JACK IN THE BOX INC /NEW/
Form 10-Q
May 16, 2013

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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended April 14, 2013
Commission File Number: 1-9390

JACK IN THE BOX INC.
(Exact name of registrant as specified in its charter)

DELAWARE	95-2698708
(State of Incorporation)	(I.R.S. Employer Identification No.)
9330 BALBOA AVENUE, SAN DIEGO, CA	92123
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (858) 571-2121

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 þ No ¨
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
Yes þ No ¨
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer þ	Accelerated filer ¨
Non-accelerated filer ¨ (Do not check if a smaller reporting company)	Smaller reporting company ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes ¨ No þ
As of the close of business May 10, 2013, 44,480,489 shares of the registrant's common stock were outstanding.

JACK IN THE BOX INC. AND SUBSIDIARIES
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PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except share data)
(Unaudited)

	April 14, 2013	September 30, 2012
ASSETS		
Current assets:		
Cash and cash equivalents	$10,202	$ 8,469
Accounts and other receivables, net	52,185	78,798
Inventories	8,713	7,752
Prepaid expenses	31,992	32,821
Deferred income taxes	26,931	26,932
Assets held for sale and leaseback	39,569	45,443
Assets of discontinued operations held for sale	—	30,591
Other current assets	452	375
Total current assets	170,044	231,181
Property and equipment, at cost	1,543,068	1,529,650
Less accumulated depreciation and amortization	(736,854)	(708,858)
Property and equipment, net	806,214	820,792
Goodwill	148,935	140,622
Other assets, net	276,544	271,130
	$1,401,737	$ 1,463,725
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current maturities of long-term debt	$20,960	$ 15,952
Accounts payable	24,123	94,713
Accrued liabilities	160,581	164,637
Total current liabilities	205,664	275,302
Long-term debt, net of current maturities	369,728	405,276
Other long-term liabilities	369,667	371,202
Stockholders' equity:		
Preferred stock $0.01 par value, 15,000,000 shares authorized, none issued	—	—
Common stock $0.01 par value, 175,000,000 shares authorized, 77,559,191 and 75,827,894 issued, respectively	776	758
Capital in excess of par value	266,500	221,100
Retained earnings	1,154,650	1,120,671
Accumulated other comprehensive loss	(129,344)	(136,013)
Treasury stock, at cost, 33,362,162 and 31,955,606 shares, respectively	(835,904)	(794,571)
Total stockholders' equity	456,678	411,945
	$1,401,737	$ 1,463,725

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS
(In thousands, except per share data)
(Unaudited)

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Revenues:				
Company restaurant sales	$277,197	$290,803	$637,291	$654,905
Franchise revenues	78,426	75,681	183,855	169,500
	355,623	366,484	821,146	824,405
Operating costs and expenses, net:				
Company restaurant costs:				
Food and packaging	90,688	94,910	206,789	217,017
Payroll and employee benefits	79,620	84,566	183,684	191,377
Occupancy and other	63,152	66,184	146,506	152,127
Total company restaurant costs	233,460	245,660	536,979	560,521
Franchise costs	39,661	37,996	92,149	87,855
Selling, general and administrative expenses	52,972	54,497	120,308	120,214
Impairment and other charges, net	2,382	5,074	5,645	9,425
Losses (gains) on the sale of company-operated restaurants	2,418	(14,078)	1,670	(15,200)
	330,893	329,149	756,751	762,815
Earnings from operations	24,730	37,335	64,395	61,590
Interest expense, net	3,426	4,534	8,791	10,591
Earnings from continuing operations and before income taxes	21,304	32,801	55,604	50,999
Income taxes	7,894	11,169	18,250	17,417
Earnings from continuing operations	13,410	21,632	37,354	33,582
Losses from discontinued operations, net of income tax benefit	(120)	—	(3,375)	—
Net earnings	$13,290	$21,632	$33,979	$33,582
Net earnings per share - basic:				
Earnings from continuing operations	$0.31	$0.49	$0.86	$0.77
Losses from discontinued operations	—	—	(0.08)	—
Net earnings per share (1)	$0.30	$0.49	$0.78	$0.77
Net earnings per share - diluted:				
Earnings from continuing operations	$0.30	$0.48	$0.84	$0.75
Losses from discontinued operations	—	—	(0.08)	—
Net earnings per share (1)	$0.29	$0.48	$0.76	$0.75
Weighted-average shares outstanding:				
Basic	43,747	43,937	43,319	43,896
Diluted	45,274	44,911	44,736	44,775

(1) Earnings per share may not add due to rounding.

