proceeds from stock option exercises	3,405	3,965
Other	(264)	325
Net cash provided by (used in) financing activities	$ 2,192	$ (65,170)

Net cash used in financing activities changed from a $65.2 million use of funds in the first nine months of 2008 to a $2.2 million source of funds in 2009, as cash provided from operating activities (used to pay down debt) for the nine months ended September 30, 2009 was $63.8 million less than in 2008. Cash provided from operating activities was higher for the first nine months of 2008 as compared to 2009 in part due to management's focus on working capital management (specifically inventory and accounts payable) to drive incremental cash flows to pay down debt. See cash flows from operating activities.

Our short-term financing needs are primarily for financing working capital during the year. Due to the seasonality of pickle and fruit production, driven by harvest cycles which occur primarily during late spring and summer, inventories generally are at a low point in late spring and at a high point during the fall, increasing our working capital requirements. In addition, we build inventories of salad dressings in the spring and soup in the late summer months in anticipation of large seasonal shipments that begin late in the second and third quarter, respectively. Our long-term financing needs will depend largely on potential acquisition activity. We expect our revolving credit agreement, plus cash flow from operations, to be adequate to provide liquidity for current operations.

Debt Obligations

At September 30, 2009, we had $371.6 million in borrowings under our revolving credit facility, senior notes of $100.0 million and $4.5 million of tax increment financing and other obligations. In addition, at September 30, 2009, there were $8.8 million in letters of credit under the revolver that were issued but undrawn.

Our revolving credit facility provides for an aggregate commitment of $600 million of which $219.6 million was available at September 30, 2009. Interest rates are tied to variable market rates which averaged 0.82% on debt outstanding as of September 30, 2009. We are in compliance with the applicable covenants as of September 30, 2009.

See Note 9 to our Condensed Consolidated Financial Statements.

Other Commitments and Contingencies

We also have the following commitments and contingent liabilities, in addition to contingent liabilities related to ordinary course of litigation, investigations and tax audits:

- certain lease obligations, and
- selected levels of property and casualty risks, primarily related to employee health care, workers' compensation claims and other casualty losses.

See Note 16 to our Condensed Consolidated Financial Statements and Note 20 in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008 for more information about our commitments and contingent obligations.

In 2009, we expect cash interest to be approximately $18.5 million based on anticipated debt levels and cash income taxes are expected to be approximately $19.6 million.

Recent Accounting Pronouncements

Information regarding recent accounting pronouncements is provided in Note 2 to the Company's Condensed Consolidated Financial Statements.

Critical Accounting Policies

A description of the Company's critical accounting policies is contained in our Annual Report on Form 10-K for the year ended December 31, 2008. There were no material changes to our critical accounting policies in the nine months ended September 30, 2009.

Off-Balance Sheet Arrangements

We do not have any obligations that meet the definition of an off-balance sheet arrangement, other than operating leases, which have or are reasonably likely to have a material effect on our Condensed Consolidated Financial Statements.

Forward Looking Statements

From time to time, we and our representatives may provide information, whether orally or in writing, including certain statements in this Quarterly Report on Form 10-Q, which are deemed to be "forward-looking" within the meaning of the Private Securities Litigation Reform Act of 1995 (the "Litigation Reform Act"). These forward-looking statements and other information are based on our beliefs as well as assumptions made by us using information currently available.

The words "anticipate," "believe," "estimate," "expect," "intend," "should" and similar expressions, as they relate to us, are intended to identify forward-looking statements. Such statements reflect our current views with respect to future events and are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein as anticipated, believed, estimated, expected or intended. We do not intend to update these forward-looking statements.

