CENTRAL GARDEN & PET CO
Form 10-Q
August 06, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 27, 2009

or

¨ **TRANSITION REPORT PURSUANT OF SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-33268

CENTRAL GARDEN & PET COMPANY

Delaware	**68-0275553**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

1340 Treat Blvd., Suite 600, Walnut Creek, California 94597

(Address of principle executive offices)

(925) 948-4000

(Registrant s telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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. x 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 definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	¨	Accelerated filer	x
Non-accelerated filer	¨	Smaller reporting company	¨

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

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date.

Common Stock Outstanding as of July 31, 2009	19,626,180
Class A Common Stock Outstanding as of July 31, 2009	48,473,159
Class B Stock Outstanding as of July 31, 2009	1,652,262

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Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995

This Form 10-Q includes forward-looking statements. Forward-looking statements include statements concerning our plans, objectives, goals, strategies, future events, future revenues or performance, capital expenditures, financing needs, plans or intentions relating to acquisitions, our competitive strengths and weaknesses, our business strategy and the trends we anticipate in the industries and economies in which we operate and other information that is not historical information. When used in this Form 10-Q, the words estimates, expects, anticipates, projects, plan intends, believes and, variations of such words or similar expressions are intended to identify forward-looking statements. All forward-looking statements are based upon our current expectations and various assumptions. Our expectations, beliefs and projections are expressed in good faith, and we believe there is a reasonable basis for them, but we cannot assure you that our expectations, beliefs and projections will be realized.

There are a number of risks and uncertainties that could cause our actual results to differ materially from the forward-looking statements contained in this Form 10-Q. Important factors that could cause our actual results to differ materially from the forward-looking statements we make in this Form 10-Q are set forth in our Form 10-K for the fiscal year ended September 27, 2008 including the factors described in the section entitled Risk Factors. If any of these risks or uncertainties materialize, or if any of our underlying assumptions are incorrect, our actual results may differ significantly from the results that we express in or imply by any of our forward-looking statements. We do not undertake any obligation to revise these forward-looking statements to reflect future events or circumstances. Presently known risk factors include, but are not limited to, the following factors:

- seasonality and fluctuations in our operating results and cash flow;
- fluctuations in market prices for seeds and grains;

declines in consumer spending during economic downturns;

inflation and adverse macro-economic conditions;

supply shortages in small animals and pet birds;

adverse weather conditions;

fluctuations in energy prices, fuel and related petrochemical costs;

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- inability to comply with the terms of our indebtedness;
- limitations in our debt capacity as a result of deterioration in operating results coupled with our current outstanding indebtedness and seasonal borrowing needs;
- impact of stock price decline on raising capital and dilution;
- access to additional capital;
- dependence on a few customers for a significant portion of our business;
- consolidation trends in the retail industry;
- uncertainty about new product innovations and marketing programs;
- competition in our industries;
- risks associated with our acquisition strategy;
- dependence upon our key executive officers;
- implementation of a new enterprise resource planning information technology system;
- potential environmental liabilities;
- risk associated with international sourcing;
- litigation and product liability claims;
- the voting power associated with our Class B stock; and
- potential dilution from issuance of authorized shares.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

CENTRAL GARDEN & PET COMPANY

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

Unaudited

	June 28, 2008	June 27, 2009	(See Note 1) September 27, 2008
ASSETS			
Current assets:			
Cash and cash equivalents	$ 8,522	$ 25,390	$ 26,929
Accounts receivable (less allowance for doubtful accounts of $14,581, $18,442 and $15,181)	292,746	262,735	260,639
Inventories	371,052	313,820	349,499
Prepaid expenses and other	36,767	43,117	34,686
Total current assets	709,087	645,062	671,753
Land, buildings, improvements and equipment net	194,064	165,519	174,013
Goodwill	201,624	206,873	201,499
Other intangible assets net	110,710	104,318	107,404
Deferred income taxes and other assets	119,016	80,539	104,649
Total	$ 1,334,501	$ 1,202,311	$ 1,259,318
LIABILITIES AND SHAREHOLDERS EQUITY			
Current liabilities:			
Accounts payable	$ 118,611	$ 117,083	$ 133,364
Accrued expenses	102,014	114,432	84,345
Current portion of long-term debt	3,350	3,311	3,340
Total current liabilities	223,975	234,826	221,049
Long-term debt	580,494	405,676	519,807
Other long-term obligations	4,606	4,685	7,037
Minority interest	2,741	2,087	2,667
Shareholders equity:			
Common stock, $.01 par value: 21,301,689, 19,495,078 and 21,008,384 shares outstanding at June 28, 2008, June 27, 2009 and September 27, 2008	213	195	210
Class A common stock, $.01 par value: 48,232,340, 48,099,760 and 48,466,999 shares outstanding at June 28, 2008, June 27, 2009 and September 27, 2008	482	481	485
Class B stock, $.01 par value: 1,652,262 shares outstanding	16	16	16
Additional paid-in capital	554,609	545,549	555,310
Accumulated earnings (deficit)	(36,553)	7,449	(50,463)
Accumulated other comprehensive income	3,918	1,347	3,200