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Dollars in thousands)
(Unaudited)

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Net earnings	$13,290	$21,632	$33,979	$33,582
Other comprehensive income (loss):				
Foreign currency translation adjustments, net of tax benefit of $1,$0,$1 and $0, respectively	2	—	5	—
Actuarial losses and prior service cost reclassified to earnings, net of tax benefit of $1,672, $1,146, $3,901 and $2,673, respectively	2,689	1,839	6,274	4,291
Cash flow hedges:				
Change in fair value of derivatives, net of tax expense of $34, $82, $33 and $237, respectively	(60)	(132)	(57)	(382)
Net loss reclassified to earnings, net of tax benefit of $118, $115, $277 and $268, respectively	193	184	447	429
Other comprehensive income	2,824	1,891	6,669	4,338
Comprehensive income	$16,114	$23,523	$40,648	$37,920

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)
(Unaudited)

	Year-to-Date	
	April 14, 2013	April 15, 2012
Cash flows from operating activities:		
Net earnings	$33,979	$33,582
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	52,590	51,874
Deferred finance cost amortization	1,249	1,431
Deferred income taxes	2,536	(2,560)
Share-based compensation expense	7,599	3,562
Pension and postretirement expense	16,772	14,372
Gains on cash surrender value of company-owned life insurance	(5,669)	(8,427)
Losses (gains) on the sale of company-operated restaurants	1,670	(15,200)
Losses on the disposition of property and equipment	416	2,858
Impairment charges and other	4,828	2,109
Loss on early retirement of debt	939	—
Changes in assets and liabilities, excluding acquisitions and dispositions:		
Accounts and other receivables	25,227	(8,680)
Inventories	25,883	5,213
Prepaid expenses and other current assets	751	(4,627)
Accounts payable	(32,036)	(6,178)
Accrued liabilities	(4,256)	6,237
Pension and postretirement contributions	(7,052)	(6,573)
Other	(3,821)	595
Cash flows provided by operating activities	121,605	69,588
Cash flows from investing activities:		
Purchases of property and equipment	(41,754)	(40,609)
Purchases of assets intended for sale and leaseback	(25,165)	(22,000)
Proceeds from sale and leaseback of assets	22,892	9,312
Proceeds from the sale of company-operated restaurants	2,866	21,964
Collections on notes receivable	2,987	9,669
Disbursements for loans to franchisees	—	(3,977)
Acquisitions of franchise-operated restaurants	(11,014)	(39,195)
Other	3,694	244
Cash flows used in investing activities	(45,494)	(64,592)
Cash flows from financing activities:		
Borrowings on revolving credit facilities	479,000	333,020
Repayments of borrowings on revolving credit facilities	(539,000)	(308,324)
Proceeds from issuance of debt	200,000	—
Principal repayments on debt	(170,540)	(10,662)
Debt issuance costs	(4,392)	(741)
Proceeds from issuance of common stock	37,113	2,015
Repurchases of common stock	(40,465)	(6,901)
Excess tax benefits from share-based compensation arrangements	599	287
Change in book overdraft	(36,693)	(13,806)
Cash flows used in financing activities	(74,378)	(5,112)

Net increase (decrease) in cash and cash equivalents	1,733	(116)
Cash and cash equivalents at beginning of period	8,469	11,424
Cash and cash equivalents at end of period	$10,202	$11,308

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

1. BASIS OF PRESENTATION

Nature of operations — Founded in 1951, Jack in the Box Inc. (the "Company") operates and franchises Jack in the Box® quick-service restaurants and Qdoba Mexican Grill® ("Qdoba") fast-casual restaurants. The following table summarizes the number of restaurants as of the end of each period:

	April 14, 2013	April 15, 2012
Jack in the Box:		
Company-operated	546	601
Franchise	1,710	1,641
Total system	2,256	2,242
Qdoba:		
Company-operated	340	289
Franchise	307	316
Total system	647	605

References to the Company throughout these Notes to Condensed Consolidated Financial Statements are made using the first person notations of "we," "us" and "our."

Basis of presentation — The accompanying condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles and the rules and regulations of the Securities and Exchange Commission ("SEC"). During fiscal 2012, we entered into an agreement to outsource our Jack in the Box distribution business. As such, the results of operations for our distribution business for all periods presented are reported as discontinued operations. Refer to Note 2, Discontinued Operations, for additional information. In our opinion, all adjustments considered necessary for a fair presentation of financial condition and results of operations for these interim periods have been included. Operating results for one interim period are not necessarily indicative of the results for any other interim period or for the full year.

These financial statements should be read in conjunction with the consolidated financial statements and related notes contained in our Annual Report on Form 10-K for the fiscal year ended September 30, 2012. The accounting policies used in preparing these condensed consolidated financial statements are the same as those described in our Form 10-K.

Principles of consolidation — The condensed consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries and the accounts of any variable interest entities ("VIEs") where we are deemed the primary beneficiary. All significant intercompany accounts and transactions are eliminated. For information related to the VIE included in our condensed consolidated financial statements, refer to Note 13, Variable Interest Entities.

Fiscal year — Our fiscal year is 52 or 53 weeks ending the Sunday closest to September 30. Fiscal years 2013 and 2012 include 52 weeks. Our first quarter includes 16 weeks and all other quarters include 12 weeks. All comparisons between 2013 and 2012 refer to the 12-weeks ("quarter") and 28-weeks ("year-to-date") ended April 14, 2013 and April 15, 2012, respectively, unless otherwise indicated.

