NBTY INC
Form 10-Q
February 09, 2010

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# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# FORM 10-Q

**(Mark One)**

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

**For the quarterly period ended December 31, 2009**

**Or**

o **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: 001-31788**

# NBTY, Inc.

(Exact name of registrant as specified in its charter)

| | |
|---|---|
| **Delaware** | **11-2228617** |
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |

**2100 Smithtown Avenue,**
**Ronkonkoma, New York 11779**
(Address of principal executive offices) (Zip Code)

**(631) 567-9500**
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, 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 o NO o

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

| | | | |
|---|---|---|---|
| Large accelerated filer ý | Accelerated filer o | Non-accelerated filer o<br>(Do not check if a smaller reporting company) | Smaller reporting company o |

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

The number of shares of Common Stock (par value $.008 per share) outstanding as of January 29, 2010 was 63,228,998.

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**PART I. FINANCIAL INFORMATION**
**Item 1. Financial Statements**

**NBTY, Inc.**

**Condensed Consolidated Balance Sheets**

(Unaudited)

(in thousands, except per share amounts)

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 158,706 | $ 106,001 |
| Accounts receivable, net | 187,593 | 155,863 |
| Inventories | 655,448 | 658,534 |
| Deferred income taxes | 28,221 | 28,154 |
| Other current assets | 62,978 | 49,999 |
| Total current assets | 1,092,946 | 998,551 |
| Property, plant and equipment, net | 367,365 | 373,817 |
| Goodwill | 339,937 | 339,099 |
| Intangible assets, net | 210,285 | 214,139 |
| Other assets | 20,852 | 34,615 |
| Total assets | $ 2,031,385 | $ 1,960,221 |
| **Liabilities and Stockholders' Equity** | | |
| Current liabilities: | | |
| Current portion of long-term debt | $ 61,227 | $ 38,893 |
| Accounts payable | 96,206 | 128,485 |
| Accrued expenses and other current liabilities | 179,165 | 156,734 |
| Total current liabilities | 336,598 | 324,112 |
| Long-term debt, net of current portion | 404,479 | 437,629 |
| Deferred income taxes | 40,676 | 36,422 |
| Other liabilities | 30,753 | 34,233 |
| Total liabilities | 812,506 | 832,396 |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Common stock, $.008 par; authorized 175,000 shares; issued and outstanding 63,209 shares and 61,874 shares at December 31, 2009 and September 30, 2009, respectively | 506 | 495 |
| Capital in excess of par | 159,378 | 145,885 |
| Retained earnings | 1,060,383 | 984,797 |
| Accumulated other comprehensive loss | (1,388) | (3,352) |
| Total stockholders' equity | 1,218,879 | 1,127,825 |

| | | |
|---|---|---|
| Total liabilities and stockholders' equity | $ 2,031,385 | $ 1,960,221 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

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**NBTY, Inc.**

**Condensed Consolidated Statements of Income**

(Unaudited)

(in thousands, except per share amounts)

| | Three months ended December 31, 2009 | Three months ended December 31, 2008 |
|---|---|---|
| Net sales | $ 751,151 | $ 660,552 |
| Costs and expenses: | | |
| Cost of sales | 411,448 | 388,503 |
| Advertising, promotion and catalog | 28,742 | 31,291 |
| Selling, general and administrative | 188,731 | 195,901 |
| IT project termination costs | | 8,647 |
| | 628,921 | 624,342 |
| Income from operations | 122,230 | 36,210 |
| Other income (expense): | | |
| Interest | (8,056) | (9,489) |
| Miscellaneous, net | 1,755 | (5,633) |
| | (6,301) | (15,122) |
| Income before provision for income taxes | 115,929 | 21,088 |
| Provision for income taxes | 40,343 | 7,613 |
| Net income | $ 75,586 | $ 13,475 |
| Net income per share: | | |
| Basic | $ 1.21 | $ 0.22 |
| Diluted | $ 1.18 | $ 0.21 |
| Weighted average common shares outstanding: | | |
| Basic | 62,408 | 61,600 |
| Diluted | 63,885 | 63,114 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

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**NBTY, Inc.**

**Condensed Consolidated Statements of Stockholders' Equity and Comprehensive Income (Loss)**

**Three Months Ended December 31, 2009 and 2008**

(Unaudited)

(in thousands)

| | Common Stock | | | | Accumulated Other Comprehensive (Loss) Income | |
|---|---|---|---|---|---|---|
| | Number of Shares | Amount | Capital in Excess of Par | Retained Earnings | Accumulated Other Comprehensive (Loss) Income | Total Stockholders' Equity |
| **Balance, September 30, 2009** | 61,874 | $ 495 | $ 145,885 | $ 984,797 | $ (3,352) | $ 1,127,825 |
| Components of comprehensive income: | | | | | | |
| Net income | | | | 75,586 | | 75,586 |
| Foreign currency translation adjustment, net of taxes | | | | | 1,164 | 1,164 |
| Change in fair value of interest rate swaps, net of taxes | | | | | 800 | 800 |
| Comprehensive income: | | | | | | $ 77,550 |
| Exercise of stock options | 1,335 | 11 | 7,832 | | | 7,843 |
| Excess tax benefit from exercise of stock options | | | 4,240 | | | 4,240 |
| Stock-based compensation | | | 1,421 | | | 1,421 |
| **Balance, December 31, 2009** | 63,209 | $ 506 | $ 159,378 | $ 1,060,383 | $ (1,388) | $ 1,218,879 |
| | | | | | | |
| **Balance, September 30, 2008** | 61,599 | $ 493 | $ 140,990 | $ 839,068 | $ 17,645 | $ 998,196 |
| Components of comprehensive income: | | | | | | |
| Net income | | | | 13,475 | | 13,475 |
| Foreign currency translation adjustment, net of taxes | | | | | (49,781) | (49,781) |
| Change in fair value of interest rate swaps, net of taxes | | | | | (6,123) | (6,123) |
| Comprehensive loss: | | | | | | $ (42,429) |
| Exercise of stock options | 1 | | 6 | | | 6 |
| Stock-based compensation | | | 702 | | | 702 |
| **Balance, December 31, 2008** | 61,600 | $ 493 | $ 141,698 | $ 852,543 | $ (38,259) | $ 956,475 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

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**NBTY, Inc.**

**Condensed Consolidated Statements of Cash Flows**

(Unaudited)

(in thousands)

| | Three months ended December 31, 2009 | Three months ended December 31, 2008 |
|---|---|---|
| Cash flows from operating activities: | | |
| Net income | $ 75,586 | $ 13,475 |
| Adjustments to reconcile net income to net cash and cash equivalents provided by operating activities: | | |
| Impairments and disposals of assets | 5,591 | 5,154 |
| Depreciation and amortization | 16,947 | 17,521 |
| Foreign currency transaction loss | 115 | 5,886 |
| Amortization of deferred charges | 392 | 316 |
| Stock-based compensation | 1,420 | 702 |
| Allowance for doubtful accounts | (115) | 1,361 |
| Inventory reserves | 2,174 | 1,737 |
| Deferred income taxes | 773 | 152 |
| Excess income tax benefit from exercise of stock options | (4,240) | |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | (31,989) | (27,740) |
| Inventories | 2,036 | (44,047) |
| Other assets | 1,523 | 4,698 |
| Accounts payable | (32,864) | 24,613 |
| Accrued expenses and other liabilities | 22,666 | 2,884 |
| Net cash provided by operating activities | 60,015 | 6,712 |
| Cash flows from investing activities: | | |
| Purchase of property, plant and equipment | (9,883) | (22,639) |
| Proceeds from sale of investments | 1,650 | |
| Cash paid for acquisitions | (87) | (264) |
| Escrow refund, net of purchase price adjustments | | 12,219 |
| Net cash used in investing activities | (8,320) | (10,684) |
| Cash flows from financing activities: | | |
| Principal payments under long-term debt agreements and capital leases | (10,968) | (8,497) |
| Proceeds from borrowings under the Revolving Credit Facility | | 35,000 |
| Principal payments under the Revolving Credit Facility | | (60,000) |
| Excess income tax benefit from exercise of stock options | 4,240 | |
| Proceeds from stock options exercised | 7,843 | 6 |
| Net cash provided by (used in) financing activities | 1,115 | (33,491) |
| Effect of exchange rate changes on cash and cash equivalents | (105) | (19) |
| Net increase (decrease) in cash and cash equivalents | 52,705 | (37,482) |
| Cash and cash equivalents at beginning of period | 106,001 | 90,180 |

| | | |
|---|---|---|
| Cash and cash equivalents at end of period | $ 158,706 | $ 52,698 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements**

(Unaudited)

(in thousands, except per share amounts)

## 1. Basis of Presentation

NBTY, Inc. (together with its subsidiaries, "we," "our," "us," "NBTY," or the "Company") is a leading global vertically integrated manufacturer, marketer, distributor and retailer of a broad line of high-quality, value-priced nutritional supplements in the United States and throughout the world. We market over 25,000 products under numerous owned and private-label brands, including Nature's Bounty®, Ester-C®, Solgar®, MET-Rx®, American Health®, Osteo Bi-Flex®, Flex-A-Min®, SISU®, Knox®, Sundown®, Rexall®, Pure Protein®, Body Fortress®, WORLDWIDE Sport Nutrition®, Natural Wealth®, Puritan's Pride®, Holland & Barrett®, GNC (UK)®, Physiologics®, Le Naturiste®, De Tuinen®, Julian Graves® and Vitamin World®.

We have prepared these financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") applicable to interim financial information and on a basis that is consistent with the accounting principles applied in our Annual Report on Form 10-K for the fiscal year ended September 30, 2009 ("2009 Form 10-K"). In our opinion, these financial statements reflect all adjustments (including normal recurring items) necessary for a fair presentation of our results for the interim periods presented. These financial statements do not include all information or notes necessary for a complete presentation of financial position, results of operations and cash flows in conformity with GAAP. Accordingly, these financial statements should be read in conjunction with the financial statements and notes thereto contained in our 2009 Form 10-K. Results for interim periods are not necessarily indicative of results which may be achieved for a full year.

We have evaluated subsequent events through February 9, 2010, the date of issuance of these financial statements.