In accordance with the provisions of the Litigation Reform Act, we are making investors aware that such forward-looking statements, because they relate to future events, are by their very nature subject to many important factors that could cause actual results to differ materially from those contemplated by the forward-looking statements contained in this Quarterly Report on Form 10-Q and other public statements we make. Such factors include, but are not limited to: the outcome of litigation and regulatory proceedings to which we may be a party; actions of competitors; changes and developments affecting our industry; quarterly or cyclical variations in financial results; our ability to obtain suitable pricing for our products; development of new products and services; our level of indebtedness; cost of borrowing; our ability to maintain and improve cost efficiency of operations; changes in foreign currency exchange rates, interest rates and raw material and commodity costs; changes in economic conditions, political conditions, reliance on third parties for manufacturing of products and provision of services; and other risks that are set forth in the Risk Factors section, the Legal Proceedings section, the Management's Discussion and Analysis of Financial Condition and Results of Operations section and other sections of this Quarterly Report on Form 10-Q, our Annual Report on Form 10-K for the year ended December 31, 2008 as well as in our Current Reports on Form 8-K.

Item 3 . Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Fluctuations

The Company entered into a $200 million long term interest rate swap agreement with an effective date of November 19, 2008 to lock into a fixed LIBOR interest rate base. Under the terms of agreement, $200 million in floating rate debt will be swapped for a fixed 2.9% interest rate base for a period of 24 months, amortizing to $50 million for an additional nine months at the same 2.9% interest rate. Under the terms of the Company's revolving credit agreement and in conjunction with our credit spread, this will result in an all in borrowing cost on the swapped principal being no more than 3.8% during the life of the swap agreement.

In July 2006, we entered into a forward interest rate swap transaction for a notional amount of $100 million as a hedge of the forecasted private placement of $100 million senior notes. The interest rate swap transaction was terminated on August 31, 2006, which resulted in a pre-tax loss of $1.8 million. The unamortized loss is reflected, net of tax, in Accumulated other comprehensive loss in our Condensed Consolidated Balance Sheets. The total loss will be reclassified ratably to our Condensed Consolidated Statements of Income as an increase to interest expense over the term of the senior notes, providing an effective interest rate of 6.29% over the terms of our senior notes.

We do not utilize financial instruments for trading purposes or hold any derivative financial instruments, which could expose us to significant interest rate market risk, other than our interest rate swap agreement, as of September 30, 2009. Our exposure to market risk for changes in interest rates relates primarily to the increase in the amount of interest expense we expect to pay with respect to our revolving credit facility, which is tied to variable market rates. Based on our outstanding debt balance of $371.6 million under our revolving credit facility at September 30, 2009, and adjusting for the $200 million fixed rate swap agreement, as of September 30, 2009, each 1% rise in our interest rate would increase our interest expense by approximately $1.7 million annually.

Input Costs

The costs of raw materials, as well as packaging materials and fuel, have varied widely in recent years and future changes in such costs may cause our results of operations and our operating margins to fluctuate significantly. Many of the raw materials that we use in our products rose to unusually high levels during 2008, including processed vegetables and meats, soybean oil, casein, cheese and packaging materials. During 2009, certain input costs have decreased from the high levels experienced in 2008, but continue to remain at levels in excess of historical costs. Other input costs such as metal cans, lids and caps continue to rise even though the underlying commodity cost has decreased. The reason for the continued rise in cost is due in part to the limited number of suppliers. In addition, fuel costs, which represent the most important factor affecting utility costs at our production facilities and our transportation costs, rose to unusually high levels in the middle of 2008, but have decreased proportionately to the general reduction in overall economic activity in 2009. Furthermore, certain input requirements, such as glass used in packaging, are available only from a limited number of suppliers. We expect the volatile nature of these costs to continue, with an overall slightly upward trend.

The most important raw material used in our pickle operations is cucumbers. We purchase cucumbers under seasonal grower contracts with a variety of growers strategically located to supply our production facilities. Bad weather or disease in a particular growing area can damage or destroy the crop in that area, which would impair crop yields. If we are not able to buy cucumbers from local suppliers, we would likely either purchase cucumbers from foreign sources, such as Mexico or India, or ship cucumbers from other growing areas in the United States, thereby increasing our production costs.

Changes in the prices of our products may lag behind changes in the costs of our materials. Competitive pressures also may limit our ability to quickly raise prices in response to increased raw materials, packaging and fuel costs. Accordingly, if we are unable to increase our prices to offset increasing raw material, packaging and fuel costs, our operating profits and margins could be materially adversely affected. In addition, in instances of declining input costs, customers may be looking for price reductions in situations where we have locked into pricing at higher costs.