Total shareholders equity	522,685	555,037	508,758
Total	$ 1,334,501	$ 1,202,311	$ 1,259,318

See notes to condensed consolidated financial statements.

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CENTRAL GARDEN & PET COMPANY

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

(unaudited)

	Three Months Ended		Nine Months Ended	
	June 28, 2008	June 27, 2009	June 28, 2008	June 27, 2009
Net sales	$ 492,937	$ 482,162	$ 1,291,410	$ 1,251,129
Cost of goods sold and occupancy	339,990	317,108	884,331	840,041
Gross profit	152,947	165,054	407,079	411,088
Selling, general and administrative expenses	119,079	113,484	319,175	305,028
Impairment of goodwill			400,000	
Income (loss) from operations	33,868	51,570	(312,096)	106,060
Interest expense	(9,346)	(5,211)	(30,631)	(17,846)
Interest income	360	12	914	614
Other income	783	1,161	2,457	80
Income (loss) before income taxes (tax benefit) and minority interest	25,665	47,532	(339,356)	88,908
Income taxes (tax benefit)	9,574	15,371	(86,837)	29,498
Minority interest	443	1,085	906	1,498
Net income (loss)	$ 15,648	$ 31,076	$ (253,425)	$ 57,912
Net income (loss) per share:				
Basic	$ 0.22	$ 0.45	$ (3.55)	$ 0.83
Diluted	$ 0.22	$ 0.44	$ (3.55)	$ 0.82
Weighted average shares used in the computation of net income (loss) per share:				
Basic	71,493	69,345	71,367	69,885
Diluted	72,148	70,449	71,367	70,798

See notes to condensed consolidated financial statements.

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CENTRAL GARDEN & PET COMPANY

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)

	Nine Months Ended	
	June 28, 2008	June 27, 2009
Cash flows from operating activities:		
Net income (loss)	$ (253,425)	$ 57,912
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	24,421	21,885
Stock-based compensation	9,107	8,200
Excess tax benefits from stock-based awards	(31)	(136)
Minority interest	906	1,498
Deferred income taxes	(110,624)	1,640
Gain on sales of property	(7,931)	(1,395)
Loss on sale of a business and equipment	1,713	479
Impairment of goodwill	400,000	
Other impairments	2,000	
Proceeds from interest rate swap termination, net of amounts reclassified into earnings		2,044
Change in assets and liabilities (excluding businesses acquired):		
Accounts receivable	(44,974)	(2,512)
Inventories	8,545	34,058
Prepaid expenses and other assets	3,309	(901)
Accounts payable	(19,647)	(16,988)
Accrued expenses	17,701	29,983
Other long-term obligations	(1,382)	(2,352)
Net cash provided by operating activities	29,688	133,415
Cash flows from investing activities:		
Additions to property and equipment	(17,311)	(10,428)
Proceeds from property sales, net of expenses	12,053	2,512
Businesses acquired, net of cash acquired	(4,998)	(4,799)
Restricted investments	(265)	
Net cash used in investing activities	(10,521)	(12,715)
Cash flows from financing activities:		
Borrowings on revolving line of credit	595,000	473,000
Repayments of revolving line of credit	(621,000)	(551,000)
Repayments of long-term debt	(1,772)	(24,144)
Proceeds from issuance of common stock	57	30
Repurchase of common stock	(3,277)	(17,849)
Redemption of preferred stock	(750)	
Distribution to minority interest		(2,082)
Excess tax benefits from stock-based awards	31	136
Payment of financing costs	(50)	(128)
Net cash used in financing activities	(31,761)	(122,037)

