MIDDLEBY CORP
Form 10-Q
May 08, 2008

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-Q**

(Mark One)
x Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

**For the quarterly period ended March 29, 2008**

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

Commission File No. 1-9973

**THE MIDDLEBY CORPORATION**
(Exact Name of Registrant as Specified in its Charter)

| | |
|---|---|
| **Delaware** | **36-3352497** |
| (State or Other Jurisdiction of Incorporation or Organization) | (I.R.S. Employer Identification No.) |
| **1400 Toastmaster Drive, Elgin, Illinois** | **60120** |
| (Address of Principal Executive Offices) | (Zip Code) |

Registrant's Telephone No., including Area Code **(847) 741-3300**

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 x No o

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

As of May 2, 2008, there were 16,960,896 shares of the registrant's common stock outstanding.

**THE MIDDLEBY CORPORATION AND SUBSIDIARIES**

**QUARTER ENDED MARCH 29, 2008**

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

**THE MIDDLEBY CORPORATION AND SUBSIDIARIES**
**CONDENSED CONSOLIDATED BALANCE SHEETS**
**(Amounts In Thousands, Except Share Data)**
**(Unaudited)**

| | Mar. 29, 2008 | Dec. 29, 2007 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 5,518 | $ 7,463 |
| Accounts receivable, net of reserve for doubtful accounts of $6,443 and $5,818 | 83,928 | 73,090 |
| Inventories, net | 81,513 | 66,438 |
| Prepaid expenses and other | 12,571 | 10,341 |
| Prepaid taxes | 16,159 | 17,986 |
| Current deferred taxes | 15,630 | 16,643 |
| Total current assets | 215,319 | 191,961 |
| | | |
| Property, plant and equipment, net of accumulated depreciation of $42,339 and $41,114 | 45,883 | 36,774 |
| Goodwill | 211,612 | 109,814 |
| Other intangibles | 125,686 | 52,522 |
| Deferred tax assets | 5,800 | 16,929 |
| Other assets | 2,526 | 3,079 |
| Total assets | $ 606,826 | $ 411,079 |
| | | |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Current maturities of long-term debt | $ 2,661 | $ 2,683 |
| Accounts payable | 36,904 | 26,576 |
| Accrued expenses | 84,607 | 95,581 |
| Total current liabilities | 124,172 | 124,840 |
| Long-term debt | 269,996 | 93,514 |
| Other non-current liabilities | 15,472 | 9,813 |
| Stockholders' equity: | | |
| Preferred stock, $0.01 par value; nonvoting; 2,000,000 shares authorized; none issued | — | — |
| Common stock, $0.005 par value; 47,500,000 shares authorized; 20,817,536 and 20,732,836 shares issued in 2008 and 2007, respectively | 120 | 120 |
| Paid-in capital | 105,947 | 104,782 |
| Treasury stock at cost; 3,859,913 and 3,855,044 shares in 2008 and 2007, respectively | (90,014) | (89,641) |
| Retained earnings | 180,077 | 166,896 |
| Accumulated other comprehensive income | 1,056 | 755 |
| Total stockholders' equity | 197,186 | 182,912 |
| Total liabilities and stockholders' equity | $ 606,826 | $ 411,079 |

See accompanying notes

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**THE MIDDLEBY CORPORATION AND SUBSIDIARIES**
**CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS**
**(In Thousands, Except Per Share Data)**
**(Unaudited)**

| | Three Months Ended Mar. 29, 2008 | Three Months Ended Mar. 31, 2007 |
|---|---|---|
| Net sales | $ 160,883 | $ 105,695 |
| Cost of sales | 101,981 | 64,590 |
| Gross profit | 58,902 | 41,105 |
| Selling and distribution expenses | 16,245 | 11,116 |
| General and administrative expenses | 16,641 | 11,183 |
| Income from operations | 26,016 | 18,806 |
| Interest expense and deferred financing amortization, net | 3,703 | 1,244 |
| Other expense (income), net | 387 | (107) |
| Earnings before income taxes | 21,926 | 17,669 |
| Provision for income taxes | 8,745 | 6,949 |
| Net earnings | $ 13,181 | $ 10,720 |
| | | |
| Net earnings per share: | | |
| Basic | $ 0.82 | $ 0.69 |
| | | |
| Diluted | $ 0.77 | $ 0.64 |
| | | |
| Weighted average number of shares | | |
| Basic | 16,055 | 15,510 |
| Dilutive stock options[1] | 1,115 | 1,230 |
| Diluted | 17,170 | 16,740 |