Fluctuations in Foreign Currencies

The Company is exposed to fluctuations in the value of our foreign currency investment in E.D. Smith, located in Canada. Input costs for certain Canadian sales are denominated in U.S. dollars, further impacting the effect foreign currency fluctuations may have on the Company.

The Company's financial statements are presented in U.S. dollars, which require the Canadian assets, liabilities, revenues, and expenses to be translated into U.S. dollars at the applicable exchange rates. Accordingly, we are exposed to volatility in the translation of foreign currency earnings due to fluctuations in the value of the Canadian dollar, which may negatively impact the Company's results of operations and financial position. For the nine months ended September 30, 2009, the Company recognized a foreign currency exchange gain of approximately $32.2 million, of which $27.4 million was recorded as a component of Accumulated other comprehensive loss and $4.8 million was recorded on the Company's Condensed Consolidated Statements of Income within the Other (income) expense line. For the nine months ended September 30, 2008 the Company recognized a loss of approximately $16.9 million, of which $13.2 million was recorded as a component of Accumulated other comprehensive loss and $3.7 million was recorded on the Company's Condensed Consolidated Statements of Income within the Other (income) expense line.

The Company enters into foreign currency contracts due to the exposure to Canadian/U.S. dollar currency fluctuations on cross border transactions. The Company does not apply hedge accounting to these contracts and records them at fair value on the Condensed Consolidated Balance Sheets, with changes in fair value being recorded through the Condensed Consolidated Statements of Income, within Other (income) expense. In May 2009, the Company entered into three foreign currency contracts for the purchase of $5.0 million U.S. dollars. The contracts were entered into for the purchase of U.S. dollar denominated raw materials by our Canadian subsidiary. These contracts expired by the end of September 2009. Prior to these contracts, the Company had similar contracts that had expired by December 31, 2008. For the three and nine months ended September 30, 2009, the Company recorded a loss on these contracts totaling approximately $0.4 million and $0.2 million, respectively. For the three and nine months ended September 30, 2008, the Company recorded a loss on these contracts totaling approximately $12.0 thousand and a gain of $32.0 thousand, respectively.

Item 4 . Controls and Procedures

Evaluations were carried out under the supervision and with the participation of the Company's management, including our Chief Executive Officer and Chief Financial Officer of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report. Based upon those evaluations, the Chief Executive Officer and Chief Financial Officer have concluded that as of September 30, 2009, these disclosure controls and procedures were effective.

There have been no changes in our internal control over financial reporting during the quarter ended September 30, 2009 that have materially affected, or are likely to materially affect, the Company's internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
TreeHouse Foods, Inc.
Westchester, IL

We have reviewed the accompanying condensed consolidated balance sheet of TreeHouse Foods, Inc. and subsidiaries (the "Company") as of September 30, 2009, and the related condensed consolidated statements of income for the three and nine month periods ended September 30, 2009 and 2008 and of cash flows for the nine month periods ended September 30, 2009 and 2008. These interim financial statements are the responsibility of the Company's management.

We conducted our reviews in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States), the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our reviews, we are not aware of any material modifications that should be made to such condensed consolidated interim financial statements for them to be in conformity with accounting principles generally accepted in the United States of America.

We have previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of TreeHouse Foods, Inc. and subsidiaries as of December 31, 2008, and the related consolidated statements of income, stockholders' equity, and cash flows for the year then ended (not presented herein); and in our report dated February 25, 2009, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 31, 2008 is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/ Deloitte & Touche LLP

Chicago, Illinois
November 4, 2009

Part II — Other Information

Item 1 . Legal Proceedings

We are party to a variety of legal proceedings arising out of the conduct of our business. While the results of proceedings cannot be predicted with certainty, management believes that the final outcome of these proceedings will not have a material adverse effect on our consolidated financial statements, annual results of operations or cash flows.