Effect of exchange rate changes on cash and cash equivalents		61		(202)
Net decrease in cash and cash equivalents		(12,533)		(1,539)
Cash and equivalents at beginning of period		21,055		26,929
Cash and equivalents at end of period	$	8,522	$	25,390
Supplemental information:				
Cash paid for interest	$	28,258	$	14,476
Cash paid for income taxes net of refunds	$	8,333	$	10,634
Non-cash investing activities:				
Liabilities assumed in connection with acquisitions	$	1,505	$	
Note receivable from sale of property	$	3,850	$	
Capital expenditures incurred but not paid	$		$	322
Non-cash financing activities				
Offset of subordinated notes with escrow	$		$	12,825
Restricted share stock bonus	$	1,549	$	3,877
Repurchased shares settled but not paid	$	1,394	$	174

See notes to condensed consolidated financial statements.

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CENTRAL GARDEN & PET COMPANY

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Three and Nine Months Ended June 27, 2009

(unaudited)

1. Basis of Presentation

The condensed consolidated balance sheets of Central Garden & Pet Company and subsidiaries (the Company or Central) as of June 28, 2008 and June 27, 2009, the condensed consolidated statements of operations for the three and nine months ended June 28, 2008 and June 27, 2009 and the condensed consolidated statements of cash flows for the nine months ended June 28, 2008 and June 27, 2009 have been prepared by the Company, without audit. In the opinion of management, all adjustments (which include only normal recurring adjustments, except as discussed in note 4) considered necessary to present fairly the financial position, results of operations and cash flows of the Company for the periods mentioned above, have been made.

For the Company s foreign business in the UK, the local currency is the functional currency. Assets and liabilities are translated using the exchange rate in effect at the balance sheet date. Income and expenses are translated at the average exchange rate for the period. For the nine month period ended June 27, 2009, there was comprehensive income of $56.1 million, which includes net income of $57.9 million and foreign currency translation adjustments of $1.8 million that are excluded from net earnings but reported in accumulated other comprehensive income, a separate component of shareholders equity. Deferred taxes are not provided on translation gains and losses, because the Company expects earnings of its foreign subsidiary to be permanently reinvested. Transaction gains and losses are included in results of operations.

Due to the seasonal nature of the Company s garden business, the results of operations for the three and nine month periods ended June 27, 2009 and June 28, 2008 are not indicative of the operating results that may be expected for the entire fiscal year. These interim financial statements should be read in conjunction with the annual audited financial statements, accounting policies and financial notes thereto, included in the Company s 2008 Annual Report on Form 10-K, which has previously been filed with the Securities and Exchange Commission. The September 27, 2008 balance sheet presented herein was derived from the audited statements.

The Company has evaluated subsequent events through August 6, 2009, the filing date of this Form 10-Q, and has determined that there were no subsequent events to recognize or disclose in these financial statements.

Minority Interest

Minority interest in the Company s condensed consolidated financial statements represents the 20% interest not owned by Central in a consolidated subsidiary. Since the Company controls this subsidiary, its financial statements are fully consolidated with those of the Company, and the minority owner s 20% share of the subsidiary s net assets and results of operations is deducted and reported as minority interest.

Repurchase of Company Stock

During the quarter ended June 27, 2009, we repurchased 191,802 shares of our voting common stock at an aggregate cost of approximately $1.9 million, or approximately $9.75 per share, and 358,645 shares of our non-voting Class A common stock at an aggregate cost of approximately $3.3 million, or approximately $9.15 per share. During the nine months ended June 27, 2009, we repurchased 1,483,727 shares of our voting common stock in the open market at an aggregate cost of approximately $10.1 million, or approximately $6.78 per share, and 1,205,813 shares of our non-voting Class A common stock in the open market at an aggregate cost of approximately $7.7 million, or approximately $6.42 per share.

Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, Fair Value Measurements. SFAS No. 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The standard also establishes a framework for measuring fair value and provides for expanded disclosures about fair value measurements. In February 2008, the FASB issued FASB Staff Position (FSP) No. FAS 157-1, *Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13*

and FSP No. FAS 157-2*, Effective Date of FASB Statement No. 157*. FSP 157-1 amends SFAS No. 157 to remove certain leasing transactions from its scope. FSP 157-2 delays the effective date of SFAS No. 157 to fiscal years beginning after November 15, 2008 for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually) and will be adopted by the

Company beginning in the first quarter of fiscal 2010. In October 2008, the FASB issued FSP No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset is Not Active*, to clarify the application of SFAS No. 157 in inactive markets for financial assets. FSP 157-3 became effective upon issuance and SFAS No. 157 is effective for fiscal years beginning after November 15, 2007. The Company elected to partially adopt SFAS No. 157 as of the beginning of fiscal 2009, as permitted by FSP 157-2. The adoption required expanded disclosures and did not have a material impact on our consolidated financial statements (see Note 2 to the condensed consolidated financial statements). The Company does not expect the adoption of the remaining provisions of SFAS No. 157 (delayed by FSP 157-2) to have a material impact on the Company s consolidated financial position, results of operations or cash flows.

In February 2007, the FASB issued SFAS No. 159, The Fair Value Option for Financial Assets and Financial Liabilities, which provides companies an option to report selected financial assets and liabilities at fair value. SFAS No. 159 requires companies to provide information to assist financial statement users to understand the effect of a company s choice to use fair value on its earnings, as well as to display on the face of the balance sheet the fair value of assets and liabilities chosen by the company for fair value accounting. Additionally, SFAS No. 159 establishes presentation and disclosure requirements designed to simplify comparisons between companies that choose different measurement attributes for similar types of assets and liabilities. The Company adopted SFAS No. 159 as of the beginning of fiscal 2009 but elected not to record additional financial assets and liabilities at fair value. As a result, the adoption of SFAS No. 159 did not impact the Company s consolidated financial position, results of operations or cash flows.

In December 2007, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 141(R) Business Combinations, which establishes accounting principles and disclosure requirements for all transactions in which a company obtains control over another business. This accounting pronouncement is effective prospectively for businesses acquired by the Company in its fiscal year beginning September 27, 2009. In April 2009, the FASB issued FSP No. 141(R)-1(FSP 141(R)-1), Accounting for Assets Acquired and Liabilities Assumed in a Business Combination that Arise from Contingencies. FSP 141(R)-1 requires an acquirer to recognize at fair value an asset acquired or a liability assumed in a business combination that arises from a contingency if the acquisition-date fair value of an asset or liability can be determined during the measurement period. If the acquisition-date fair value cannot be determined, then the acquirer follows the recognition criteria in FASB Statement No. 5, Accounting for Contingencies and FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss an interpretation of FASB Statement No. 5 to determine whether the contingency should be recognized as of the acquisition date or after it. Since this guidance will be applied prospectively, on adoption, there will be no impact to the current consolidated financial statements.

In December 2007, the FASB issued SFAS No. 160, Noncontrolling Interests in Consolidated Financial Statements, an amendment to ARB No. 51. This standard prescribes the accounting by a parent company for minority interests held by other parties in a subsidiary of the parent company. SFAS No. 160 is effective for the Company in its fiscal year beginning September 27, 2009. The Company is currently evaluating the impact of SFAS No. 160 on its consolidated financial statements.

In March 2008, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 161, Disclosures about Derivative Instruments and Hedging Activities an Amendment of FASB Statement 133. SFAS No. 161 enhances required disclosures regarding derivatives and hedging activities, including enhanced disclosures regarding how: (a) an entity uses derivative instruments; (b) derivative instruments and related hedged items are accounted for under SFAS No. 133, Accounting for Derivatives and Hedging Activities; and (c) derivative instruments and related hedged items affect an entity s financial position, financial performance and cash flows. SFAS No. 161 is effective for the Company in its fiscal year beginning September 27, 2009. The Company is currently evaluating the impact of SFAS No. 161 on its consolidated financial statements.

In April 2008, the FASB issued FSP No. 142-3 (FSP 142-3) Determination of the Useful Life of Intangible Assets. FSP 142-3 amends the factors an entity should consider in developing renewal or extension assumptions used in determining the useful life of recognized intangible assets under FASB Statement No. 142, Goodwill and Other Intangible Assets. This new guidance applies prospectively to intangible assets that are acquired individually or with a group of other assets in business combinations and asset acquisitions. FSP 142-3 is effective for the Company in its fiscal year beginning September 27, 2009. Early adoption is prohibited. Since this guidance will be applied prospectively, on adoption, there will be no impact to the current consolidated financial statements.