### Estimates

The preparation of financial statements in conformity with GAAP requires that we make estimates and assumptions that affect the reported amounts of assets, liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. These judgments can be subjective and complex, and consequently actual results could differ materially from those estimates and assumptions. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Our most significant estimates include: sales returns and other allowances; inventory valuation and obsolescence; valuation and recoverability of long-lived assets, including goodwill; income taxes; and accruals for the outcome of current litigation.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**1. Basis of Presentation (Continued)**

**Accounts Receivable Reserves**

Accounts receivable were net of the following reserves:

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Allowance for sales returns | $ 9,033 | $ 11,707 |
| Promotional programs incentive allowance | 64,129 | 49,071 |
| Allowance for doubtful accounts | 3,660 | 3,723 |
| | $ 76,822 | $ 64,501 |

**Net Income Per Share**

Basic net income per share is based on the weighted average number of common shares outstanding during the three-month periods ended December 31, 2009 and 2008. For the three months ended December 31, 2009, diluted net income per share includes the dilutive effect of outstanding stock options and restricted stock units, which resulted in a dilutive effect of 1,477 shares. For the three months ended December 31, 2008, diluted net income per share includes the dilutive effect of outstanding stock options, which resulted in a dilutive effect of 1,514 shares. There were 287 and 900 outstanding stock options at December 31, 2009 and 2008, respectively, that were not included in the calculation of diluted net income per share since they would have been anti-dilutive.

**Recent Accounting Developments**

In June 2009, the Financial Accounting Standards Board ("FASB") issued authoritative guidance requiring an enterprise to perform an analysis to determine whether the enterprise's variable interests give it a controlling financial interest in a variable interest entity. This analysis identifies the primary beneficiary of a variable interest entity as one with the power to direct the activities of a variable interest entity that most significantly impacts the entity's economic performance and the obligation to absorb losses of the entity that could potentially be significant to the variable interest. This guidance will become effective for us October 1, 2010. We anticipate that the adoption of this guidance will not have a significant impact on our consolidated financial position or results of operations since we currently do not have any variable interest entities.

The FASB issued authoritative guidance that retains the purchase method of accounting for acquisitions; however, it includes changes in the way assets and liabilities are recognized in purchase accounting. It also changes the recognition of assets acquired and liabilities assumed arising from contingencies, requires the capitalization of in-process research and development at fair value, and requires the expensing of acquisition-related costs as incurred. This guidance became effective for us October 1, 2009 and will apply prospectively to business combinations completed on or after that date. The adoption of this guidance will impact future acquisitions.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**2. Inventories**

The components of inventories were as follows:

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Raw materials | $ 172,088 | $ 166,447 |
| Work-in-process | 22,687 | 26,447 |
| Finished goods | 486,944 | 489,737 |
| Valuation and obsolescence reserves | (26,271) | (24,097) |
| Total | $ 655,448 | $ 658,534 |

**3. Goodwill and Intangible Assets**

**Goodwill**

The changes in the carrying amount of goodwill by segment for the three-month period ended December 31, 2009, were as follows:

| | Wholesale / US Nutrition | North American Retail | European Retail | Direct Response / E-Commerce | Consolidated |
|---|---|---|---|---|---|
| **Balance at October 1, 2009:** | | | | | |
| Goodwill | $ 180,276 | $ 7,686 | $ 142,718 | $ 16,105 | $ 346,785 |
| Accumulated impairment losses | | (7,686) | | | (7,686) |
| | 180,276 | | 142,718 | 16,105 | 339,099 |
| Foreign currency translation | 145 | | 606 | | 751 |
| Acquisition | | | 87 | | 87 |
| **Balance at December 31, 2009:** | | | | | |
| Goodwill | 180,421 | 7,686 | 143,411 | 16,105 | 347,623 |
| Accumulated impairment losses | | (7,686) | | | (7,686) |
| | $ 180,421 | $ | $ 143,411 | $ 16,105 | $ 339,937 |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**3. Goodwill and Intangible Assets (Continued)**

**Intangible Assets**

The carrying amounts of intangible assets as of December 31, 2009 and September 30, 2009 were as follows:

| | December 31, 2009 | | September 30, 2009 | | |
|---|---|---|---|---|---|
| | Gross carrying amount | Accumulated amortization | Gross carrying amount | Accumulated amortization | Amortization period (years) |
| **Definite lived intangible assets** | | | | | |
| Brands | $ 98,191 | $ 27,450 | $ 98,093 | $ 26,201 | 20 |
| Customer lists | 64,952 | 44,616 | 64,948 | 43,667 | 2 - 15 |
| Private label and customer relationships | 122,935 | 16,002 | 122,822 | 14,374 | 10 - 20 |
| Trademarks and licenses | 17,802 | 7,572 | 17,844 | 7,417 | 2 - 20 |
| Covenants not to compete | 3,545 | 3,300 | 3,540 | 3,249 | 3 - 5 |
| | 307,425 | 98,940 | 307,247 | 94,908 | |
| **Indefinite lived intangible asset** | | | | | |
| Trademark | 1,800 | | 1,800 | | |
| Total intangible assets | $ 309,225 | $ 98,940 | $ 309,047 | $ 94,908 | |

Aggregate amortization expense of other intangible assets included in the consolidated statements of income under the caption "selling, general and administrative" expenses for the three months ended December 31, 2009 and 2008 was $3,999 and $4,035, respectively.

Assuming no changes in our definite lived intangible assets, estimated amortization expense for each of the five succeeding fiscal years is as follows:

| **For the fiscal year ending September 30,** | |
|---|---|
| 2010 | $ 15,945 |
| 2011 | $ 15,903 |
| 2012 | $ 15,772 |
| 2013 | $ 15,674 |
| 2014 | $ 15,162 |

**4. IT Project Termination Costs**

During December 2008, management determined that certain information technology projects relating to the Direct Response/E-Commerce segment that were ineffective and not economical would be terminated. As a result, previously capitalized software configuration and other related costs of $8,647 were written-off during the three months ended December 31, 2008.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**5. Accrued Expenses and Other Current Liabilities**

The components of accrued expenses and other current liabilities were as follows:

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Income taxes payable | $ 35,315 | $ 16,700 |
| Accrued compensation and related taxes | 29,637 | 38,945 |
| Accrued purchases | 28,508 | 17,664 |
| Litigation | 9,506 | 9,646 |
| Other | 76,199 | 73,779 |
| | $ 179,165 | $ 156,734 |

**6. Long-Term Debt**

The components of long-term debt were as follows:

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Credit Agreement: | | |
| $300 million, five-year Term Loan | $ 259,500 | $ 270,000 |
| $325 million, Revolving Credit Facility | | |
| Senior Subordinated Notes | 188,895 | 188,856 |
| Multi-currency Term Loan | 15,440 | 15,336 |
| Mortgage and Capital Leases | 1,871 | 2,330 |
| | 465,706 | 476,522 |
| Less: current portion | 61,227 | 38,893 |
| Total | $ 404,479 | $ 437,629 |

During December 2009, we made an additional principal payment of $3,000 on the Term Loan.

**7. Litigation Summary**

**Prohormone Products**

In March 2004, a putative class-action lawsuit, captioned *Jerry Beidler v. MET-Rx U.S.A, Inc,* was filed in New Jersey Superior Court, Mercer County, against MET-Rx U.S.A, Inc. ("Met-Rx"), a subsidiary of the Company, claiming that the advertising and marketing of certain prohormone supplements were false and misleading and that plaintiff and the putative class of New Jersey purchasers of these products were entitled to damages and injunctive relief. Because these allegations were virtually identical to allegations made in a putative nationwide class-action previously filed against Met-Rx in California (in an action styled *Eric Ayala v. MET-Rx U.S.A, Inc. et. al.*), we moved in 2004 to dismiss or stay the New Jersey action pending the outcome of the California action. The motion was granted, and the New Jersey action is stayed at this time. The California action against Met-Rx was dismissed in 2008.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**7. Litigation Summary (Continued)**

**Nutrition Bars**

Our subsidiary, Rexall Sundown, Inc. ("Rexall"), and certain of its subsidiaries, are defendants in a class-action lawsuit, captioned *Jamie Pesek, et al. v. Rexall Sundown, Inc., et al.*, brought in California Superior Court, County of San Francisco in 2002 on behalf of all California consumers who bought various nutrition bars. Plaintiffs allege misbranding of nutrition bars and violations of California unfair competition statutes, misleading advertising and other similar causes of action. Plaintiffs seek restitution, legal fees and injunctive relief. We have defended this action vigorously. Since December 2007, with Rexall's and the other defendants' renewed motion for judgment on the pleadings pending, the Court has stayed the case for all purposes, pending rulings on relevant cases before the California Supreme Court. Although the California Supreme Court has resolved some of those cases, others remain pending as of this date. Accordingly, the case remains stayed. Most recently, the Court held a case-management conference on August 5, 2009, at which the parties requested, and the Court agreed, to keep the stay in place for at least another six months. We anticipate that the Court will hold another conference in early 2010. Based upon the information currently available, no determination can be made at this time as to the final outcome of this case, nor can its materiality be accurately ascertained.

**Claims in the Ordinary Course**

In addition to the foregoing, other regulatory inquiries, claims, suits and complaints (including product liability, intellectual property and Proposition 65 claims) arise in the ordinary course of our business. We believe that such other inquiries, claims, suits and complaints would not have a material adverse effect on our consolidated financial condition or results of operations, if adversely determined against us.

**8. Income Taxes**

Our provision for income taxes is impacted by a number of factors, including federal taxes, our international tax structure, state tax rates in the jurisdictions where we conduct business, and our ability to utilize state tax credits that expire between 2013 and 2016. Therefore, our overall effective income tax rate could vary as a result of these factors.

The effective income tax rate for the three months ended December 31, 2009 and 2008 was 34.8% and 36.1%, respectively. The effective income tax rate was lower for the three months ended December 31, 2009 as compared to the prior comparable period due to losses attributable to certain foreign subsidiaries for which no benefit was recognized in the prior year and due to the partial release of a valuation allowance on state tax credits in the current year.

We accrue interest and penalties related to unrecognized tax benefits in income tax expense. This methodology is consistent with previous periods. At December 31, 2009, we had $1,314 and $688 accrued for the potential payment of interest and penalties, respectively. As of December 31, 2009, we were subject to U.S. Federal Income Tax examinations for the tax years 2006-2009, and to non-U.S. examinations for the tax years of 2004-2009. In addition, we are generally subject to state and local examinations for fiscal years 2006-2009.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**8. Income Taxes (Continued)**

At December 31, 2009, we had a liability of $9,091 for unrecognized tax benefits, the recognition of which would have an effect of $6,126 on income tax expense and the effective income tax rate. We do not believe that the amount will change significantly in the next 12 months. At this time, we are unable to make a reasonably reliable estimate of the timing of payments in individual years beyond 12 months due to uncertainties in the timing of tax audit outcomes.