Item 1A . Risk Factors

Information regarding risk factors appears in *Management's Discussion and Analysis of Financial Condition and Results of Operations — Information Related to Forward-Looking Statements* , in Part I — Item 2 of this Form 10-Q and in Part I — Item 1A of the TreeHouse Foods, Inc. Annual Report on Form 10-K for the year ended December 31, 2008. There have been no material changes from the risk factors previously disclosed in the TreeHouse Foods, Inc. Annual Report on Form 10-K for the year ended December 31, 2008.

Item 2 . Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3 . Defaults Upon Senior Securities

None.

Item 4 . Submission of Matters to a Vote of Security Holders

None.

Item 5 . Other Information

None.

Item 6 . Exhibits

3.2	Form of Amended and Restated By-laws of TreeHouse Foods, Inc.
15.1	Awareness Letter from Deloitte & Touche LLP regarding unaudited financial information
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

SIGNATURES

Pursuant to the requirement 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.

TREEHOUSE FOODS, INC.
/s/ Dennis F. Riordan
Dennis F. Riordan
Senior Vice President and Chief Financial Officer

November 4, 2009

Exhibit 3.2

AMENDED AND RESTATED BY-LAWS

OF

TREEHOUSE FOODS, INC.

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ARTICLE I

STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place as may be designated from time to time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President or, if not so designated, at the principal office of the corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President (which date shall not be a legal holiday in the place where the meeting is to be held). If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these By-laws to the annual meeting of the stockholders shall be deemed to refer to such special meeting.

1.3 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President, but such special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the General Corporation Law of the State of Delaware) by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (1) the corporation is unable to deliver by electric transmission two consecutive notices given by the corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. The notices of all meetings shall state the place, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the General Corporation Law of the State of Delaware.

1.5 Voting List. The Secretary shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

1.6 Quorum. Except as otherwise provided by law, the Restated Certificate of Incorporation or these By-laws, the holders of a majority in voting power of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7 Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these By-laws by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by applicable law or the Restated Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote for such stockholder by a proxy executed or transmitted in a manner permitted by the General Corporation Law of the State of Delaware by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary of the corporation before or at the time of the meeting. No such proxy shall be voted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock present or represented and voting on such matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, the holders of a majority in voting power of the shares of stock of that class present or represented and voting on such matter), except when a different vote is required by applicable law, the Restated Certificate of Incorporation or these By-laws. When a quorum is present at any meeting, any election by stockholders of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election.

1.10 Nomination of Directors .

(a) Except for (1) any directors entitled to be elected by the holders of preferred stock, (2) any directors elected in accordance with Section 2.9 hereof by the Board of Directors to fill a vacancy or newly-created directorships or (3) as otherwise required by applicable law or stock market regulation, only persons who are nominated in accordance with the procedures in this Section 1.10 shall be eligible for election as directors. Nomination for election to the Board of Directors at a meeting of stockholders may be made (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who (x) complies with the notice procedures set forth in Section 1.10(b) and (y) is a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such meeting.

(b) To be timely, a stockholder's notice must be received in writing by the Secretary at the principal executive offices of the corporation as follows: (i) in the case of an election of directors at an annual meeting of stockholders, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting in any year is advanced by more than 20 days, or delayed by more than 60 days, from the first anniversary of the preceding year's annual meeting, a stockholder's notice must be so received not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the tenth day following the day on which notice of the date of such annual meeting was mailed or public disclosure of the date of such annual meeting was made, whichever first occurs; or (ii) in the case of an election of directors at a special meeting of stockholders, provided that the Board of Directors has determined that directors shall be elected at such meeting, not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of (x) the 90th day prior to such special meeting and (y) the tenth day following the day on which notice of the date of such special meeting was mailed or public disclosure of the date of such special meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an annual meeting (or the public announcement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice.