In April 2009, the FASB issued three related FSP: (i) FSP FAS No. 115-2 and FAS No. 124-2, Recognition of Presentation of Other-Than-Temporary Impairments (FSP FAS 115-2 and FAS 124-2), (ii) FSP FAS No. 107-1 and Accounting Principles Board Opinion (APB) No. 28-1, Interim Disclosures about Fair Value of Financial Instruments (FSP FAS 107-1 and APB 28-1), and (iii) FSP FAS No. 157-4, Determining the Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly (FSP FAS 157-4), which are effective for interim and annual reporting periods ending after June 15, 2009. The Company adopted the provisions of these FSP for the quarter ended June 27, 2009. FSP FAS 115-2 and FAS 124-2 amend the other-than-temporary impairment guidance in U.S. GAAP for debt securities to modify the requirement for recognizing other-than-temporary impairments, change the existing impairment model, and modify the presentation and frequency of related disclosures. FSP FAS 107-1 and APB 28-1 require disclosures about fair value of financial instruments for interim reporting periods as well as in annual financial statements. FSP FAS 157-4 provides additional guidance for

estimating fair value in accordance with SFAS No. 157, Fair Value Measurements. The adoption of these FSPs did not have a material impact on the Company s consolidated results of operations and financial condition. See Note 3 to the condensed consolidated financial statements for further discussion.

In June 2009, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 166, Accounting for Transfers of Financial Assets. SFAS No. 166 is a revision to SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, and amends the guidance on transfers of financial assets, including securitization transactions where entities have continued exposure to risks related to transferred financial assets. SFAS No. 166 also expands the disclosure requirements for such transactions. SFAS 166 will be effective for the Company in its fiscal year beginning September 26, 2010. The Company is currently assessing the potential impacts, if any, on its consolidated financial statements.

In June 2009, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 167, Amendments to FASB Interpretation No. 46(R). SFAS No. 167 is a revision of FIN No. 46(R), Consolidation of Variable Interest Entities, and amends the consolidation guidance for VIEs under FIN No. 46(R). This statement will become effective for the Company in its fiscal year beginning September 26, 2010. The Company is currently assessing the potential impacts, if any, on its consolidated financial statements.

In June 2009, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 168, The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles A Replacement of FASB Statement No. 162. The FASB Accounting Standards Codification (Codification) will become the source of authoritative GAAP recognized by the FASB to be applied by nongovernmental entities. Rules and interpretive releases of the SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. On the effective date, the Codification will supercede all then-existing non-SEC accounting and reporting standards. This standard will become effective for the Company on July 1, 2009. The Company does not expect that this standard will have a material impact on its consolidated financial statements on adoption.

2. Fair Value Measurements

SFAS No. 157 establishes a single authoritative definition of fair value, a framework for measuring fair value and expands disclosure of fair value measurements. SFAS No. 157 requires financial assets and liabilities to be categorized based on the inputs used to calculate their fair values as follows:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3 - Unobservable inputs for the asset or liability, which reflect the Company s own assumptions about the assumptions that market participants would use in pricing the asset or liability (including assumptions about risk).

In February 2009, the Company s $75 million pay-floating interest rate swap was terminated prior to its maturity by the counterparty in accordance with the terms of the interest rate swap agreement. Prior to its termination, the swap was measured under Level 2 inputs in the fair value hierarchy. As a result of this swap termination, the Company received cash proceeds and realized a settlement gain of $2.3 million that was recorded as an adjustment to the carrying amount of the related debt. The settlement gain is being amortized as an offset to interest expense over the remaining term of the debt, which matures February 2013.

3. Financial Instruments

Effective March 29, 2009, the Company adopted FSP No. FAS 107-1 and APB 28-1, Interim Disclosures about Fair Value of Financial Instruments. FSP No. FAS 107-1 and APB 28-1 requires disclosures about the fair value of financial instruments in interim as well as annual financial statements.

The Company s financial instruments include cash and equivalents, accounts receivable and payable, short-term borrowings, and accrued liabilities. The carrying amount of these instruments approximates fair value because of their short-term nature.

The estimated fair value of the Company s senior subordinated notes as of June 27, 2009 is $131.7 million, compared to a carrying value of $137.2 million. The estimated fair value is based on quoted market prices for these instruments.

The estimated fair value of the Company s term loan, including current portion, as of June 27, 2009 is $231.6 million, compared to a carrying value of $269.4 million. The estimated fair value has been determined using inputs that were derived from available market information and may not be representative of actual values that could have been or will be realized in the future.