1 There were no anti-dilutive stock options excluded from common stock equivalents for any period presented.

See accompanying notes

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**THE MIDDLEBY CORPORATION AND SUBSIDIARIES**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(In Thousands)**
**(Unaudited)**

| | Three Months Ended | |
|---|---|---|
| | Mar. 29, 2008 | Mar. 31, 2007 |
| Cash flows from operating activities- | | |
| Net earnings | $ 13,181 | $ 10,720 |
| | | |
| Adjustments to reconcile net earnings to cash provided by operating activities: | | |
| Depreciation and amortization | 3,533 | 1,318 |
| Deferred taxes | 2,512 | 25 |
| Non-cash share-based compensation | 2,350 | 1,322 |
| Unrealized loss on derivative financial instruments | 204 | — |
| Cash effects of changes in - | | |
| Accounts receivable, net | 815 | (2,121) |
| Inventories, net | (1,558) | (4,823) |
| Prepaid expenses and other assets | 3,767 | (697) |
| Accounts payable | 5,461 | 907 |
| Accrued expenses and other liabilities | (17,702) | (11,086) |
| | | |
| Net cash provided by (used in) operating activities | 12,563 | (4,435) |
| | | |
| Cash flows from investing activities- | | |
| Net additions to property and equipment | (2,124) | (598) |
| Acquisition of Star | (188,068) | — |
| Net cash (used in) investing activities | (190,192) | (598) |
| | | |
| Cash flows from financing activities- | | |
| Net proceeds (repayments) under revolving credit facilities | 176,350 | 9,450 |
| Repayments under senior secured bank notes | — | (3,750) |
| Repayments under foreign bank loan | (245) | (1,077) |
| Debt issuance costs | (162) | — |
| Purchase of treasury stock | (373) | — |
| Net proceeds from stock issuances | 37 | 925 |
| | | |
| Net cash provided by (used in) financing activities | 175,607 | 5,548 |
| | | |
| Effect of exchange rates on cash and cash equivalents | 77 | 4 |
| | | |
| Changes in cash and cash equivalents- | | |
| | | |
| Net (decrease) increase in cash and cash equivalents | (1,945) | 519 |
| | | |
| Cash and cash equivalents at beginning of year | 7,463 | 3,534 |
| | | |
| Cash and cash equivalents at end of quarter | $ 5,518 | $ 4,053 |

| | | | | |
|---|---|---|---|---|
| **Supplemental disclosure of cash flow information:** | | | | |
| **Interest paid** | **$** | **2,359** | **$** | **1,038** |
| **Income tax payments** | **$** | **245** | **$** | **4,411** |

See accompanying notes

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**THE MIDDLEBY CORPORATION AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**March 29, 2008**
**(Unaudited)**

**1) Summary of Significant Accounting Policies**

**A) Basis of Presentation**

The condensed consolidated financial statements have been prepared by The Middleby Corporation (the "company"), pursuant to the rules and regulations of the Securities and Exchange Commission. The financial statements are unaudited and certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations, although the company believes that the disclosures are adequate to make the information not misleading. These financial statements should be read in conjunction with the financial statements and related notes contained in the company's 2007 Form 10-K.

In the opinion of management, the financial statements contain all adjustments necessary to present fairly the financial position of the company as of March 29, 2008 and December 29, 2007, and the results of operations for the three months ended March 29, 2008 and March 31, 2007 and cash flows for the three months ended March 29, 2008 and March 31, 2007.

**B) Share-Based Compensation**

Share-based compensation expense is calculated by estimating the fair value of market based stock awards and stock options at the time of grant and amortized over the stock options' vesting period. Share-based compensation expense was $2.4 million and $1.3 million for the first quarter of 2008 and 2007, respectively.

**C) Income Tax Contingencies**

In July 2006, the Financial Accounting Standards Board, ("FASB") issued Interpretation No. 48 "Accounting for Uncertainty in Income Taxes" ("FIN 48"). This interpretation prescribes a comprehensive model for how a company should recognize, measure, present and disclose in its financial statements uncertain tax positions that the company has taken or expects to take on a tax return. FIN 48 states that a tax benefit from an uncertain tax position may be recognized only if it is "more likely than not" that the position is sustainable, based on its technical merits. The tax benefit of a qualifying position is the largest amount of tax benefit that is greater than 50% likely of being realized upon settlement with a taxing authority having full knowledge of all relevant information. A tax benefit from an uncertain position was previously recognized if it was probable of being sustained. Under FIN 48, the liability for unrecognized tax benefits is classified as non-current unless the liability is expected to be settled in cash within 12 months of the reporting date. FIN 48 is effective as of the beginning of the first fiscal year beginning after December 15, 2006. The company adopted the provisions of FIN 48 on the first day of fiscal 2007 as required.