The stockholder's notice to the Secretary shall set forth: (A) as to each proposed nominee (1) such person's name, age, business address and, if known, residence address, (2) such person's principal occupation or employment, (3) the class and number of shares of stock of the corporation which are beneficially owned by such person, and (4) any other information concerning such person that must be disclosed as to nominees in proxy solicitations pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); (B) as to the stockholder giving the notice (1) such stockholder's name and address, as they appear on the corporation's books, (2) the class and number of shares of stock of the corporation which are owned, beneficially and of record, by such stockholder, (3) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (4) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the person(s) named in its notice and (5) a representation whether the stockholder intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to elect the nominee and/or (y) otherwise to solicit proxies from stockholders in support of such nomination; and (C) as to the beneficial owner, if any, on whose behalf the nomination is being made (1) such beneficial owner's name and address, (2) the class and number of shares of stock of the corporation which are beneficially owned by such beneficial owner, (3) a description of all arrangements or understandings between such beneficial owner and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made and (4) a representation whether the beneficial owner intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock requirement to elect the nominee and/or (y) otherwise to solicit proxies from stockholders in support of such nomination. In addition, to be effective, the stockholder's notice must be accompanied by the written consent of the proposed nominee to serve as a director if elected. The corporation may require any proposed nominee to furnish such other information as may reasonably be required to determine the eligibility of such proposed nominee to serve as a director of the corporation. A stockholder shall not have complied with this Section 1.10(b) if the stockholder (or beneficial owner, if any, on whose behalf the nomination is made) solicits or does not solicit, as the case may be, proxies in support of such stockholder's nominee in contravention of the representations with respect thereto required by this Section 1.10.

(c) The chairman of any meeting shall have the power and duty to determine whether a nomination was made in accordance with the provisions of this Section 1.10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with the representations with respect thereto required by this Section 1.10), and if the chairman should determine that a nomination was not made in accordance with the provisions of this Section 1.10, the chairman shall so declare to the meeting and such nomination shall be disregarded.

(d) Except as otherwise required by applicable law, nothing in this Section 1.10 shall obligate the corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the corporation or the Board of Directors information with respect to any nominee for director submitted by a stockholder.

(e) Notwithstanding the foregoing provisions of this Section 1.10, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of this Section 1.10, to be considered a qualified representative of the stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, at the meeting of stockholders.

(f) For purposes of this Section 1.10, "public disclosure" shall include disclosure in a press release reported by the Dow Jones New Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

1.11 Notice of Business at Annual Meetings .

(a) At any annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (1) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (2) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (3) properly brought before the meeting by a stockholder in accordance with the applicable provisions of these By-laws. For business to be properly brought before an annual meeting by a stockholder, (i) if such business relates to the nomination of a person for election as a director of the corporation, the procedures in Section 1.10 must be complied with and (ii) if such business relates to any other matter, the business must constitute a proper matter under Delaware law for stockholder action and the stockholder must (x) have given timely notice thereof in writing to the Secretary in accordance with the procedures set forth in Section 1.11(b) and (y) be a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such annual meeting.

(b) To be timely, a stockholder's notice must be received in writing by the Secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided , however , that in the event that the date of the annual meeting in any year is advanced by more than 20 days, or delayed by more than 60 days, from the first anniversary of the preceding year's annual meeting, a stockholder's notice must be so received not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the tenth day following the day on which notice of the date of such annual meeting was mailed or public disclosure of the date of such annual meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an annual meeting (or the public announcement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice.

The stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (1) a brief description of the business desired to be brought before the annual meeting, the text relating to the business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-laws, the language of the proposed amendment), and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (3) the class and number of shares of stock of the corporation which are owned, of record and beneficially, by the stockholder and beneficial owner, if any, (4) a description of all arrangements or understandings between such stockholder or such beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of the stockholder or such beneficial owner, if any, in such business, (5) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting and (6) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal and/or (y) otherwise to solicit proxies from stockholders in support of such proposal. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at any annual meeting of stockholders except in accordance with the procedures set forth in this Section 1.11; provided that any stockholder proposal which complies with Rule 14a-8 of the proxy rules (or any successor provision) promulgated under the Securities Exchange Act of 1934, as amended, and is to be included in the corporation's proxy statement for an annual meeting of stockholders shall be deemed to comply with the requirements of this Section 1.11. A stockholder shall not have complied with this Section 1.11(b) if the stockholder (or beneficial owner, if any, on whose behalf the nomination is made) solicits or does not solicit, as the case may be, proxies in support of such stockholder's proposal in contravention of the representations with respect thereto required by this Section 1.11.