Use of estimates — In preparing the condensed consolidated financial statements in conformity with U.S. generally accepted accounting principles, management is required to make certain assumptions and estimates that affect reported amounts of assets, liabilities, revenues, expenses and the disclosure of contingencies. In making these assumptions and estimates, management may from time to time seek advice and consider information provided by actuaries and other experts in a particular area. Actual amounts could differ materially from these estimates.

2. DISCONTINUED OPERATIONS

During fiscal 2012, we entered into an agreement with a third party distribution service provider pursuant to a Board-approved plan to sell our Jack in the Box distribution business. During the first quarter of fiscal 2013, we

completed the transition of our distribution centers. The distribution business assets sold in the transaction are classified as assets of discontinued operations in the condensed consolidated balance sheet as of September 30, 2012. The operations and cash flows of the business have been eliminated and in accordance with the provisions of the Accounting Standards Codification (“ASC”) 360, Property, Plant, and Equipment, the results are reported as discontinued operations for all periods presented.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

As of April 14, 2013, there were no assets or liabilities classified as held for sale related to our distribution business.
The following is a summary of our distribution business assets held for sale as of September 30, 2012 (in thousands):

Inventories	$26,844
Property and equipment, net	3,747
Total assets of discontinued operations	$30,591

The following is a summary of our distribution business operating results, which are included in discontinued operations for each period (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Revenue	$—	$140,146	$37,743	$334,940
Operating loss before income tax benefit	$(175)	$—	$(5,437)	$—

The loss on the sale of the distribution business was not material to our results of operations. The operating loss in 2013 includes $1.9 million for accelerated depreciation of a long-lived asset disposed of upon completion of the transaction, $2.1 million for future lease commitments and $1.2 million primarily related to costs incurred to exit certain vendor contracts. Our liability for lease commitments related to our distribution centers is included in other long-term debt and has changed during 2013 as follows (in thousands):

	Quarter	Year-to-Date
Balance at beginning of period	$2,277	$697
Additions and adjustments	185	2,054
Cash payments	(346)	(635)
Balance at end of quarter	$2,116	$2,116

3. INDEBTEDNESS

New Credit Facility — On November 5, 2012, the Company refinanced its former credit facility and entered into an amended and restated credit agreement. The new credit facility is comprised of (i) a $400.0 million revolving credit facility and (ii) a $200.0 million term loan facility. The interest rate on the new credit facility is based on the Company's leverage ratio and can range from London Interbank Offered Rate ("LIBOR") plus 1.75% to 2.25% with no floor. The initial interest rate was LIBOR plus 2.00%. The revolving credit facility and the term loan facility both have maturity dates of November 5, 2017. As part of the credit agreement, we could also request the issuance of up to $75.0 million in letters of credit, the outstanding amount of which reduces our net borrowing capacity under the agreement.

Use of proceeds — The Company borrowed $200.0 million under the new term loan and approximately $220.0 million under the new revolving credit facility. The proceeds from the refinancing transaction were used to repay all borrowings under the former facility and to pay related transaction fees and expenses associated with the refinance of the facility, and will also be available for permitted share repurchases, permitted dividends, permitted acquisitions, ongoing working capital requirements and other general corporate purposes. At April 14, 2013, we had borrowings under the revolving credit facility of $190.0 million, $195.0 million outstanding under the term loan and letters of credit outstanding of $30.9 million.

Collateral — The Company's obligations under the new credit facility are secured by first priority liens and security interests in the capital stock, partnership, and membership interests owned by the Company and/or its subsidiaries, and any proceeds thereof, subject to certain restrictions. Additionally, there is a negative pledge on all tangible and intangible assets (including all real and personal property), with customary exceptions.

Covenants — We are subject to a number of customary covenants under our new credit facility, including limitations on additional borrowings, acquisitions, loans to franchisees, capital expenditures, lease commitments, stock repurchases and dividend payments, and requirements to maintain certain financial ratios defined in the credit agreement.

Repayments — The term loan requires amortization in the form of quarterly installments of $5.0 million that began in March 2013. We are required to make certain mandatory prepayments under certain circumstances and we have the option to make certain prepayments without premium or penalty. The new credit facility includes events of default (and related remedies, including acceleration and increased interest rates following an event of default) that are customary for facilities and transactions of this type.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

4. SUMMARY OF REFRANCHISINGS, FRANCHISE DEVELOPMENT AND ACQUISITIONS

Refranchisings and franchise development — The following is a summary of the number of Jack in the Box restaurants sold to franchisees, the number of restaurants developed by franchisees and the related gains and fees recognized (dollars in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Restaurants sold to franchisees	4	37	4	37
New restaurants opened by franchisees	9	9	29	29
Initial franchise fees	$389	$1,770	$1,035	$2,490
Proceeds from the sale of company-operated restaurants (1)	$2,033	$20,715	$2,866	$21,964
Net assets sold (primarily property and equipment)	(1,635)	(5,754)	(1,720)	(5,833)
Goodwill related to the sale of company-operated restaurants	(67)	(604)	(67)	(652)
Other	—	(279)	—	(279)
Gains on the sale of company-operated restaurants (1)	331	14,078	1,079	15,200
Loss on anticipated sale of Jack in the Box company-operated market	(2,749)	—	(2,749)	—
Total gains (losses) on the sale of company-operated restaurants	$(2,418)	$14,078	$(1,670)	$15,200

(1) Amounts in 2013 and 2012 include additional proceeds and gains recognized upon the extension of the underlying franchise and lease agreements related to restaurants sold in a prior year of $0.2 million and $0.9 million, respectively, in the quarter and $1.0 million and $2.1 million, respectively, year-to-date.