As of December 29, 2007, the total amount of liability for unrecognized tax benefits related to federal, state and foreign taxes was approximately $7.7 million plus approximately $1.0 million of accrued interest and $1.3 million of penalties. As of March 29, 2008, the corresponding balance of liability for unrecognized tax benefits was approximately $8.0 million plus approximately $1.0 million of accrued interest and $1.3 million of penalties. The company recognizes interest and penalties accrued related to unrecognized tax benefits in income tax expense, which is consistent with reporting in prior periods.

The company does not anticipate that total unrecognized tax benefits will significantly change due to any settlement of audits and the expiration of statute of limitations within the next twelve months.

The company operates in multiple taxing jurisdictions; both within the United States and outside of the United States, and faces audits from various tax authorities. The Company remains subject to examination until the statute of limitations expires for the respective tax jurisdiction. Within specific countries, the company and its operating subsidiaries may be subject to audit by various tax authorities and may be subject to different statute of limitations expiration dates. A summary of the tax years that remain subject to examination in the company's major tax jurisdictions are:

| | |
|---|---|
| United States – federal | 2005 - 2007 |
| United States – states | 2001 - 2007 |
| China | 2006 - 2007 |
| Denmark | 2006 - 2007 |
| Mexico | 2006 - 2007 |
| Philippines | 2004 - 2007 |
| South Korea | 2004 - 2007 |
| Spain | 2005 - 2007 |
| Taiwan | 2005 - 2007 |
| United Kingdom | |

2006 -
2007

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**D) Fair Value Measures**

In September 2006, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 157 "Fair Value Measurements". This statement defines fair value, establishes a framework for measuring fair value in general accepted accounting principles and expands disclosure about fair value measurements. This statement is effective for interim reporting periods in fiscal years beginning after November 15, 2007. The company adopted SFAS No. 157 on December 30, 2007 (first day of fiscal year 2008). The adoption of SFAS No. 157 did not have a material impact on the financial statements.

FASB Staff Position No. FAS 157-2, "Effective Date of FASB Statement No. 157" delays the effective date of the application of SFAS No. 157 to fiscal years beginning after November 15, 2008 for all nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a non-recurring basis. The company adopted SFAS No. 157 with the exception of the application of the statement to non-recurring nonfinancial assets and liabilities. Non-recurring nonfinancial assets and nonfinancial liabilities for which the company has not applied the provisions of SFAS No. 157 primarily include those measured at fair value in goodwill and long-lived asset impairment testing, those initially measured at fair value in a business combination, and nonfinancial liabilities for exit or disposal activities.

SFAS No. 157 defines fair value as the price that would be received for an asset or paid to transfer a liability (an exit price) in the principal most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. SFAS No. 157 establishes a fair value hierarchy, which prioritizes the inputs used in measuring fair value into the following levels:

Level 1 – Quoted prices in active markets for identical assets or liabilities
Level 2 – Inputs, other than quoted prices in active markets, that are observable either directly or indirectly.
Level 3 – Unobservable inputs based on assumptions.

The company's financial assets that are measured at fair value on a recurring basis are categorized using the fair value hierarchy and liabilities at March 29, 2008 are as follows (in thousands):

| | Fair Value Level 1 | Fair Value Level 2 | Fair Value Level 3 | Total |
|---|---|---|---|---|
| Financial Assets: | | | | |
| None | — | — | — | — |
| | | | | |
| Financial Liabilities: | | | | |
| Interest rate swaps | —$ | 1,353 | —$ | 1,353 |

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities – Including an amendment of FASB Statement No. 115. This statement permits entities to choose to measure many financial instruments and certain other items at fair value. This statement is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 159 did not have a material impact on the financial statements. Upon adoption, the company has not elected to apply SFAS No. 159 to measure selected financial instruments and certain other items; therefore, there was no impact to the financial statements upon adoption. Subsequent to the initial adoption of SFAS No. 159, the company has not made any elections during the three months ended March 29, 2008.

**2) Acquisitions and Purchase Accounting**