(c) The chairman of any meeting shall have the power and duty to determine whether business was properly brought before the meeting in accordance with the provisions of this Section 1.11 (including whether the stockholder or beneficial owner, if any, on whose behalf the proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's proposal in compliance with the representation with respect thereto required by this Section 1.11), and if the chairman should determine that business was not properly brought before the meeting in accordance with the provisions of this Section 1.11, the chairman shall so declare to the meeting and such business shall not be brought before the meeting.

(d) Notwithstanding the foregoing provisions of this Section 1.11, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present business, such business shall not be considered, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of this Section 1.11, to be considered a qualified representative of the stockholder, a person must be authorized by a written instrument executed by the such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as a proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, at the meeting of stockholders.

(e) For purposes of this Section 1.11, "public disclosure" shall include disclosure in a press release reported by the Dow Jones New Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

1.12 Conduct of Meetings .

(a) Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer’s absence, by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) The chairman of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. If no announcement is made, the polls shall be deemed to have opened when the meeting is convened and closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) In advance of any meeting of stockholders, the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the corporation.

Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote in completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

1.13 No Action by Consent in Lieu of a Meeting. Stockholders of the corporation may not take any action by written consent in lieu of a meeting.

ARTICLE II

DIRECTORS

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by applicable law or the Restated Certificate of Incorporation.

2.2 Number, Election and Qualification. The number of directors of the Corporation shall be established by a majority of the entire Board of Directors except that such number shall be not less than three (3) nor more than fifteen (15), the exact number to be nine (9) until otherwise determined by resolution adopted by a majority of the entire Board of Directors. Election of directors need not be by written ballot. Directors need not be stockholders of the corporation.

2.3 Classes of Directors. The Board of Directors shall be and is divided into three classes: Class I, Class II and Class III. The allocation of directors among classes shall be determined by resolution of the Board of Directors.

2.4 Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected; provided, that the term of each director shall continue until the election and qualification of a successor and be subject to such director's earlier death, resignation, disqualification or removal.

2.5 Quorum. A majority of the directors at any time in office shall constitute a quorum. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.6 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors unless a greater number is required by applicable law or by the Restated Certificate of Incorporation.

2.7 Removal. Subject to the rights of holder of any series of Preferred Stock, directors of the corporation may be removed only for cause and only by the affirmative vote of the holders of at least 75% of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors.

2.8 Vacancies. Subject to the rights of holder of any series of Preferred Stock, any vacancy or newly-created directorships on the Board of Directors, however occurring, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. A director elected to fill a vacancy shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of a successor or until such director's earlier death, resignation, disqualification or removal.

2.9 Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the corporation at its principal office or to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

2.10 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.11 Special Meetings. Special meetings of the Board of Directors may be held at any time and place designated in a call by the Chairman of the Board, the Chief Executive Officer, the President, two or more directors, or by one director in the event that there is only a single director in office.

2.12 Notice of Special Meetings. Notice of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (a) in person or by telephone at least 24 hours in advance of the meeting, (b) by sending written notice via reputable overnight courier, telecopy or electronic mail, or delivering written notice by hand, to such director's last known business, home or electronic mail address at least 48 hours in advance of the meeting, or (c) by sending written notice via first-class mail to such director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.13 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.14 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

2.15 Committees . The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-laws for the Board of Directors. Except as otherwise provided in the Restated Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

2.16 Compensation of Directors . Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary entities in any other capacity and receiving compensation for such service.

ARTICLE III

OFFICERS

3.1 Titles . The officers of the corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including a Chairman of the Board, a Vice Chairman of the Board, and one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 Election . The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 Qualification. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Restated Certificate of Incorporation or by these By-laws, each officer shall hold office until such officer's successor is elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation or removal.

3.5 Resignation and Removal. Any officer may resign by delivering a written resignation to the corporation at its principal office or to the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

Any officer may be removed at any time, with or without cause, by vote of a majority of the directors then in office.

Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the corporation.

3.6 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of Chief Executive Officer, President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is elected and qualified, or until such officer's earlier death, resignation or removal.