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4. Goodwill

The Company accounts for goodwill in accordance with SFAS No. 142, Goodwill and Other Intangible Assets, and tests goodwill for impairment annually, or whenever events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. This assessment involves the use of significant accounting judgments and estimates as to future operating results and discount rates. Changes in estimates or use of different assumptions could produce significantly different results. An impairment loss is generally recognized when the carrying amount of the reporting unit s net assets exceeds the estimated fair value of the reporting unit. The Company uses discounted cash flow analysis to estimate the fair value of our reporting units. The Company s goodwill impairment analysis also includes a comparison of the aggregate estimated fair value of all four reporting units to the Company s total market capitalization.

In the first fiscal quarter of fiscal 2008, the Company recorded a non-cash charge of $400 million to recognize the impairment of goodwill and other intangible assets, comprised of $202 million relating to its Garden Products segment and $198 million relating to its Pet Products segment. This non-cash charge of $400 million reduced net earnings for the nine months ended June 28, 2008 by $290.4 million net of taxes.

In connection with the Company s purchase of an additional 60% equity interest in Tech Pac L.L.C. in March 2006, it deposited approximately $15.5 million into an escrow account for possible contingent performance-based payments. In fiscal 2009, a net amount of $4.8 million in cash was paid in performance-based payments which the Company recognized as additional goodwill.

5. Long-Term Debt

As of June 27, 2009, the Company had $650 million in senior secured credit facilities, consisting of a $350 million revolving credit facility maturing in February 2011 and a $300 million term loan maturing in September 2012. Interest on the revolving credit facility is based, at the Company s option, on a rate equal to prime plus a margin, which fluctuates from 0% to 0.375%, or LIBOR plus a margin, which fluctuates from 0.75% to 1.50%, determined quarterly based on consolidated total debt to consolidated EBITDA for the most recent trailing 12-month period. As of June 27, 2009, the applicable interest rate on the revolving credit facility related to base rate borrowings was 3.38%, and the applicable interest rate related to LIBOR rate borrowings was 1.57%. Interest on the term loan is based, at the Company s option, on a rate equal to LIBOR plus a margin, which fluctuates from 1.50% to 1.75 %, or the prime rate plus a margin, which fluctuates from 0.50% to 0.75%. As of June 27, 2009, interest was calculated on the term loan based on a rate equal to LIBOR plus a margin. As of June 27, 2009, the applicable interest rate on the term loan related to base rate borrowings was 3.75%, and the applicable interest rate related to LIBOR rate borrowings was 1.82%. The term loan is payable in quarterly installments of $750,000 with the balance payable in September 2012.

These facilities are secured by substantially all of the Company s assets and contain certain financial covenants which require the Company to maintain minimum levels of interest coverage and maximum levels of total debt to EBITDA and that restrict the Company s ability to repurchase its stock, make investments in or acquisitions of other businesses and pay dividends above certain levels over the life of the facilities. Under the terms of the Company s senior secured credit facilities, it may make restricted payments, including cash dividends, in an aggregate amount not to exceed $75,000,000 over the life of the facilities; if the total leverage ratio for the fiscal quarter most recently ended is less than 3.00 to 1.00, the maximum restricted payment amount will be increased to $100,000,000 over the life of the facilities. Apart from the covenants limiting restricted payments and capital expenditures, the facilities do not restrict the use of retained earnings or net income.

The Company was in compliance with all financial covenants as of June 27, 2009. There was no outstanding balance at June 27, 2009 under the $350 million revolving credit facility. There were $20.8 million of outstanding letters of credit. After giving effect to the financial covenants in the credit agreement, the remaining borrowing capacity was $326 million.

The Company s credit facility contains mandatory prepayment provisions when the Company has excess cash flow, as defined in the credit agreement, during the fiscal year. Accordingly, in December 2008, the Company repaid $21.6 million of the $300 million term loan.

The Company also has outstanding $150 million of 9 $^{1}/8$% senior subordinated notes due 2013 (senior subordinated notes). In October 2003, the Company entered into a $75 million pay-floating interest rate swap effectively converting half of its $150 million fixed rate 9 $^{1}/8$% senior subordinated notes to a floating rate of LIBOR + 4.04%. In February 2009, the swap was terminated prior to its maturity by the counterparty in accordance with the terms of the interest rate swap agreement. As a result of this swap termination, the Company received cash proceeds and realized a settlement gain of $2.3 million that was recorded as an adjustment to the carrying amount of the related debt. The settlement gain is being amortized as an offset to interest expense over the remaining term of the debt, which matures in February 2013.