**9. Stock-based Compensation**

During the three months ended December 31, 2009, the Company granted 287 stock options to directors and certain employees under the 2008 and 2000 Stock Option Plans. These stock options were granted with an exercise price of $43.88. All stock options were granted at a price equal to the fair market value of the Company's common stock on the date of grant. The vesting period for these options is over four years, in three equal increments on each of the second, third and fourth anniversary of the date of grant, except those granted to Harvey Kamil, President and Chief Financial Officer, the vesting of which will accelerate if he retires after the second anniversary of the date of grant. All stock options granted expire ten years from the date of grant.

The weighted average fair value per share of the options granted was $22.13. The fair value of each option award is estimated on the date of grant using a Black-Scholes-Merton option pricing model. The following weighted average assumptions were used for the options granted during the three months ended December 31, 2009:

| | |
|---|---|
| Risk-free rate(1) | 2.9% |
| Expected term(2) | 6.4 |
| Expected volatility(3) | 48.0% |
| Expected dividends | 0.0% |

(1) The risk-free rate is based upon the rate on a zero coupon U.S. Treasury bill, for the expected term of the option, in effect at the time of grant.

(2) The expected term of the option is based on historical employee exercise behavior, the vesting terms of the respective option and a contractual life of ten years.

(3) Expected volatility is primarily based on the daily historical volatility of our stock price, over a period similar to the expected term of the option.

During the three months ended December 31, 2009, the Company also granted 21 restricted stock units to directors and certain executives under the 2009 Equity Awards Plan. The fair market value of the Company's common stock on the date of grant was $43.88. These restricted stock units vest over four years, in three equal increments on each of the second, third and fourth anniversary of the date of grant, except those granted to Harvey Kamil, President and Chief Financial Officer, the vesting of which will accelerate if he retires after the second anniversary of the date of grant.

**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**10. Fair Value of Financial Instruments**

GAAP establishes a framework for measuring fair value and expands disclosures about fair value measurements. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. GAAP also establishes a fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. There are three levels of inputs that may be used to measure fair value:

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

Level 2 Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

**Interest Rate Swaps**

To manage the potential risk arising from changing interest rates and their impact on long-term debt, our policy is to maintain a combination of available fixed and variable rate financial instruments. In Fiscal 2008, we entered into two interest rate swap contracts to hedge the variability of future interest relating to a portion of the interest payments on our Term Loan. Each swap contract has a notional amount of $100 million. One swap contract has a fixed interest rate, before bank margin, of 3.88% for a two-year term and the other swap contract has a fixed interest rate, before bank margin, of 4.195% for a three-year term. Under the terms of the swap contracts, variable interest payments for a portion of our Term Loan are swapped for fixed interest payments.

We have formally documented the relationship between the interest rate swap contracts and the Term Loan, as well as our risk management objective and strategy for undertaking the hedge transactions. This process includes linking the derivative which was designated as a cash flow hedge to the specific liability on the balance sheet. We record the change in the fair value of the swap contracts through Other Comprehensive Income ("OCI"), net of income tax. Since we expect these hedging relationships to be highly effective, both at inception of the hedges and on an ongoing basis, they are expected to be highly effective in achieving offsetting changes in fair value attributable to the hedged risk during the period that the hedges are designated. We have determined that there will be no ineffectiveness in the hedging relationships since the hedged forecasted interest payments are based on the same notional amount, have the same reset dates, and are based on the same benchmark interest rate designated under the variable rate Term Loan. We assess, at the inception of the hedges and on an ongoing basis, whether the derivatives used in the hedging transaction are highly effective in offsetting changes in the cash flows of the hedged item. The change in the fair value of the swap contracts for the three months ended December 31, 2009 recorded through OCI, net of income tax was $800. At December 31, 2009, the swap contracts liability was $8,878. Of this amount, $3,260 is included in other current liabilities and $5,618 is included in other liabilities. At September 30, 2009, the swap contracts

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**10. Fair Value of Financial Instruments (Continued)**

liability, included in other liabilities, was $10,181. The fair value of the swap contracts were valued using observable current market information such as the prevailing LIBOR interest rate and LIBOR yield curve rates (Level 2).

**$7^1/_8$% Senior Subordinated Notes**

The face value and the fair value of the $7^1/_8$% Senior Subordinated Notes at December 31, 2009, was $190,000 and $190,475, respectively. The fair value of the $7^1/_8$% Senior Subordinated Notes was based on then quoted market prices (Level 1).

**11. Business and Credit Concentration**

**Financial Instruments**

Financial instruments that potentially subject us to credit risk consist primarily of cash and cash equivalents (the amounts of which may, at times, exceed Federal Deposit Insurance Corporation limits on insurable amounts), investments and trade accounts receivable. We mitigate our risk by investing in or through major financial institutions. At December 31, 2009, we had $1,425 of municipal bonds, which were classified as available-for-sale investments and included in non-current assets.

**Customers**

We perform on-going credit evaluations of our customers and adjust credit limits based upon payment history and the customers' current creditworthiness, as determined by review of their current credit information. Customers' account activity is continuously monitored. As a result of this review process, we record bad debt expense, which is based upon historical experience as well as specific customer collection issues that have been identified, to adjust the carrying amount of the related receivable to its estimated realizable value. While such bad debt expenses historically have been within expectations and the allowances established, if the financial condition of one or more of our customers were to deteriorate, additional bad debt provisions may be required.

The following individual customers accounted for the following percentages of net sales for the three months ended December 31, 2009 and 2008, respectively:

| | Wholesale/ US Nutrition Segment Net Sales Three months ended December 31, | | Total Consolidated Net Sales Three months ended December 31, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| Customer A | 27% | 29% | 17% | 18% |
| Customer B | 13% | 12% | 8% | 7% |
| Customer C | 10% | 6% | 6% | 4% |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**11. Business and Credit Concentration (Continued)**

The loss of any one of these customers, or any other major customer, would have a material adverse effect on our consolidated results of operations if we were unable to replace that customer.

The following individual customers accounted for 10% or more of the Wholesale/U.S. Nutrition segment's gross accounts receivable as of December 31, 2009 and September 30, 2009, respectively:

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Customer A | 21% | 25% |
| Customer B | 16% | 9% |
| Customer C | 11% | 11% |

**12. Supplemental Disclosure of Cash Flow Information**

| | Three months ended December 31, 2009 | Three months ended December 31, 2008 |
|---|---|---|
| *Non-cash investing and financing information:* | | |
| Property, plant and equipment additions included in accounts payable | $ 2,682 | $ 3,304 |

**13. Segment Information**

We are organized by sales segments on a worldwide basis. We evaluate performance based on a number of factors; however, the primary measures of performance are the net sales, gross profit and income or loss from operations (prior to corporate allocations) of each segment, as these are the key performance indicators that we review. Operating income or loss for each segment does not include the impact of any intercompany transfer pricing mark-up, corporate general and administrative expenses, interest expense and other miscellaneous income/expense items. Corporate general and administrative expenses include, but are not limited to: human resources, legal, finance, and various other corporate level activity related expenses. Such unallocated expenses remain within the Corporate segment. During fiscal 2009, we changed the way certain expenses are allocated to the segments. Specifically, certain shipping and warehouse costs, information technology and advertising costs previously included in the Corporate segment are now allocated to the Wholesale/US Nutrition, North American Retail and Direct Response/E-Commerce segments on a percentage of sales basis. All prior period segment information has been adjusted to conform with the current period presentation.

All our products fall into one or more of these four segments:

Wholesale/US Nutrition This segment is comprised of several divisions, each targeting specific market groups, which include wholesalers, distributors, food, drug and mass merchandisers, pharmacies, health food stores, bulk and international customers.

North American Retail This segment generates revenue through its 448 owned and operated Vitamin World and Nutrition Warehouse stores selling proprietary brand and third-party products, and through its Canadian operation of 86 owned and operated Le Naturiste stores.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**13. Segment Information (Continued)**

European Retail This segment generates revenue through its 543 Holland & Barrett stores, 351 Julian Graves stores and 32 GNC stores in the UK, 82 DeTuinen stores in the Netherlands and 25 Nature's Way stores in Ireland. In addition, Holland and Barrett has 14 franchise locations in South Africa, Singapore and Malta. Such revenue consists of sales of proprietary brand and third-party products, as well as franchise fees.

Direct Response/E-Commerce This segment generates revenue through the sale of proprietary brand and third-party products primarily through mail order catalog and the internet. Catalogs are strategically mailed to customers who order by mail, internet, or by phone.

The following table represents key financial information of our business segments:

| | Wholesale / US Nutrition | North American Retail | European Retail | Direct Response/ E-Commerce | Corporate/ Manufacturing | Consolidated |
|---|---|---|---|---|---|---|
| ***Three months ended December 31, 2009:*** | | | | | | |
| Net sales | $ 471,114 | $ 51,458 | $ 175,995 | $ 52,584 | $ | $ 751,151 |
| Income (loss) from operations | 86,238 | 2,072 | 34,644 | 16,388 | (17,112) | 122,230 |
| Depreciation and amortization | 3,672 | 709 | 3,626 | 1,206 | 7,734 | 16,947 |
| Capital expenditures | 139 | 435 | 4,104 | 30 | 5,175 | 9,883 |
| ***Three months ended December 31, 2008:*** | | | | | | |
| Net sales | $ 406,966 | $ 48,438 | $ 156,026 | $ 49,122 | $ | $ 660,552 |
| Income (loss) from operations | 30,017 | (1,155) | 26,171 | 709 | (19,532) | 36,210 |
| Depreciation and amortization | 3,724 | 752 | 3,561 | 1,265 | 8,219 | 17,521 |
| Capital expenditures | 176 | 1,501 | 4,123 | 4,117 | 12,722 | 22,639 |

**Net sales by location of customer:**

| | Three months ended December 31, 2009 | 2008 |
|---|---|---|
| United States | $ 496,255 | $ 449,191 |
| United Kingdom | 165,714 | 147,204 |
| Canada | 28,575 | 22,219 |
| Netherlands | 18,284 | 14,597 |
| Ireland | 5,840 | 4,953 |
| Other foreign countries | 36,483 | 22,388 |
| Consolidated net sales | $ 751,151 | $ 660,552 |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**13. Segment Information (Continued)**

**Total assets by segment:**

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Wholesale / US Nutrition | $ 944,817 | $ 915,783 |
| North American Retail | 29,780 | 28,334 |
| European Retail | 434,796 | 403,657 |
| Direct Response / E-Commerce | 54,531 | 54,348 |
| Corporate / Manufacturing | 567,461 | 558,099 |
| Consolidated assets | $ 2,031,385 | $ 1,960,221 |

Approximately 30% and 29% of our net sales during the three months ended December 31, 2009 and 2008, respectively, were denominated in currencies other than U.S. dollars, principally the British pound sterling, the euro and the Canadian dollar. A significant weakening of such currencies versus the U.S. dollar could have a material adverse effect on our results of operations.