Franchise acquisitions — During 2013 and 2012, we acquired 12 and 36 Qdoba franchise restaurants, respectively, in select markets where we believe there is continued opportunity for restaurant development. Additionally, in 2013 we exercised our right of first refusal and acquired one Jack in the Box franchise restaurant. We account for the acquisition of franchised restaurants using the acquisition method of accounting for business combinations. The purchase price allocations were based on fair value estimates determined using significant unobservable inputs (Level 3). The goodwill recorded primarily relates to the sales growth potential of the locations acquired. The following table provides detail of the combined allocations in each year-to-date period (dollars in thousands):

	April 14, 2013			April 15, 2012
	Qdoba	Jack in the Box	Total	Qdoba
Restaurants acquired from franchisees	12	1	13	36
Property and equipment	$2,632	$145	$2,777	$9,559
Reacquired franchise rights	106	34	140	461
Liabilities assumed	(281)	(2)	(283)	(108)
Goodwill	7,207	1,173	8,380	29,283
Total consideration	$9,664	$1,350	$11,014	$39,195

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

5. FAIR VALUE MEASUREMENTS

Financial assets and liabilities — The following table presents the financial assets and liabilities measured at fair value on a recurring basis at the end of each period (in thousands):

	Total	Quoted Prices in Active Markets for Identical Assets (3) (Level 1)	Significant Other Observable Inputs (3) (Level 2)	Significant Unobservable Inputs (Level 3)
Fair value measurements as of April 14, 2013:				
Non-qualified deferred compensation plan (1)	$(39,656)	$ (39,656)	$—	$—
Interest rate swaps (Note 6) (2)	(1,799)	—	(1,799)	—
Total liabilities at fair value	$(41,455)	$ (39,656)	$(1,799)	$—
Fair value measurements as of September 30, 2012:				
Non-qualified deferred compensation plan (1)	$(38,537)	$ (38,537)	$—	$—
Interest rate swaps (Note 6) (2)	(2,433)	—	(2,433)	—
Total liabilities at fair value	$(40,970)	$ (38,537)	$(2,433)	$—

(1) We maintain an unfunded defined contribution plan for key executives and other members of management excluded from participation in our qualified savings plan. The fair value of this obligation is based on the closing market prices of the participants' elected investments.

(2) We entered into interest rate swaps to reduce our exposure to rising interest rates on our variable debt. The fair values of our interest rate swaps are based upon Level 2 inputs which include valuation models as reported by our counterparties. The key inputs for the valuation models are quoted market prices, interest rates and forward yield curves.

(3) We did not have any transfers in or out of Level 1 or Level 2.

The fair values of the Company's debt instruments are based on the amount of future cash flows associated with each instrument discounted using the Company's borrowing rate. At April 14, 2013, the carrying values of the credit facility obligations were not materially different from fair value, as the borrowings are prepayable without penalty. The estimated fair values of our capital lease obligations approximated their carrying values as of April 14, 2013.

Non-financial assets and liabilities — The Company's non-financial instruments, which primarily consist of property and equipment, goodwill and intangible assets, are reported at carrying value and are not required to be measured at fair value on a recurring basis. However, on a periodic basis (at least annually for goodwill and semi-annually for property and equipment) or whenever events or changes in circumstances indicate that their carrying value may not be recoverable, non-financial instruments are assessed for impairment. If applicable, the carrying values are written down to fair value.

The following table presents non-financial assets and liabilities measured at fair value on a non-reoccurring basis during fiscal 2013 (in thousands):

	Fair Value Measurement	Impairment Charges
Long-lived assets held and used	$ 300	$2,878
Long-lived assets held for sale	$ 100	2,657

Long-lived assets held and used consist primarily of Jack in the Box restaurants determined to be underperforming or which we intend to close. To determine fair value, we used the income approach, which assumes that the future cash flows reflect current market expectations. The future cash flows are generally based on the assumption that the highest

and best use of the asset is to sell the store to a franchisee (market participant). These fair value measurements require significant judgment using Level 3 inputs, such as discounted cash flows, which are not observable from the market, directly or indirectly. Refer to Note 7, Impairment, Disposition of Property and Equipment, Restaurant Closing Costs and Restructuring, for additional information regarding impairment charges.

Long-lived assets held for sale were written down to fair value less costs to sell and primarily relate to the anticipated sale of a Jack in the Box company-operated market.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

6. DERIVATIVE INSTRUMENTS

Objectives and strategies — We are exposed to interest rate volatility related to our variable rate debt. To reduce our exposure to rising interest rates, in August 2010, we entered into two interest rate swap agreements that effectively convert the first $100.0 million of our variable rate term loan borrowings to a fixed-rate basis from September 2011 through September 2014. These agreements have been designated as cash flow hedges.