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In connection with Gulfstream s purchase of an additional 60% equity interest in Tech Pac L.L.C. in March 2006, the Company deposited approximately $15.5 million into an escrow for possible contingent performance-based payments. In March 2009, a net amount of $4.8 million in cash was paid in performance-based payments, which the Company recognized as additional goodwill. There are no remaining contingent performance-based payments due to the seller. As part of the resolution of the contingent payments, the Company became the beneficiary of the remaining funds in the escrow, which are comprised primarily of $12.8 million of aggregate principal amount of the senior subordinated notes. Under the requirements of SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, the senior subordinated notes contained within the escrow accounts have been recorded as a reduction of debt for accounting purposes against our outstanding senior subordinated notes balance as of June 27, 2009. The senior subordinated notes continue to be held in the escrow and have not been retired.

6. Stock-Based Compensation

The Company has various non-qualified stock-based compensation programs, which provide for stock option grants and restricted stock awards. The grant date fair values of stock options and restricted stock awards are amortized over the vesting period. Stock options may be granted to officers, key employees and directors. The Company accounts for stock-based awards in accordance with SFAS No. 123(R), Share-Based Payment. Stock compensation expense is recognized over the requisite service period using the straight-line attribution method for non-performance based options.

Stock options were generally granted with 30 month cliff vesting and 42 month expiration, but were also granted with graded vesting increments of 20% or 25% per year and expiring up to eight years from the date of grant. In fiscal 2008, 3.7 million performance options were granted that vest based on pre-determined Company goals for each of the next five years and expire at the end of the sixth year. Of the options granted in fiscal 2008, approximately 216,000 options scheduled to possibly vest in each of fiscal year 2009 and 2010 were amended and are now only subject to service vesting conditions. We currently estimate the performance-based options are probable of achievement and are recording the related expense over the estimated service period using the accelerated method. In fiscal 2009, approximately 78% of the performance options granted in fiscal 2008 that were eligible to vest in 2009, vested. To the extent Company goals are not achieved, the amount of stock-based compensation recognized in the future will be adjusted.

In fiscal 2009, 1.5 million performance options were granted that vest based on pre-determined Company goals for each of the next five years and expire at the end of the sixth year. We currently estimate the performance-based options are probable of achievement and are recording the related expense over the estimated service period using the accelerated method. To the extent Company goals are not achieved, the amount of stock-based compensation recognized in the future will be adjusted.

The Company recognized share-based compensation expense of $1.8 million and $2.3 million for the three month periods ended June 27, 2009 and June 28, 2008, respectively, and $8.2 million and $9.1 million for the nine month periods ended June 27, 2009 and June 28, 2008, respectively, as a component of selling, general and administrative expenses.

The following table summarizes option activity for the nine months ended June 27, 2009:

	Number of Shares (in thousands)
Outstanding at September 27, 2008	7,599
Granted	1,713
Exercised	(102)
Cancelled or Expired	(415)
Outstanding at June 27, 2009	8,795
Exercisable at June 27, 2009	2,133

Options to purchase 8.8 million shares of common stock at prices ranging from $4.26 to $17.99 per share were outstanding at June 27, 2009 and options to purchase 9.4 million shares of common stock at prices ranging from $4.26 to $17.99 per share were outstanding at June 28, 2008.

The weighted average exercise price per share of stock option awards granted during the first nine months of fiscal 2009 and fiscal 2008 was $7.85 and $9.02, respectively. The weighted average per share grant-date fair value of stock option awards granted during the first nine months of fiscal 2009 and fiscal 2008 was $2.21 and $0.63, respectively.

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As of June 27, 2009, there was approximately $7.4 million of total unrecognized compensation cost related to non-vested stock options, which is expected to be recognized over a remaining weighted-average vesting period of four years.

Restricted Stock Awards: As of June 27, 2009, there were 0.4 million shares of restricted stock awards outstanding. The awards generally vest in 20% or 25% annual increments beginning two or three years from the date of grant.

The following table summarizes restricted stock award activity during the nine months ended June 27, 2009:

	Number of Shares (in thousands)
Nonvested at September 27, 2008	563
Granted	737
Vested	(753)
Forfeited	(172)
Nonvested at June 27, 2009	375

The weighted average per share grant-date fair value of restricted stock awards granted during the first nine months of fiscal 2009 and fiscal 2008 was $6.18 and $4.29, respectively.