Foreign subsidiaries accounted for the following percentages of total assets and total liabilities:

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Total Assets | 27% | 26% |
| Total Liabilities | 13% | 13% |

**14. Condensed Consolidating Financial Statements of Guarantors of Senior Subordinated Notes**

The $7^1/_8$% Senior Subordinated Notes due 2015 are guaranteed by our domestic wholly-owned subsidiaries. These guarantees are full, unconditional and joint and several. The following condensed consolidating financial information presents:

1. Condensed consolidating financial statements as of December 31, 2009 and September 30, 2009 and for the three months ended December 31, 2009 and 2008 of (a) NBTY, Inc., the parent and issuer, (b) the guarantor subsidiaries, (c) the non-guarantor subsidiaries and (d) the Company on a consolidated basis; and

2. Elimination entries necessary to consolidate NBTY, Inc., the parent, with guarantor and non-guarantor subsidiaries.

The condensed consolidating financial statements are presented using the equity method of accounting for investments in wholly-owned subsidiaries. Under this method, the investments in subsidiaries are recorded at cost and adjusted for our share of the subsidiaries' cumulative results of operations, capital contributions, distributions and other equity changes. The principal elimination entries eliminate investments in subsidiaries and intercompany balances and transactions. This financial information should be read in conjunction with the financial statements and other notes related thereto.

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**14. Condensed Consolidating Financial Statements of Guarantors of Senior Subordinated Notes (Continued)**

**Condensed Consolidating Balance Sheet**
**As of December 31, 2009**

| | Parent Company | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations | Consolidated |
|---|---|---|---|---|---|
| Assets | | | | | |
| Current assets: | | | | | |
| Cash and cash equivalents | $ 62,283 | $ | $ 96,423 | $ | $ 158,706 |
| Accounts receivable, net | | 165,159 | 22,434 | | 187,593 |
| Intercompany | | 149,165 | 729,364 | (878,529) | |
| Inventories | | 526,861 | 128,587 | | 655,448 |
| Deferred income taxes | | 24,164 | 4,057 | | 28,221 |
| Other current assets | | 17,208 | 45,770 | | 62,978 |
| Total current assets | 62,283 | 882,557 | 1,026,635 | (878,529) | 1,092,946 |
| Property, plant and equipment, net | | 276,602 | 90,763 | | 367,365 |
| Goodwill | | 197,701 | 142,236 | | 339,937 |
| Other intangible assets, net | | 185,436 | 24,849 | | 210,285 |
| Other assets | | 20,792 | 60 | | 20,852 |
| Intercompany loan receivable | 342,870 | 40,733 | | (383,603) | |
| Investments in subsidiaries | 2,173,335 | | | (2,173,335) | |
| Total assets | $ 2,578,488 | $ 1,603,821 | $ 1,284,543 | $ (3,435,467) | $ 2,031,385 |
| Liabilities and Stockholders' Equity | | | | | |
| Current liabilities: | | | | | |
| Current portion of long-term debt | $ 45,103 | $ 60 | $ 16,064 | $ | $ 61,227 |
| Accounts payable | | 60,109 | 36,097 | | 96,206 |
| Intercompany | 878,529 | | | (878,529) | |
| Accrued expenses and other current liabilities | | 136,743 | 42,422 | | 179,165 |
| Total current liabilities | 923,632 | 196,912 | 94,583 | (878,529) | 336,598 |
| Intercompany loan payable | | | 383,603 | (383,603) | |
| Long-term debt, net of current portion | 380,393 | | 24,086 | | 404,479 |
| Deferred income taxes | 38,010 | | 2,666 | | 40,676 |
| Other liabilities | 17,574 | 2,629 | 10,550 | | 30,753 |
| Total liabilities | 1,359,609 | 199,541 | 515,488 | (1,262,132) | 812,506 |
| Commitments and contingencies | | | | | |
| Stockholders' Equity: | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Common stock | 506 | | | | 506 |
| Capital in excess of par | 159,378 | 352,019 | 301,271 | (653,290) | 159,378 |
| Retained earnings | 1,060,383 | 1,052,261 | 473,008 | (1,525,269) | 1,060,383 |
| Accumulated other comprehensive loss | (1,388) | | (5,224) | 5,224 | (1,388) |
| Total stockholders' equity | 1,218,879 | 1,404,280 | 769,055 | (2,173,335) | 1,218,879 |
| Total liabilities and stockholders' equity | $ 2,578,488 | $ 1,603,821 | $ 1,284,543 | $ (3,435,467) | $ 2,031,385 |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**14. Condensed Consolidating Financial Statements of Guarantors of Senior Subordinated Notes (Continued)**

**Condensed Consolidating Balance Sheet**
**As of September 30, 2009**

| | Parent Company | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations | Consolidated |
|---|---|---|---|---|---|
| Assets | | | | | |
| Current assets: | | | | | |
| Cash and cash equivalents | $ 46,169 | $ | $ 59,832 | $ | $ 106,001 |
| Accounts receivable, net | | 132,762 | 23,101 | | 155,863 |
| Intercompany | | 141,489 | 744,496 | (885,985) | |
| Inventories | | 530,218 | 128,316 | | 658,534 |
| Deferred income taxes | | 24,124 | 4,030 | | 28,154 |
| Other current assets | | 20,910 | 29,089 | | 49,999 |
| Total current assets | 46,169 | 849,503 | 988,864 | (885,985) | 998,551 |
| Property, plant and equipment, net | 39,246 | 245,415 | 89,156 | | 373,817 |
| Goodwill | | 197,701 | 141,398 | | 339,099 |
| Other intangible assets, net | | 189,022 | 25,117 | | 214,139 |
| Other assets | | 21,403 | 13,212 | | 34,615 |
| Intercompany loan receivable | 340,710 | 40,733 | | (381,443) | |
| Investments in subsidiaries | 2,082,257 | | | (2,082,257) | |
| Total assets | $ 2,508,382 | $ 1,543,777 | $ 1,257,747 | $ (3,349,685) | $ 1,960,221 |
| Liabilities and Stockholders' Equity | | | | | |
| Current liabilities: | | | | | |
| Current portion of long-term debt | $ 38,138 | $ 115 | $ 640 | $ | $ 38,893 |
| Accounts payable | | 90,835 | 37,650 | | 128,485 |
| Intercompany | 885,985 | | | (885,985) | |
| Accrued expenses and other current liabilities | | 114,851 | 41,883 | | 156,734 |
| Total current liabilities | 924,123 | 205,801 | 80,173 | (885,985) | 324,112 |
| Intercompany loan payable | | | 381,443 | (381,443) | |
| Long-term debt, net of current portion | 398,411 | | 39,218 | | 437,629 |
| Deferred income taxes | 35,959 | | 463 | | 36,422 |
| Other liabilities | 22,064 | 2,602 | 9,567 | | 34,233 |
| Total liabilities | 1,380,557 | 208,403 | 510,864 | (1,267,428) | 832,396 |
| Commitments and contingencies | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Stockholders' Equity: | | | | | |
| Common stock | 495 | | | | 495 |
| Capital in excess of par | 145,885 | 352,019 | 301,269 | (653,288) | 145,885 |
| Retained earnings | 984,797 | 983,355 | 450,168 | (1,433,523) | 984,797 |
| Accumulated other comprehensive loss | (3,352) | | (4,554) | 4,554 | (3,352) |
| Total stockholders' equity | 1,127,825 | 1,335,374 | 746,883 | (2,082,257) | 1,127,825 |
| Total liabilities and stockholders' equity | $ 2,508,382 | $ 1,543,777 | $ 1,257,747 | $ (3,349,685) | $ 1,960,221 |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**14. Condensed Consolidating Financial Statements of Guarantors of Senior Subordinated Notes (Continued)**

**Condensed Consolidating Statement of Income**
**Three Months Ended December 31, 2009**

| | Parent Company | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations | Consolidated |
|---|---|---|---|---|---|
| Net sales | $ | $ 543,298 | $ 224,406 | $ (16,553) | $ 751,151 |
| Costs and expenses: | | | | | |
| Cost of sales | | 329,317 | 98,684 | (16,553) | 411,448 |
| Advertising, promotion and catalog | | 23,244 | 5,498 | | 28,742 |
| Selling, general and administrative | 17,112 | 85,911 | 85,708 | | 188,731 |
| | 17,112 | 438,472 | 189,890 | (16,553) | 628,921 |
| Income from operations | (17,112) | 104,826 | 34,516 | | 122,230 |
| Other income (expense): | | | | | |
| Equity in income of subsidiaries | 91,746 | | | (91,746) | |
| Intercompany interest | 2,253 | | (2,253) | | |
| Interest | (7,827) | | (229) | | (8,056) |
| Miscellaneous, net | (23) | 1,184 | 594 | | 1,755 |
| | 86,149 | 1,184 | (1,888) | (91,746) | (6,301) |
| Income before provision for income taxes | 69,037 | 106,010 | 32,628 | (91,746) | 115,929 |
| (Benefit)/ provision for income taxes | (6,549) | 37,104 | 9,788 | | 40,343 |
| Net income | $ 75,586 | $ 68,906 | $ 22,840 | $ (91,746) | $ 75,586 |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**14. Condensed Consolidating Financial Statements of Guarantors of Senior Subordinated Notes (Continued)**

**Condensed Consolidating Statement of Income**
**Three Months Ended December 31, 2008**

| | Parent Company | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations | Consolidated |
|---|---|---|---|---|---|
| Net sales | $ | $ 466,544 | $ 211,026 | $ (17,018) | $ 660,552 |
| Costs and expenses: | | | | | |
| Cost of sales | | 312,705 | 92,816 | (17,018) | 388,503 |
| Advertising, promotion and catalog | | 25,606 | 5,685 | | 31,291 |
| Selling, general and administrative | 16,937 | 93,542 | 85,422 | | 195,901 |
| IT project termination costs | | 8,647 | | | 8,647 |
| | 16,937 | 440,500 | 183,923 | (17,018) | 624,342 |
| Income from operations | (16,937) | 26,044 | 27,103 | | 36,210 |
| Other income (expense): | | | | | |
| Equity in income of subsidiaries | 27,425 | | | (27,425) | |
| Intercompany interest | 6,655 | | (6,655) | | |
| Interest | (9,040) | | (449) | | (9,489) |
| Miscellaneous, net | (380) | (3,484) | (1,769) | | (5,633) |
| | 24,660 | (3,484) | (8,873) | (27,425) | (15,122) |
| Income before provision for income taxes | 7,723 | 22,560 | 18,230 | (27,425) | 21,088 |
| (Benefit)/ provision for income taxes | (5,752) | 7,896 | 5,469 | | 7,613 |
| Net income | $ 13,475 | $ 14,664 | $ 12,761 | $ (27,425) | $ 13,475 |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**14. Condensed Consolidating Financial Statements of Guarantors of Senior Subordinated Notes (Continued)**