Financial position — The following derivative instruments were outstanding as of the end of each period (in thousands):

	April 14, 2013		September 30, 2012	
	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
Derivatives designated as hedging instruments:				
Interest rate swaps (Note 5)	Accrued liabilities	$(1,799)	Accrued liabilities	$(2,433)
Total derivatives		$(1,799)		$(2,433)

Financial performance — The following is a summary of the accumulated other comprehensive income ("OCI") gain or loss activity related to our interest rate swap derivative instruments (in thousands):

	Location of Loss in Income	Quarter		Year-to-Date	
		April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Loss recognized in OCI	N/A	$(94)	$(214)	$(90)	$(619)
Loss reclassified from accumulated OCI into income	Interest expense, net	$(311)	$(299)	$(724)	$(697)

Amounts reclassified from accumulated OCI into interest expense represent payments made to the counterparty for the effective portions of the interest rate swaps. During the periods presented, our interest rate swaps had no hedge ineffectiveness.

7. IMPAIRMENT, DISPOSITION OF PROPERTY AND EQUIPMENT, RESTAURANT CLOSING COSTS AND RESTRUCTURING

Impairment and other charges, net in the accompanying condensed consolidated statements of earnings is comprised of the following (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Impairment charges	$362	$910	$2,884	$2,109
Losses on the disposition of property and equipment, net	1,248	1,775	416	2,858
Costs of closed restaurants (primarily lease obligations) and other	429	864	1,190	2,933
Restructuring costs	343	1,525	1,155	1,525
	$2,382	$5,074	$5,645	$9,425

Impairment — When events and circumstances indicate that our long-lived assets might be impaired and their carrying amount is greater than the undiscounted cash flows we expect to generate from such assets, we recognize an impairment loss as the amount by which the carrying value exceeds the fair value of the assets. Impairment charges in 2013 and in 2012 primarily represent charges to write down the carrying value of underperforming Jack in the Box restaurants and Jack in the Box restaurants we intend to or have closed.

Disposition of property and equipment — We also recognize accelerated depreciation and other costs on the disposition of property and equipment. When we decide to dispose of a long-lived asset, depreciable lives are adjusted based on the estimated disposal date and accelerated depreciation is recorded. Other disposal costs primarily relate to gains or losses recognized upon the sale of closed restaurant properties, and charges from our ongoing re-image and logo program and normal capital maintenance activities. Losses on the disposition of property and equipment, net for the 28-weeks ended April 14, 2013 includes income of $2.4 million from the resolution of two eminent domain matters involving Jack in the Box restaurants.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

Restaurant closing costs consist of future lease commitments, net of anticipated sublease rentals and expected ancillary costs, and are included in impairment and other charges, net in the accompanying condensed consolidated statements of earnings. Total accrued restaurant closing costs, included in accrued liabilities and other long-term liabilities, changed as follows (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Balance at beginning of period	$19,561	$21,228	$20,677	$21,657
Additions and adjustments	312	666	738	1,912
Cash payments	(1,436)	(1,727)	(2,978)	(3,402)
Balance at end of quarter	$18,437	$20,167	$18,437	$20,167

Additions and adjustments in all periods presented primarily relate to revisions to certain sublease and cost assumptions.

Restructuring costs — Beginning in 2012, we have been engaged in a comprehensive review of our organization structure, including evaluating opportunities for outsourcing, restructuring of certain functions and workforce reductions. The following is a summary of these costs (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Severance costs	$302	$1,525	$670	$1,525
Other	41	—	485	—
	$343	$1,525	$1,155	$1,525

Total accrued severance costs related to our restructuring activities are included in accrued liabilities and changed as follows in 2013 (in thousands):

	Quarter	Year-to-Date
Balance at beginning of period	$671	$ 1,758
Additions	302	670
Cash payments	(934)	(2,389)
Balance at end of quarter	$39	$ 39

As part of the ongoing review of our organization structure, we expect to incur additional charges related to our restructuring activities; however, we are unable to make a reasonable estimate of the additional costs at this time. Our continuing efforts to lower our cost structure include identifying opportunities to reduce general and administrative costs as well as improve restaurant profitability across both brands.

8. INCOME TAXES

The income tax provisions reflect year-to-date effective tax rates of 32.8% in 2013 and 34.2% in 2012. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual 2013 rate could differ from our current estimates.

At April 14, 2013, our gross unrecognized tax benefits associated with uncertain income tax positions were $0.6 million, which if recognized would favorably impact the effective income tax rate. The gross unrecognized tax benefits decreased $0.3 million from the end of fiscal year 2012 based on the settlement of a state income tax audit. It is reasonably possible that changes to the gross unrecognized tax benefits will be required within the next twelve months due to the possible settlement of state tax audits.