3.7 Chairman of the Board. The Board of Directors may appoint from its members a Chairman of the Board, who need not be an employee or officer of the corporation. If the Board of Directors appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors and, if the Chairman of the Board is also designated as the corporation’s Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 3.8 of these By-laws. Unless otherwise provided by the Board of Directors, the Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders.

3.8 President; Chief Executive Officer. Unless the Board of Directors has designated the Chairman of the Board or another person as the corporation’s Chief Executive Officer, the President shall be the Chief Executive Officer of the corporation. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board of Directors. The President shall perform such other duties and shall have such other powers as the Board of Directors or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the

Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

3.9 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.10 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairman of the meeting shall designate a temporary secretary to keep a record of the meeting.

3.11 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories selected in accordance with these By-laws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.12 Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

ARTICLE IV

CAPITAL STOCK

4.1 Issuance of Stock. Subject to the provisions of the Restated Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any shares of the authorized capital stock of the corporation held in the corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such lawful consideration and on such terms as the Board of Directors may determine.

4.2 Certificates of Stock. Every holder of stock of the corporation shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by such holder in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Restated Certificate of Incorporation, these By-laws, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

There shall be set forth on the face or back of each certificate representing shares of such class or series of stock of the corporation a statement that the corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.3 Transfers. Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Restated Certificate of Incorporation or by these By-laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these By-laws.

4.4 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE V

GENERAL PROVISIONS

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Restated Certificate of Incorporation or by these By-laws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time stated in such notice, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.4 Voting of Securities. Except as the Board of Directors may otherwise designate, the Chief Executive Officer, the President or the Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this corporation (with or without power of substitution) at any meeting of stockholders or securityholders of any other entity, the securities of which may be held by this corporation.

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Restated Certificate of Incorporation. All references in these By-laws to the Restated Certificate of Incorporation shall be deemed to refer to the Restated Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7 Severability. Any determination that any provision of these By-laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-laws.

5.8 Pronouns. All pronouns used in these By-laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

ARTICLE VI

AMENDMENTS

These By-laws may be altered, amended or repealed, in whole or in part, or new By-laws may be adopted by the Board of Directors or by the stockholders as provided in the Restated Certificate of Incorporation.

Exhibit 15.1

TreeHouse Foods, Inc.
Two Westbrook Corporate Center
Suite 1070
Westchester, Illinois

We have reviewed, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the unaudited interim financial information of TreeHouse Foods, Inc. and subsidiaries for the periods ended September 30, 2009 and 2008, as indicated in our report dated November 4, 2009; because we did not perform an audit, we expressed no opinion on that information.

We are aware that our report referred to above, which is included in your Quarterly Report on Form 10-Q for the quarter ended September 30, 2009, is incorporated by reference in Registration Statements No. 333-126161 and No. 333-150053 on Form S-8.

We also are aware that the aforementioned report, pursuant to Rule 436(c) under the Securities Act of 1933, is not considered a part of the Registration Statements prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of that Act.

/s/ Deloitte & Touche LLP

Chicago, Illinois
November 4, 2009

Exhibit 31.1

CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Sam K. Reed, certify that:

1. I have reviewed this quarterly report on Form 10-Q of TreeHouse Foods, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of registrant’s board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 4, 2009

/s/ Sam K. Reed

Sam K. Reed
Chairman of the Board and Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Dennis F. Riordan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of TreeHouse Foods, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2009

/s/ Dennis F. Riordan
Dennis F. Riordan
Senior Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of TreeHouse Foods, Inc. (the "Company") for the period ended September 30, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Sam K. Reed, Chairman of the Board and Chief Executive Officer of the Company, certify to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Sam K. Reed
Sam K. Reed
Chairman of the Board and Chief Executive Officer

Date: November 4, 2009

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of TreeHouse Foods, Inc. (the “Company”) for the period ended September 30, 2009, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Dennis F. Riordan, Senior Vice President and Chief Financial Officer of the Company, certify to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Dennis F. Riordan
Dennis F. Riordan
Senior Vice President and Chief Financial Officer

Date: November 4, 2009