**Condensed Consolidating Statement of Cash Flows**
**Three Months Ended December 31, 2009**

| | Parent Company | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations | Consolidated |
|---|---|---|---|---|---|
| Cash flows from operating activities: | | | | | |
| Net income | $ 75,586 | $ 68,906 | $ 22,840 | $ (91,746) | $ 75,586 |
| Adjustments to reconcile net income to net cash & cash provided by operating activities: | | | | | |
| Equity in earnings of subsidiaries | (91,746) | | | 91,746 | |
| Impairments and disposals of assets | | 5,529 | 62 | | 5,591 |
| Depreciation and amortization | 1,291 | 11,206 | 4,450 | | 16,947 |
| Foreign currency transaction loss | 6 | | 109 | | 115 |
| Amortization of deferred charges | 392 | | | | 392 |
| Stock-based compensation | 1,184 | 117 | 119 | | 1,420 |
| Allowance for doubtful accounts | | (115) | | | (115) |
| Inventory reserves | | 2,174 | | | 2,174 |
| Deferred income taxes | | 807 | (34) | | 773 |
| Excess income tax benefit from exercise of stock options | (4,240) | | | | (4,240) |
| Changes in operating assets and liabilities: | | | | | |
| Accounts receivable | | (33,286) | 1,297 | | (31,989) |
| Inventories | | 1,318 | 718 | | 2,036 |
| Other assets | | 2,660 | (1,137) | | 1,523 |
| Accounts payable | | (31,076) | (1,788) | | (32,864) |
| Accrued expenses and other liabilities | | 19,156 | 3,510 | | 22,666 |
| Net cash (used in) provided by operating activities | (17,527) | 47,396 | 30,146 | | 60,015 |
| Cash flows from investing activities: | | | | | |
| Intercompany accounts | 30,996 | (42,922) | 11,926 | | |
| Purchase of property, plant and equipment | (355) | (4,474) | (5,054) | | (9,883) |
| Proceeds from sale of investments | 1,650 | | | | 1,650 |
| Cash paid for acquisitions | | | (87) | | (87) |
| Net cash provided by (used in) investing activities | 32,291 | (47,396) | 6,785 | | (8,320) |
| Cash flows from financing activities: | | | | | |
| Principal payments under long-term debt agreements and capital leases | (10,733) | | (235) | | (10,968) |
| Excess income tax benefit from exercise of stock options | 4,240 | | | | 4,240 |
| Proceeds from stock options exercised | 7,843 | | | | 7,843 |
| Net cash provided by (used in) financing activities | 1,350 | | (235) | | 1,115 |
| | | | (105) | | (105) |

| | | | |
|---|---|---|---|
| Effect of exchange rate changes on cash and cash equivalents | | | |
| Net increase in cash and cash equivalents | 16,114 | 36,591 | 52,705 |
| Cash and cash equivalents at beginning of period | 46,169 | 59,832 | 106,001 |
| Cash and cash equivalents at end of period | $ 62,283 $ | $ 96,423 $ | $ 158,706 |

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**NBTY, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(Unaudited)

(in thousands, except per share amounts)

**14. Condensed Consolidating Financial Statements of Guarantors of Senior Subordinated Notes (Continued)**

**Condensed Consolidating Statement of Cash Flows**
**Three Months Ended December 31, 2008**

| | Parent Company | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations | Consolidated |
|---|---|---|---|---|---|
| Cash flows from operating activities: | | | | | |
| Net income | $ 13,475 | $ 14,664 | $ 12,761 | $ (27,425) | $ 13,475 |
| Adjustments to reconcile net income to net cash & cash provided by operating activities: | | | | | |
| Equity in earnings of subsidiaries | (27,425) | | | 27,425 | |
| Impairments and disposals of assets | 25 | 4,667 | 462 | | 5,154 |
| Depreciation and amortization | 1,251 | 12,181 | 4,089 | | 17,521 |
| Foreign currency transaction (gain) / loss | 3,011 | 797 | 2,078 | | 5,886 |
| Amortization of deferred charges | 316 | | | | 316 |
| Stock-based compensation | 562 | 88 | 52 | | 702 |
| Allowance for doubtful accounts | | 1,290 | 71 | | 1,361 |
| Inventory reserves | | 1,737 | | | 1,737 |
| Deferred income taxes | | 153 | (1) | | 152 |
| Changes in operating assets and liabilities, net of acquisitions: | | | | | |
| Accounts receivable | | (25,359) | (2,381) | | (27,740) |
| Inventories | | (37,759) | (6,288) | | (44,047) |
| Other assets | | 5,806 | (1,108) | | 4,698 |
| Accounts payable | | 24,813 | (200) | | 24,613 |
| Accrued expenses and other liabilities | | 2,989 | (105) | | 2,884 |
| Net cash (used in) provided by operating activities | (8,785) | 6,067 | 9,430 | | 6,712 |
| Cash flows from investing activities: | | | | | |
| Intercompany accounts | (11,380) | 11,395 | (15) | | |
| Purchase of property, plant and equipment | (3,190) | (16,295) | (3,154) | | (22,639) |
| Cash paid for acquisitions, net of cash acquired | | | (264) | | (264) |
| Escrow refund, net of purchase price adjustments | 11,904 | | 315 | | 12,219 |
| Net cash provided by (used in) investing activities | (2,666) | (4,900) | (3,118) | | (10,684) |
| Cash flows from financing activities: | | | | | |
| Principal payments under long-term debt agreements and capital leases | (7,724) | (611) | (162) | | (8,497) |
| Proceeds from borrowings under the Revolving Credit Facility | 35,000 | | | | 35,000 |
| Principal payments under the Revolving Credit Facility | (60,000) | | | | (60,000) |
| Proceeds from stock options exercised | 6 | | | | 6 |
| Net cash used in financing activities | (32,718) | (611) | (162) | | (33,491) |

| | | | | | |
|---|---|---|---|---|---|
| Effect of exchange rate changes on cash and cash equivalents | | (556) | 537 | | (19) |
| Net (decrease) increase in cash and cash equivalents | (44,169) | | 6,687 | | (37,482) |
| Cash and cash equivalents at beginning of period | 49,662 | | 40,518 | | 90,180 |
| Cash and cash equivalents at end of period | $ 5,493 | $ | $ 47,205 | $ | $ 52,698 |

**NBTY, Inc.**

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(in thousands, except per share amounts and number of stores)

***Forward-Looking Statements***

*This report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. When used in this report, the words "subject to," "believe," "expect," "plan," "project," "estimate," "intend," "may," "should," "can," and "anticipate," and the negative thereof, or variations thereof, or similar expressions, are intended to identify forward-looking statements, which are inherently uncertain. Similarly, discussions of strategy, although believed to be reasonable, are also forward-looking statements and are inherently uncertain.*

*All forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from projected results. Factors that may materially affect forward-looking statements include:*

- *slow or negative growth in the nutritional supplement industry;*
- *changes in worldwide general economic and political conditions, and in economic and political conditions in the markets in which we compete from time to time;*
- *application of anti-trust or similar merger control laws in any jurisdiction, which may limit our expansion plans;*
- *our inability to retain customers of companies (or mailing lists) recently acquired;*
- *increased competition;*
- *increased costs;*
- *loss or retirement of key members of our management;*
- *increases in the cost of borrowings or unavailability of additional debt or equity capital, or both;*
- *unavailability of, or inability to consummate, advantageous acquisitions in the future, including those that may be subject to bankruptcy court approval, or our inability to integrate acquisitions into the mainstream of our business;*
- *interruption of business or negative impact on sales and earnings due to acts of God, acts of war, terrorism, bio-terrorism, civil unrest or disruption of mail service;*
- *our inability to gain or hold market share of our wholesale or retail customers anywhere in the world;*

*our inability to obtain or renew insurance or to manage insurance costs;*

*our exposure to, and the expense of defending and resolving, product liability claims, intellectual property claims and other litigation;*

*our inability to implement our business strategy successfully;*

*our inability to manage our retail, wholesale, manufacturing or other operations efficiently;*

*consumer acceptance of our products due to adverse publicity regarding nutritional supplements;*

*our inability to renew leases for our retail locations;*

*the inability of our retail stores to attain or maintain profitability;*

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*the absence of clinical trials for many of our products;*

*sales and earnings volatility or trends for us and our market segments;*

*the efficacy of our internet and on-line sales and marketing strategies;*

*fluctuations in foreign currencies, including the British pound sterling, the euro, the Canadian dollar and the Chinese yuan;*

*controls on sales to, or purchases from, foreign countries or certain persons;*

*our inability to secure favorable new sites for, and delays in opening, new retail and manufacturing locations;*

*introduction of, and compliance with, new federal, state, local or foreign legislation or regulation, or adverse determinations by regulators anywhere in the world (including the banning of products) and, more particularly, Good Manufacturing Practices in the United States and the Food Supplements Directive and Traditional Herbal Medicinal Products Directive in Europe;*

*the mix of our products and the profit margins thereon;*

*the availability and pricing of raw materials;*

*adverse effects on us of increased energy prices and potentially reduced traffic flow to our retail locations;*

*adverse tax determinations;*

*our inability to comply with, or adverse consequences stemming from, new government regulation or enforcement policies;*

*the loss of a significant customer;*

*risk factors discussed elsewhere in this report; and*

*other factors beyond our control.*

*Consequently, readers should regard these forward-looking statements solely as our current plans, estimates and beliefs. We caution readers not to place undue reliance on forward-looking statements. We cannot guarantee future results, events, levels of activity, performance or achievements. Except as required by law, we do not undertake and specifically decline any obligation to update, republish or revise* *forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrences of unanticipated events.*

*We obtained industry data used throughout this report from industry publications and internal company estimates. While we believe this information to be reliable, we have not independently verified, and cannot guarantee, its accuracy.*

*The following discussion should also be read in conjunction with our unaudited condensed consolidated financial statements and notes thereto included elsewhere herein and with our 2009 Form 10-K.*