The major jurisdictions in which the Company files income tax returns include the United States and states in which we operate that impose an income tax. The federal statutes of limitations have not expired for fiscal years 2009 and forward. The statutes of limitations for California and Texas, which constitute the Company's major state tax

jurisdictions, have not expired for fiscal years 2001 and 2007, respectively, and forward. Generally, the statutes of limitations for the other state jurisdictions have not expired for fiscal years 2009 and forward.

9. RETIREMENT PLANS

Defined benefit pension plans — We sponsor a qualified defined benefit pension plan covering substantially all full-time employees hired prior to January 1, 2011. Participants will no longer accrue benefits under this plan effective December 31, 2015. We also sponsor an unfunded supplemental executive retirement plan, which provides certain employees additional pension benefits and was closed to new participants effective January 1, 2007. Benefits under both plans are based on the employees' years of service and compensation over defined periods of employment.

Postretirement healthcare plans — We also sponsor healthcare plans that provide postretirement medical benefits to certain employees who meet minimum age and service requirements. The plans are contributory, with retiree contributions adjusted annually, and contain other cost-sharing features such as deductibles and coinsurance.

Net periodic benefit cost — The components of net periodic benefit cost in each period were as follows (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Defined benefit pension plans:				
Service cost	$2,481	$2,175	$5,789	$5,075
Interest cost	5,222	5,225	12,185	12,191
Expected return on plan assets	(5,242)	(4,612)	(12,231)	(10,761)
Actuarial loss	4,116	2,864	9,604	6,683
Amortization of unrecognized prior service cost	62	100	145	233
Net periodic benefit cost	$6,639	$5,752	$15,492	$13,421
Postretirement healthcare plans:				
Service cost	$—	$14	$—	$33
Interest cost	366	373	854	870
Actuarial loss	183	21	426	48
Net periodic benefit cost	$549	$408	$1,280	$951

Future cash flows — Our policy is to fund our plans at or above the minimum required by law. As of the date of our last actuarial funding valuation, there was no minimum contribution funding requirement. Details regarding fiscal 2013 contributions are as follows (in thousands):

	Defined Benefit Pension Plans	Postretirement Healthcare Plans
Net year-to-date contributions	$6,995	$628
Remaining estimated net contributions during fiscal 2013	$11,400	$800

We will continue to evaluate contributions to our funded defined benefit pension plan based on changes in pension assets as a result of asset performance in the current market and economic environment.

10. SHARE-BASED COMPENSATION

We offer share-based compensation plans to attract, retain and motivate key officers, employees and non-employee directors to work toward the financial success of the Company. In 2013, we granted the following shares related to our share-based compensation awards in each period as follows:

	Year-to-Date
Stock options	376,793
Performance share awards	89,236
Nonvested stock units	141,616

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

The components of share-based compensation expense recognized in each period are as follows (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Stock options	$1,269	$785	$3,159	$1,975
Performance share awards	547	172	1,664	502
Nonvested stock awards	85	135	219	315
Nonvested stock units	1,416	293	2,337	615
Deferred compensation for non-management directors	220	155	220	155
Total share-based compensation expense	$3,537	$1,540	$7,599	$3,562

11. STOCKHOLDERS' EQUITY

Repurchases of common stock — In November 2011, the Board of Directors approved a program, expiring November 2013, to repurchase $100.0 million in shares of our common stock. During 2013, we repurchased approximately 1.4 million shares at an aggregate cost of $41.3 million under this authorization. In November 2012, the Board of Directors approved a new program to repurchase up to an additional $100.0 million in shares of our common stock through November 2014. As of April 14, 2013, the aggregate remaining amount authorized for repurchase was $135.6 million under both authorizations.

Accumulated other comprehensive loss — The components of accumulated other comprehensive loss, net of taxes, were as follows at the end of each period (in thousands):

	April 14, 2013	September 30, 2012
Unrecognized periodic benefit costs, net of tax benefits of $79,704 and $83,605, respectively	$(128,239)	$ (134,513)
Net unrealized losses related to cash flow hedges, net of tax benefits of $689 and $933, respectively	(1,110)	(1,500)
Foreign currency translation adjustment, net of tax expense of $2	5	—
Accumulated other comprehensive loss	$(129,344)	$ (136,013)

12. AVERAGE SHARES OUTSTANDING

Our basic earnings per share calculation is computed based on the weighted-average number of common shares outstanding. Our diluted earnings per share calculation is computed based on the weighted-average number of common shares outstanding adjusted by the number of additional shares that would have been outstanding had the potentially dilutive common shares been issued. Potentially dilutive common shares include stock options, nonvested stock awards and units, non-management director stock equivalents and shares issuable under our employee stock purchase plan. Performance share awards are included in the weighted-average diluted shares outstanding each period if the performance criteria have been met at the end of the respective periods.