During the nine months ended June 27, 2009, the Company awarded approximately 621,000 shares of its non-voting common stock as bonus compensation in lieu of cash payments of $6.2 million. The shares granted during the period as bonus compensation vested immediately.

As of June 27, 2009, there was approximately $2.8 million of unrecognized compensation cost related to nonvested restricted stock awards, which is expected to be recognized over a remaining weighted-average period of two years.

7. Earnings per Share

The following is a reconciliation of the numerators and denominators of the basic and diluted per share computations for income (loss) from continuing operations:

	Three Months Ended June 27, 2009			**Nine Months Ended June 27, 2009**		
	Income	**Shares**	**Per Share**	**Income**	**Shares**	**Per Share**
	(in thousands, except per share amounts)					
Basic EPS:						
Net income available to common shareholders	$ 31,076	69,345	$ 0.45	$ 57,912	69,885	$ 0.83
Effect of dilutive securities:						
Options to purchase common stock		724	(0.01)		503	(0.01)
Restricted shares		380			410	
Diluted EPS:						
Net income available to common shareholders	$ 31,076	70,449	$ 0.44	$ 57,912	70,798	$ 0.82

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	Three Months Ended June 28, 2008			Nine Months Ended June 28, 2008		
	Income	Shares	Per Share	Income (Loss)	Shares	Per Share
	(in thousands, except per share amounts)					
Basic EPS:						
Net income (loss) available to common shareholders	$ 15,648	71,493	$ 0.22	$ (253,425)	71,367	$ (3.55)
Effect of dilutive securities:						
Options to purchase common stock		63				
Restricted shares		592				
Diluted EPS:						
Net income (loss) available to common shareholders	$ 15,648	72,148	$ 0.22	$ (253,425)	71,367	$ (3.55)

Options to purchase 8.8 million shares of common stock at prices ranging from $4.26 to $17.99 per share were outstanding at June 27, 2009 and options to purchase 9.4 million shares of common stock at prices ranging from $4.26 to $17.99 per share were outstanding at June 28, 2008.

For the three month periods ended June 27, 2009 and June 28, 2008, options to purchase 6.1 million and 6.8 million shares of common stock, respectively, were outstanding but were not included in the computation of diluted earnings per share because the option exercise prices were greater than the average market price of the common shares and, therefore, the effect would be anti-dilutive.

For the nine month period ended June 27, 2009, options to purchase 6.4 million shares of common stock were outstanding but were not included in the computation of diluted earnings per share because the option exercise prices were greater than the average market price of the common shares and, therefore, the effect would be anti-dilutive. The potential effects of stock awards and the assumed conversion of the Company s convertible preferred stock were excluded from the diluted earnings per share calculation for the nine month period ended June 28, 2008, because their inclusion in a net loss period would be anti-dilutive to the earnings per share calculation.

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8. Segment Information

Management has determined that the Company has two operating segments which are also reportable segments based on the level at which the Chief Executive Officer reviews the results of operations to make decisions regarding performance assessment and resource allocation. These operating segments are Pet Products and Garden Products and are presented in the table below (in thousands).

	Three Months Ended		Nine Months Ended	
	June 28, 2008	June 27, 2009	June 28, 2008	June 27, 2009
Net sales:				
Pet Products	$ 239,464	$ 215,010	$ 672,001	$ 629,525
Garden Products	253,473	267,152	619,409	621,604
Total net sales	$ 492,937	$ 482,162	$ 1,291,410	$ 1,251,129
Income (loss) from operations:				
Pet Products	$ 32,734	$ 29,822	$ (119,837)[(1)]	$ 74,594
Garden Products	12,561	35,270	(167,386)[(2)]	64,235
Corporate	(11,427)	(13,522)	(24,873)	(32,769)
Total income (loss) from operations	33,868	51,570	(312,096)	106,060
Interest expense net	(8,986)	(5,199)	(29,717)	(17,232)
Other income	783	1,161	2,457	80
Income taxes (tax benefit)	9,574	15,371	(86,837)	29,498
Minority interest	443	1,085	906	1,498
Net income (loss)	$ 15,648	$ 31,076	$ (253,425)	$ 57,912
Depreciation and amortization:				
Pet Products	$ 4,554			