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**Overview**

NBTY, Inc. (together with its subsidiaries, the "Company," "NBTY," "we," or "us") is a leading global vertically integrated manufacturer, marketer and retailer of a broad line of high-quality, value-priced nutritional supplements in the United States and throughout the world. We market approximately 25,000 products under numerous brands, including Nature's Bounty®, Ester-C®, Solgar®, MET-Rx®, American Health®, Osteo Bi-Flex®, Flex-A-Min®, SISU®, Knox®, Sundown®, Rexall®, Pure Protein®, Body Fortress®, WORLDWIDE Sport Nutrition®, Natural Wealth®, Puritan's Pride®, Holland & Barrett®, GNC (UK)®, Physiologics®, Le Naturiste®, De Tuinen®, Julian Graves® and Vitamin World®. Our vertical integration includes purchasing raw materials and formulating and manufacturing products, which we then market through the following four channels of distribution:

Wholesale/US Nutrition operations distributes products under various US Nutrition brand names and third party private labels, each targeting specific market groups that include mass market retailers, supermarkets, club stores, drugstore chains, pharmacies, health and natural food stores, healthcare practitioners, wholesalers, distributors and international customers;

North American Retail operations includes 448 Vitamin World stores in the United States and 86 Le Naturiste stores operating in Canada, each selling branded and third-party products;

European Retail operations includes 543 Holland & Barrett stores in Europe and 14 franchise Holland & Barrett stores in South Africa, Singapore and Malta (which we include in this segment), 351 Julian Graves stores, and 32 GNC (UK) stores in the United Kingdom ("UK"); 82 De Tuinen stores (including 19 franchise locations) in the Netherlands; and 25 Nature's Way stores in Ireland, each selling branded and third-party products; and

Direct Response/E-Commerce operations includes the sale of branded and third-party products primarily through mail order catalogs and the internet.

**Results of Operations**

Operating results in all periods presented include the results of acquisitions. The timing of acquisitions and the changing mix of our businesses may affect the comparability of results from one period to another.

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**Three Months Ended December 31, 2009 Compared to the Three Months Ended December 31, 2008:**

**Net Sales**

Net sales by segment for the three months ended December 31, 2009 as compared with the prior comparable period were as follows:

**Net Sales by Segment**
**Three months ended December 31,**

| | 2009 | | 2008 | | Comparison 2009 vs. 2008 | |
|---|---|---|---|---|---|---|
| **Segment** | **Net Sales** | **% of total** | **Net Sales** | **% of total** | **$ change** | **% change** |
| Wholesale/US Nutrition | $ 471,114 | 62.7% | $ 406,966 | 61.7% | $ 64,148 | 15.8% |
| North American Retail | 51,458 | 6.9% | 48,438 | 7.3% | 3,020 | 6.2% |
| European Retail | 175,995 | 23.4% | 156,026 | 23.6% | 19,969 | 12.8% |
| Direct Response / E-Commerce | 52,584 | 7.0% | 49,122 | 7.4% | 3,462 | 7.0% |
| Net sales | $ 751,151 | 100.0% | $ 660,552 | 100.0% | $ 90,599 | 13.7% |

*Wholesale/US Nutrition*

Net sales for the Wholesale/US Nutrition segment increased $64,148 or 15.8% to $471,114 for the three months ended December 31, 2009. This increase was attributable to the following:

Higher net sales of domestic private label products, which increased $36,970. This increase in domestic private label is attributable to higher sales volume as well as a re-allocation of shelf space at a major customer.

Net sales from our major brands increased $34,890. Some of the major brands in this segment include Nature's Bounty, Solgar, Osteo Bi-Flex, Sundown and Ester C.

Net sales from our sports nutrition brands (such as WORLDWIDE Sport Nutrition®, Pure Protein® and Met-Rx®) increased $1,170.

Wholesale net sales to international customers increased $13,230.

Net sales from all other brands decreased $22,112 due primarily to a re-allocation of shelf space at a major customer.

We continue to adjust shelf space allocation among our numerous wholesale brands to provide the best overall product mix and to respond to changing market conditions. These efforts have helped to strengthen US Nutrition's position in the mass marketplace. Wholesale/US Nutrition continues to leverage valuable consumer sales information obtained from our Vitamin World retail stores and Puritan's Pride Direct Response/E-Commerce operations in order to provide its mass-market customers with data and analyses to drive mass market sales.

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We use targeted promotions to grow overall net sales. Promotional programs and rebates as a percentage of sales were 10.6% for the three months ended December 31, 2009 as compared to 8.5% for the prior comparable period. We expect promotional programs and rebates as a percentage of sales to fluctuate on a quarterly basis.

Product returns were $5,250 or 1.0% of sales for the three months ended December 31, 2009 as compared to $7,508 or 1.7% of sales for the prior comparable period. The product returns for the three months ended December 31, 2009 and 2008 are mainly attributable to returns in the ordinary course of business.

One customer represented 27% and 29% of the Wholesale/US Nutrition segment's net sales for the three months ended December 31, 2009 and 2008, respectively. It also represented 17% and 18% of consolidated net sales for the three months ended December 31, 2009 and 2008, respectively. In addition, two other customers each represented greater than 10% of the Wholesale/US Nutrition segment's net sales for the three months ended December 31, 2009. The loss of any one of these customers, or any other major customer, would have a material adverse effect on our results of operations if we were unable to replace that customer.

*North American Retail*

Net sales for this segment increased $3,020 or 6.2% to $51,458 for the three months ended December 31, 2009. Sales for stores open more than one year (same store sales) increased 5.3%, representing $2,520 of the overall increase in sales.

The following is a summary of North American Retail store activity for the three months ended December 31, 2009 and 2008:

| **North American Retail stores:** | **Three months ended December 31, 2009** | **2008** |
|---|---|---|
| *Vitamin World* | | |
| Open at beginning of the period | 442 | 441 |
| Opened during the period | 6 | 7 |
| Closed during the period | | (1) |
| Open at end of the period | 448 | 447 |
| *Le Naturiste* | | |
| Open at beginning of the period | 86 | 81 |
| Opened during the period | | 3 |
| Closed during the period | | |
| Open at end of the period | 86 | 84 |
| *Total North American Retail* | | |
| Open at beginning of the period | 528 | 522 |
| Opened during the period | 6 | 10 |
| Closed during the period | | (1) |
| Open at end of the period | 534 | 531 |

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We anticipate opening up to 14 additional Vitamin World and three Le Naturiste stores during the remainder of this fiscal year. We anticipate closing two Vitamin World and two Le Naturiste stores during the three months ended March 31, 2010. We also continually evaluate when and whether to close other underperforming retail stores.

*European Retail*

Net sales for this segment increased $19,969 or 12.8% to $175,995 for the three months ended December 31, 2009. Same store sales increased 10.4%, representing $15,707 of the overall increase in sales. In local currency, same store sales increased 6.2% from the prior like period.

The following is a summary of European Retail store activity for the three months ended December 31, 2009 and 2008:

| **European Retail stores:** | **Three months ended December 31, 2009** | **2008** |
|---|---|---|
| *Company-owned stores* | | |
| Open at beginning of the period | 1,004 | 971 |
| Opened during the period | 10 | 5 |
| Closed during the period | | |
| Open at end of the period | 1,014 | 976 |
| *Franchised stores* | | |
| Open at beginning of the period | 28 | 22 |
| Opened during the period | 5 | 4 |
| Closed during the period | | |
| Open at end of the period | 33 | 26 |
| *Total company-owned and franchised stores* | | |
| Open at beginning of the period | 1,032 | 993 |
| Opened during the period | 15 | 9 |
| Closed during the period | | |
| Open at end of the period | 1,047 | 1,002 |

We anticipate opening approximately 31 additional stores during the remainder of this fiscal year. We also continually evaluate when and whether to close underperforming retail stores.

*Direct Response / E-Commerce*

Direct Response/E-Commerce net sales increased $3,462 or 7.0% for the three months ended December 31, 2009 as compared to the prior comparable period. The average order size increased approximately 5% for the three months ended December 31, 2009 as compared to 2008. We remain the vitamin and nutritional supplements leader in the direct response and e-commerce sectors and continue to increase the number of products available via our catalog and websites.

This division continues to vary its promotional strategy throughout the fiscal year. Historical results reflect this pattern and therefore this division should be viewed on an annual, and not quarterly, basis.

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### Gross Profit

Gross Profit by segment for the three months ended December 31, 2009 as compared with the prior comparable period was as follows:

| | Gross Profit by Segment Three months ended December 31, 2009 | | 2008 | | Comparison 2009 vs. 2008 | |
|---|---|---|---|---|---|---|
| **Segment** | **Gross Profit** | **% of sales** | **Gross Profit** | **% of sales** | **$ change** | **% change** |
| Wholesale/US Nutrition | $ 161,902 | 34.4% | $ 112,016 | 27.5% | $ 49,886 | 44.5% |
| North American Retail | 34,811 | 67.6% | 32,419 | 66.9% | 2,392 | 7.4% |
| European Retail | 109,908 | 62.4% | 98,750 | 63.3% | 11,158 | 11.3% |
| Direct Response/E-Commerce | 33,082 | 62.9% | 28,864 | 58.8% | 4,218 | 14.6% |
| Gross Profit | $ 339,703 | 45.2% | $ 272,049 | 41.2% | $ 67,654 | 24.9% |

The Wholesale/U.S. Nutrition segment's gross profit percentage increased to 34.4% for the three months ended December 31, 2009 as compared to 27.5% for the prior comparable period. The prior comparable period was affected by higher raw material and other manufacturing costs which were not offset by higher prices charged to customers and lower margins on domestic private label products. During the three months ended December 31, 2009, the improved gross profit percentage reflects a more stable raw materials environment as well as efficiencies generated in manufacturing and supply chain management brought about by economies of scale.

The increase in both the North American Retail and European Retail segment's gross profit percentages for the three months ended December 31, 2009 as compared to the comparable prior period relates to changes in product mix and promotional activity. The increase in the Direct Response/E-Commerce segment's gross profit percentage to 62.9% for the three months ended December 31, 2009 as compared to 58.8% for the prior comparable period reflects a decrease in promotional activity.

### Advertising, Promotion and Catalog Expenses

Total advertising, promotion and catalog expenses by segment for the three months ended December 31, 2009 as compared with the prior comparable period were as follows:

| | Three months ended December 31, 2009 | 2008 | Dollar Change 2009 vs. 2008 | Percentage Change 2009 vs. 2008 |
|---|---|---|---|---|
| Wholesale / US Nutrition | $ 20,450 | $ 20,683 | $ (233) | -1% |
| North American Retail | 1,837 | 2,394 | (557) | -23% |
| European Retail | 2,977 | 3,370 | (393) | -12% |
| Direct Response / E-Commerce | 3,370 | 4,712 | (1,342) | -28% |
| Corporate | 108 | 132 | (24) | -18% |
| Total | $ 28,742 | $ 31,291 | $ (2,549) | -8% |

| | | |
|---|---|---|
| Percentage of net sales | 3.8% | 4.7% |

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The decrease in the Direct Response/E-Commerce segment's advertising, promotions and catalog expense is due to a decrease in catalog expense of $1,247 as compared to the prior comparable period relating to the number of catalogs and mailings in circulation in both periods.