The following table reconciles basic weighted-average shares outstanding to diluted weighted-average shares outstanding (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Weighted-average shares outstanding – basic	43,747	43,937	43,319	43,896
Effect of potentially dilutive securities:				
Stock options	950	470	840	403

Nonvested stock awards and units	368	264	350	261
Performance share awards	209	240	227	215
Weighted-average shares outstanding – diluted	45,274	44,911	44,736	44,775
Excluded from diluted weighted-average shares outstanding:				
Antidilutive	215	3,092	1,094	2,975
Performance conditions not satisfied at the end of the period	223	351	223	351

13. VARIABLE INTEREST ENTITIES

In January 2011, we formed Jack in the Box Franchise Finance, LLC ("FFE") for the purpose of operating a franchisee lending program to assist Jack in the Box franchisees in re-imaging their restaurants. We are the sole equity investor in FFE. The lending program was comprised of a $20.0 million commitment from the Company in the form of a capital note and an $80.0 million Senior Secured Revolving Securitization Facility entered into with a third party. The lending period and the revolving period expired in June 2012 and the third party facility repayments were completed in August 2012.

We have determined that FFE is a VIE. We considered a variety of factors in identifying the primary beneficiary of FFE including, but not limited to, who holds the power to direct matters that most significantly impact FFE's economic performance (such as determining the underwriting standards and credit management policies), as well as what party has the obligation to absorb the losses of FFE. Based on these considerations, we have determined that the Company is the primary beneficiary and have reflected the entity in the accompanying condensed consolidated financial statements.

FFE's assets consolidated by the Company represent assets that can be used only to settle obligations of the consolidated VIE. Likewise, FFE's liabilities consolidated by the Company do not represent additional claims on the Company's general assets; rather they represent claims against the specific assets of FFE. The impacts of FFE's results were not material to the Company's condensed consolidated statements of earnings or cash flows. The FFE's balance sheet consisted of the following at the end of each period (in thousands):

	April 14, 2013	September 30, 2012
Cash	$—	$ 444
Other current assets (1)	2,323	2,536
Other assets, net (1)	9,835	11,051
Total assets	$12,158	$ 14,031
Current liabilities	$89	$ 14
Other long-term liabilities (2)	12,338	14,428
Retained earnings	(269)	(411)
Total liabilities and stockholders' equity	$12,158	$ 14,031

(1) Consists primarily of amounts due from franchisees.
(2) Consists primarily of the capital note contributions from Jack in the Box which are eliminated in consolidation.

The Company's maximum exposure to loss is equal to its outstanding contributions as of April 14, 2013. This amount represents estimated losses that would be incurred should all franchisees default on their loans without any consideration of recovery. To offset the credit risk associated with the Company's variable interest in FFE, the Company holds a security interest in the assets of FFE subordinate and junior to all other obligations of FFE.

14. CONTINGENCIES AND LEGAL MATTERS

The Company assesses contingencies, including litigation contingencies, to determine the degree of probability and range of possible loss for potential accrual in its financial statements. An estimated loss contingency is accrued in the financial statements if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Because litigation is inherently unpredictable, assessing contingencies is highly subjective and requires judgments about future events. When evaluating litigation contingencies, we may be unable to provide a meaningful estimate due to a number of factors, including the procedural status of the matter in question, the presence of complex or novel legal theories, and/or the ongoing discovery and development of information important to the matter. In addition, damage amounts claimed in litigation against us may be unsupported, exaggerated or unrelated to possible

outcomes, and as such are not meaningful indicators of our potential liability. The Company regularly reviews contingencies to determine the adequacy of the accruals and related disclosures. The ultimate amount of loss may differ from these estimates.

Gessele v. Jack in the Box Inc. — In August 2010, five former employees instituted litigation in federal court in Oregon alleging claims under the federal Fair Labor Standards Act ("FLSA") and Oregon wage and hour laws. The plaintiffs allege that the Company failed to pay non-exempt employees for certain meal breaks and improperly recorded payroll deductions for shoe purchases and for workers' compensation expenses. In April 2013, the district court: (i) granted certification of the Oregon state law claims with respect to payroll deductions for shoe purchases and workers' compensation expenses, (ii) granted conditional certification for these same claims under the FLSA, and (iii) denied certification for meal break claims under both federal and Oregon law. We intend to vigorously defend against this lawsuit. We have made an accrual for a single claim for which we believe a loss is both probable and estimable. This accrued loss contingency did not have a material effect on our results of operations. Due to the procedural status of the other claims in this case, we have not established a loss contingency accrual as the liability with respect to these claims is not probable and we are currently unable to estimate a range of loss. Nonetheless, an unfavorable resolution of this matter could have a material adverse effect on our business, results of operations, liquidity or financial condition.

Other Legal Matters — In addition to the matter described above, the Company is subject to normal and routine litigation brought by former, current or prospective employees, customers, franchisees, vendors, landlords, shareholders or others. We intend to defend ourselves in any such matters. Although we currently believe that the ultimate outcome of these matters will not have a material adverse effect on our business, results of operations, liquidity or financial position of the Company, it is possible that our business, results of operations, liquidity, or financial position could be materially affected in any particular future reporting period by the unfavorable resolution of one or more of these matters or contingencies.

Lease Guarantees — In connection with the sale of the distribution business, we have assigned the leases at two of our distribution centers to third parties. Under these agreements, which expire in 2015 and 2017, the Company remains secondarily liable for the lease payments for which we were responsible under the original lease. As of April 14, 2013, the amount remaining under these lease guarantees totaled $3.4 million. We have not recorded a liability for the guarantees as the likelihood of the third party defaulting on the assignment agreements was deemed to be less than probable.