**Selling, General and Administrative Expenses**

Selling, general and administrative expenses by segment for the three months ended December 31, 2009 as compared with the prior comparable period were as follows:

| | Three months ended December 31, | | Dollar Change | Percentage Change |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 vs. 2008 | 2009 vs. 2008 |
| Wholesale / US Nutrition | $ 55,215 | $ 61,316 | $ (6,101) | -10% |
| North American Retail | 30,901 | 31,180 | (279) | -1% |
| European Retail | 72,287 | 69,209 | 3,078 | 4% |
| Direct Response / E-Commerce | 13,324 | 14,795 | (1,471) | -10% |
| Corporate | 17,004 | 19,401 | (2,397) | -12% |
| Total | $ 188,731 | $ 195,901 | $ (7,170) | -4% |
| Percentage of net sales | 25.1% | 29.7% | | |

Certain expenses historically included in the Corporate segment have been re-allocated to other operating segments. Specifically, certain shipping, advertising and information technology costs have been re-allocated in fiscal 2009 to the Wholesale/US Nutrition, North American Retail and Direct Response/E-Commerce segments on a percentage of sales basis. The prior year amounts have been reclassified to conform to the current year presentation.

The Wholesale/US Nutrition's selling, general and administrative expense ("SG&A") decreased $6,101 for the three months ended December 31, 2009 as compared to the prior comparable period with expense decreases across most categories. Freight costs decreased $1,664 and were 2.1% as a percentage of net sales as compared to 2.9% in the prior comparable period. This decrease is partially attributable better utilization of freight carriers.

The increase in the European Retail SG&A is mainly due to new stores and the effect of foreign currency exchange rates.

The Direct Response/E-Commerce SG&A decreased $1,471 due to decreases across most categories. Payroll expense decreased $603 primarily due to severance expense in the prior comparable period that did not recur in the three months ended December 31, 2009.

The Corporate segment's SG&A decreased $2,397 primarily due to severance expense in the prior comparable period of $1,500 that did not recur in the three months ended December 31, 2009. Additionally, professional and legal expense decreased $1,316 as compared to the prior comparable period.

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**IT Project Termination Costs**

During the prior comparable period, management determined that certain information technology projects relating to the Direct Response/E-Commerce segment would be terminated because they were determined to be ineffective and uneconomical. As a result, we recorded a charge of $8,647 for previously capitalized software configuration and other related costs for the three months ended December 31, 2008.

**Interest Expense**

Interest expense decreased $1,433 due to lower principal balances outstanding on the term loan and revolving credit facility. At December 31, 2009, there were no borrowings outstanding on the revolving credit facility as compared to $35,000 outstanding at December 31, 2008. In addition, the term loan balance was reduced by $33,000 to $259,500 at December 31, 2009 as compared to $292,500 at December 31, 2008.

**Miscellaneous, net**

The components of miscellaneous, net were as follows:

| | Three months ended December 31, | | Dollar Change |
|---|---|---|---|
| | **2009** | **2008** | **2009 vs. 2008** |
| Foreign exchange (losses) / gains | $ 618 | $ (7,072) | $ 7,690 |
| Rental income | 147 | 578 | (431) |
| Investment income | 124 | 690 | (566) |
| Other | 866 | 171 | 695 |
| Total | $ 1,755 | $ (5,633) | $ 7,388 |

Miscellaneous, net increased primarily due to the strengthening of the British pound sterling, which resulted in the reduction of foreign exchange losses in the prior comparable quarter. The average exchange rate for the conversion of the British pound sterling to US dollars for the three months ended December 31, 2009 and 2008 was 1.63 and 1.57, respectively.

**Provision for Income Taxes**

Our provision for income taxes is impacted by a number of factors, including federal taxes, our international tax structure, state tax rates in the jurisdictions where we conduct business, and our ability to utilize state tax credits that expire between 2013 and 2016. Therefore, our overall effective income tax rate could vary as a result of these factors. The effective income tax rate for the three months ended December 31, 2009 and December 31, 2008 was 34.8% and 36.1%, respectively. The effective income tax rate was lower for the three months ended December 31, 2009 as compared to the prior comparable period due to losses attributable to certain foreign subsidiaries for which no benefit was recognized in the prior year and due to the partial release of a valuation allowance on state tax credits in the current year.

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**Seasonality**

Although we believe that our business is not seasonal in nature, historically, we have experienced, and expect to continue to experience, a substantial variation in our net sales and operating results from quarter to quarter. The factors that influence this variability of quarterly results include general economic and industry conditions affecting consumer spending, changing consumer demands and current news on nutritional supplements, the timing of our introduction of new products, promotional program incentives offered to customers, the timing of catalog promotions, the level of consumer acceptance of new products and actions of competitors. Accordingly, a comparison of our results of operations from consecutive periods is not necessarily meaningful, and our results of operations for any period are not necessarily indicative of future performance. Additionally, we may experience higher net sales in a quarter depending upon when we have engaged in significant promotional activities.

**Liquidity and Capital Resources**

Our primary sources of liquidity and capital resources are cash generated from operations and our revolving credit facility. The facility provides for revolving credit loans in the aggregate principal amount of up to $325,000 to be used for working capital and other general corporate purposes, and acquisitions. At December 31, 2009, no borrowings were outstanding under the revolving credit facility. We have used cash to finance working capital, facility expansions, acquisitions, capital expenditures and debt service requirements. We anticipate these uses will continue to be our principal uses of cash in the future.

The following table sets forth, for the periods indicated, cash balances and working capital:

| | December 31, 2009 | September 30, 2009 |
|---|---|---|
| Cash and cash equivalents at end of the period | $ 158,706 | $ 106,001 |
| Working capital | $ 756,348 | $ 674,439 |

The following table sets forth, for the period indicated, net cash flows provided by (used in) operating, investing and financing activities and other operating measures:

| | For the three months ended December 31, | |
|---|---|---|
| | 2009 | 2008 |
| Cash flow provided by operating activities | $ 60,015 | $ 6,712 |
| Cash flow used in investing activities | $ (8,320) | $ (10,684) |
| Cash flow provided by (used in) financing activities | $ 1,115 | $ (33,491) |
| Inventory turnover | 2.5 | 2.6 |
| Days sales (Wholesale) outstanding in accounts receivable | 37 | 34 |

We monitor current and anticipated future levels of cash and cash equivalents in relation to anticipated operating, financing and investing requirements. Cash and cash equivalents held by our foreign subsidiaries are subject to U.S. income taxes upon repatriation to the U.S. We generally repatriate all earnings from our foreign subsidiaries where permitted under local law. However, during fiscal 2009, we permanently reinvested a portion of our foreign earnings outside of the United States.

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We also plan to permanently reinvest a portion of our foreign earnings outside of the United States during fiscal 2010.

The increase in working capital of $81,909 as compared to September 30, 2009 was primarily due to increased cash and accounts receivable balances.

Cash provided by operating activities during the three-month period ended December 31, 2009 was mainly attributable to net income.

During the three-month period ended December 31, 2009, cash flows used in investing activities consisted primarily of purchases of property, plant and equipment, offset by proceeds received from the sale of municipal bond investments.

For the three-month period ended December 31, 2009, cash flows used in financing activities related to the net principal payments under long-term debt agreements and principal payments under capital lease obligations, offset by proceeds and excess income tax benefit of stock options.

We believe our cash generated from operations, as well as our undrawn borrowings under our $325,000 revolving credit facility, will be sufficient to fund our operations and meet our cash requirements to satisfy our working capital needs, capital expenditure needs, outstanding commitments, and other liquidity requirements associated with our existing operations over the next 18 to 24 months. Our ability to fund these requirements and comply with financial covenants under our debt agreements will depend on our future operations, performance and cash flow and is subject to prevailing economic conditions and financial, business and other factors, some of which are beyond our control. In addition, as part of our strategy, we may pursue acquisitions and investments that are complementary to our business. Any material future acquisitions or investments will likely require additional capital and, therefore, we cannot predict or assure that additional funds from existing sources will be sufficient for such future events.

**Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements. For additional information relating to certain contractual cash obligations see below.

**Contractual Cash Obligations and Other Commercial Commitments**

We conduct retail operations under operating leases, which generally have lease terms between 5-15 years, with the longest lease term expiring in 2039. Some of the leases contain escalation clauses, as well as renewal options, and provide for contingent rent based upon sales plus certain tax and maintenance costs. At December 31, 2009, we had $635,560 in future minimum rental payments (excluding real estate tax and maintenance costs) for retail locations and other leases that have initial or noncancelable lease terms in excess of one year.

During the three months ended December 31, 2009, no one supplier individually represented greater than 10% of our raw material purchases. We do not believe that the loss of any single supplier would have a material adverse effect on our consolidated financial condition or results of operations. We were committed to make future purchases for inventory related items, such as raw materials and finished goods, under various purchase arrangements, some of which extend beyond one year, with fixed price provisions aggregating $175,984 at December 31, 2009. Generally, most of our purchase commitments are cancelable at our discretion until the order has been shipped, but require repayment of all expenses incurred through the date of cancellation.

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We had $26,599 in open capital commitments at December 31, 2009, primarily related to new stores, building improvements and manufacturing equipment.

At December 31, 2009, we had a liability of $9,091 for unrecognized tax benefits, the recognition of which would have an effect of $6,126 on income tax expense and the effective income tax rate. We do not believe that the amount will change significantly in the next 12 months. At this time, we are unable to make a reasonably reliable estimate of the timing of payments in individual years beyond 12 months due to uncertainties in the timing of tax audit outcomes.

We have employment agreements with two of our executive officers. The agreements, entered into on March 1, 2009, each have a term of three years and are automatically renewed each year thereafter unless either party notifies the other to the contrary. These agreements provide for minimum salary levels and contain provisions regarding severance and change in control of the Company. The remaining commitment for salaries to these two officers as of December 31, 2009 was approximately $1,795. In addition, five members of Holland & Barrett's senior executive staff have service contracts terminable by us upon twelve months notice. The annual aggregate commitment for such senior executive staff as of December 31, 2009 was approximately $1,436.

We maintain a consulting agreement with Rudolph Management Associates, Inc. for the services of Arthur Rudolph, one of our directors and the father of Scott Rudolph, our Chief Executive Officer. The agreement requires Mr. Rudolph to provide consulting services to us through December 31, 2010, in exchange for a consulting fee of $450 per year, payable monthly. In addition, Mr. Rudolph receives certain fringe benefits accorded to our other executives.

We have grown our business through acquisitions, and under proper conditions, may continue to seek to acquire entities in similar or complementary businesses. Such acquisitions are likely to require the incurrence or assumption of indebtedness or obligations, the issuance of equity securities or some combination thereof. In addition, from time to time we may determine to sell or otherwise dispose of certain of our existing assets or businesses; we cannot predict if any such transactions will be consummated, nor the terms or forms of consideration that might be required in any such transactions.

**Financial Covenants and Credit Rating**

We were in compliance with all covenants under our credit arrangements at December 31, 2009. Our credit arrangements impose certain restrictions regarding capital expenditures and limit our ability to: incur additional indebtedness, dispose of assets, make repayments of indebtedness or amendments of debt instruments, pay distributions, create liens on assets and enter into sale and leaseback transactions, investments, loans or advances and acquisitions. Such restrictions could limit our ability to respond to market conditions, to provide for unanticipated capital investments or to take advantage of business or acquisition opportunities.

At December 31, 2009, credit ratings were as follows:

| Credit Rating Agency | Secured Debt | $7^1/8$ % Notes | Overall |
|---|---|---|---|
| Standard and Poors | BBB- | BB | BB/Stable |
| Moody's | Ba1/LGD3 | B1/LGD6 | Ba2 |

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(in thousands, except per share amounts and number of stores)

**Recent Accounting Developments**

In June 2009, the Financial Accounting Standards Board ("FASB") issued authoritative guidance requiring an enterprise to perform an analysis to determine whether the enterprise's variable interests give it a controlling financial interest in a variable interest entity. This analysis identifies the primary beneficiary of a variable interest entity as one with the power to direct the activities of a variable interest entity that most significantly impacts the entity's economic performance and the obligation to absorb losses of the entity that could potentially be significant to the variable interest. This guidance will become effective for us October 1, 2010. We anticipate that the adoption of this guidance will not have a significant impact on our consolidated financial position or results of operations since we currently do not have any variable interest entities.

The FASB issued authoritative guidance that retains the purchase method of accounting for acquisitions; however, it includes changes in the way assets and liabilities are recognized in purchase accounting. It also changes the recognition of assets acquired and liabilities assumed arising from contingencies, requires the capitalization of in-process research and development at fair value, and requires the expensing of acquisition-related costs as incurred. This guidance became effective for us October 1, 2009 and will apply prospectively to business combinations completed on or after that date. The adoption of this guidance will impact future acquisitions.

**Critical Accounting Policies and Estimates**

We describe our significant accounting policies in Note 1 of the Notes to Consolidated Financial Statements included in our 2009 Form 10-K. We discuss our critical accounting estimates in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations", in our 2009 Form 10-K. There have been no significant changes in our significant accounting policies or critical accounting estimates since the end of fiscal 2009.

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**NBTY, Inc.**

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

(in thousands)

**Quantitative and Qualitative Disclosures About Market Risk**

We are subject to currency fluctuations, primarily with respect to the British pound sterling, the euro, the Canadian dollar and the Chinese yuan, and interest rate risks that arise from normal business operations. We regularly assess these risks.

We have subsidiaries whose operations are denominated in foreign currencies (primarily the British pound sterling, the euro, the Canadian dollar and the Chinese yuan). We consolidate the earnings of our international subsidiaries by translating them into U.S. dollars at the average exchange rates in each applicable period. To the extent the U.S. dollar weakens against foreign currencies, the remeasurement of these foreign currency denominated transactions results in increased net sales, operating expenses and net income. Similarly, our net sales, operating expenses and net income will decrease when the U.S. dollar strengthens against foreign currencies.

The U.S. dollar volume of net sales denominated in foreign currencies was approximately $224,406, or 29.9% of total net sales, for the three months ended December 31, 2009. A majority of our foreign currency exposure is denominated in the British pound sterling and Canadian dollars. For the three months ended December 31, 2009, as compared to the prior comparable period, the change in currency rates between the British pound sterling and Canadian dollar as compared to the U.S. dollar was 4% and 14%, respectively, resulting in an increase of $10,766 and $1,377 in net sales and operating income, respectively. The related impact on net income was an increase of approximately $0.02 per diluted share for the three months ended December 31, 2009.

To manage the potential risk arising from changing interest rates and their impact on long-term debt, our policy is to maintain a combination of available fixed and variable rate financial instruments. We are exposed to changes in interest rates on our floating rate revolving credit facility, our multicurrency term facility, and our $300,000 Term Loan. With respect to the interest on the Term Loan, in August 2008, we entered into two interest rate swap contracts, each with a notional amount of $100 million. Under the terms of the swap contracts, variable interest payments will be swapped for fixed interest payments. The interest rate exposure on the multicurrency term facility is mitigated by the interest earned on the cash collateral securing the loan. Therefore, a hypothetical 10% change in interest rates would not have a material effect on our consolidated pretax income or cash flow. During the quarter ended and at December 31, 2009, there were no borrowings outstanding under our revolving credit facility.

The $7^1/8$% Senior Subordinated Notes had a fair value at December 31, 2009, based on then quoted market prices, of $190,475. At December 31, 2009, based solely on a hypothetical 10% change in interest rates related to our fixed rate Notes, we estimate that the hypothetical fair value of our fixed rate debt would have changed approximately $5,000. We believe that the carrying value of all our other financial instruments approximates fair value due to their short maturities and variable interest rates.

NBTY, Inc.

## Item 4. Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

Our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) are designed to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission. Our disclosure controls and procedures are also designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officer, to allow timely decisions regarding required disclosure. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, have concluded, based on their respective evaluations as of the end of the period covered by this report, that our disclosure controls and procedures are effective as of December 31, 2009.

### Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during the three months ended December 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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**NBTY, Inc.**

**PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

**Prohormone Products**

In March 2004, a putative class-action lawsuit, captioned *Jerry Beidler v. MET-Rx U.S.A, Inc,* was filed in New Jersey Superior Court, Mercer County, against MET-Rx U.S.A, Inc. ("Met-Rx"), a subsidiary of the Company, claiming that the advertising and marketing of certain prohormone supplements were false and misleading and that plaintiff and the putative class of New Jersey purchasers of these products were entitled to damages and injunctive relief. Because these allegations were virtually identical to allegations made in a putative nationwide class-action previously filed against Met-Rx in California (in an action styled *Eric Ayala v. MET-Rx U.S.A, Inc. et. al*.), we moved in 2004 to dismiss or stay the New Jersey action pending the outcome of the California action. The motion was granted, and the New Jersey action is stayed at this time. The California action against Met-Rx was dismissed in 2008.

**Nutrition Bars**

Our subsidiary, Rexall Sundown, Inc. ("Rexall"), and certain of its subsidiaries, are defendants in a class-action lawsuit, captioned *Jamie Pesek, et al. v. Rexall Sundown, Inc., et al.*, brought in California Superior Court, County of San Francisco in 2002 on behalf of all California consumers who bought various nutrition bars. Plaintiffs allege misbranding of nutrition bars and violations of California unfair competition statutes, misleading advertising and other similar causes of action. Plaintiffs seek restitution, legal fees and injunctive relief. We have defended this action vigorously. Since December 2007, with Rexall's and the other defendants' renewed motion for judgment on the pleadings pending, the Court has stayed the case for all purposes, pending rulings on relevant cases before the California Supreme Court. Although the California Supreme Court has resolved some of those cases, others remain pending as of this date. Accordingly, the case remains stayed. Most recently, the Court held a case-management conference on August 5, 2009, at which the parties requested, and the Court agreed, to keep the stay in place for at least another six months. We anticipate that the Court will hold another conference in early 2010. Based upon the information currently available, no determination can be made at this time as to the final outcome of this case, nor can its materiality be accurately ascertained.

**Claims in the Ordinary Course**

In addition to the foregoing, other regulatory inquiries, claims, suits and complaints (including product liability, intellectual property and Proposition 65 claims) arise in the ordinary course of our business. We believe that such other inquiries, claims, suits and complaints would not have a material adverse effect on our consolidated financial condition or results of operations, if adversely determined against us.

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**NBTY, Inc.**

**Item 1A. Risk Factors**

**Risk Factors**

In addition to the other information set forth in this report, you should carefully consider the risk factors disclosed under Part 1 Item 1A, "Risk Factors" in our 2009 Form 10-K, which could materially adversely affect our business, financial condition, operating results and cash flows. The risks and uncertainties described in our 2009 Form 10-K are not the only ones we face. Risks and uncertainties not currently known to us or that we currently deem immaterial also may materially adversely affect our business, financial condition operating results or cash flows. Since September 30, 2009, there have been no significant changes relating to risk factors.

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**NBTY, Inc.**

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

**Issuer Purchases of Equity Securities**

The Company-sponsored Employee Stock Ownership Plan purchased 69,100 shares of our common stock at an average price per share of $43.61 in the open market during December 2009.

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**NBTY, Inc.**

**Item 6. Exhibits**

| Exhibit No. | Description |
|---|---|
| 3.1 | Restated Certificate of Incorporation of NBTY, Inc. (incorporated by reference to exhibit 3.1 to the Form 10-K of NBTY, Inc. for the fiscal year ended September 30, 2005, filed on December 22, 2005). |
| 3.2 | Amended and Restated By-Laws of NBTY, Inc. (incorporated by reference to exhibit 3.2 to the Form 10-K of NBTY, Inc. for the fiscal year ended September 30, 2006, filed on December 11, 2006). |
| 10.1 | Eighth Amendment to Executive Consulting Agreement, effective January 1, 2010, by and between NBTY, Inc. and Rudolph Management Associates, Inc.* |
| 31.1 | Rule 13a-14(a) Certification of Chief Executive Officer.* |
| 31.2 | Rule 13a-14(a) Certification of Chief Financial Officer.* |
| 32.1 | Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.* |
| 32.2 | Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.* |

* Filed herewith

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## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**NBTY, INC.**
(Registrant)

| | | |
|---|---|---|
| Date: February 9, 2010 | By: | /s/ SCOTT RUDOLPH |
| | | Scott Rudolph<br>*Chairman and Chief Executive Officer*<br>*(Principal Executive Officer)* |
| Date: February 9, 2010 | By: | /s/ HARVEY KAMIL |
| | | Harvey Kamil<br>*President and Chief Financial Officer*<br>*(Principal Financial and Accounting Officer)* |