15. SEGMENT REPORTING

We are principally engaged in developing, operating and franchising our Jack in the Box and Qdoba quick-service restaurant concepts, both of which we consider reportable operating segments. This segment reporting structure reflects the Company's current management structure, internal reporting method and financial information used in deciding how to allocate Company resources. Based upon certain quantitative thresholds, both operating segments are considered reportable segments.

We measure and evaluate our segments based on segment earnings from operations. Summarized financial information concerning our reportable segments is shown in the following tables (in thousands):

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Revenues by segment:				
Jack in the Box restaurant operations segment	$277,916	$299,418	$645,492	$682,076
Qdoba restaurant operations segment	77,707	67,066	175,654	142,329
Consolidated revenues	$355,623	$366,484	$821,146	$824,405
Earnings from operations by segment:				
Jack in the Box restaurant operations segment	$22,300	$33,510	$59,517	$55,647
Qdoba restaurant operations segment	2,468	3,869	4,965	6,043
FFE operations	(38)	(44)	(87)	(100)

Consolidated earnings from operations	$24,730	$37,335	$64,395	$61,590
Total depreciation expense by segment:				
Jack in the Box restaurant operations segment	$17,750	$18,035	$41,433	$42,328
Qdoba restaurant operations segment	4,640	3,970	10,658	8,752
Consolidated depreciation expense	$22,390	$22,005	$52,091	$51,080

Interest income and expense, income taxes and total assets are not reported for our segments, in accordance with our method of internal reporting.

	April 14, 2013	September 30, 2012
Goodwill by segment (in thousands):		
Jack in the Box	$48,953	$ 47,847
Qdoba	99,982	92,775
Consolidated goodwill	$148,935	$ 140,622

Refer to Note 4, Summary of Refranchisings, Franchise Development and Acquisitions, for information regarding the changes in goodwill during 2013.

16. SUPPLEMENTAL CONSOLIDATED CASH FLOW INFORMATION (in thousands)

	April 14, 2013	April 15, 2012
Cash paid during the year for:		
Interest, net of amounts capitalized	$8,556	$11,089
Income tax payments	$22,907	$24,125

17. SUPPLEMENTAL CONSOLIDATED BALANCE SHEET INFORMATION (in thousands)

	April 14, 2013	September 30, 2012
Other assets, net:		
Company-owned life insurance policies	$91,375	$ 86,276
Deferred tax asset	108,855	115,537
Other	76,314	69,317
	$276,544	$ 271,130
Accrued liabilities:		
Payroll and related taxes	$44,191	$ 58,503
Sales and property taxes	12,699	13,055
Advertising	16,029	21,400
Insurance	33,319	33,391
Deferred beverage allowance	14,656	4,583
Other	39,687	33,705
	$160,581	$ 164,637
Other long-term liabilities:		
Pension plans	$212,604	$ 213,854
Straight-line rent accrual	53,768	54,288
Other	103,295	103,060
	$369,667	$ 371,202

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

GENERAL

All comparisons between 2013 and 2012 refer to the 12-weeks ("quarter") and 28-weeks ("year-to-date") ended April 14, 2013 and April 15, 2012, respectively, unless otherwise indicated.

For an understanding of the significant factors that influenced our performance during the quarterly and year-to-date periods ended April 14, 2013 and April 15, 2012, our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with the Condensed Consolidated Financial Statements and related Notes included in this Quarterly Report and our Annual Report on Form 10-K for the fiscal year ended September 30, 2012.

Our MD&A consists of the following sections:

- Overview — a general description of our business and fiscal 2013 highlights.
- Financial reporting — a discussion of changes in presentation.
- Results of operations — an analysis of our consolidated statements of earnings for the periods presented in our condensed consolidated financial statements.
- Liquidity and capital resources — an analysis of our cash flows including capital expenditures, share repurchase activity, known trends that may impact liquidity and the impact of inflation.
- Discussion of critical accounting estimates — a discussion of accounting policies that require critical judgments and estimates.
- New accounting pronouncements — a discussion of new accounting pronouncements, dates of implementation and the impact on our consolidated financial position or results of operations, if any.
- Cautionary statements regarding forward-looking statements — a discussion of the risks and uncertainties that may cause our actual results to differ materially from any forward-looking statements made by management.

OVERVIEW

As of April 14, 2013, we operated and franchised 2,256 Jack in the Box quick-service restaurants, primarily in the western and southern United States, and 647 Qdoba Mexican Grill ("Qdoba") fast-casual restaurants throughout the United States and including two in Canada.

Our primary source of revenue is from retail sales at Jack in the Box and Qdoba company-operated restaurants. We also derive revenue from Jack in the Box and Qdoba franchise restaurants, including royalties (based upon a percent of sales), franchise fees and rents from Jack in the Box franchisees. Historically, we also generated revenue from distribution sales of food and packaging commodities to franchisees. We completed the outsourcing of this function in the first quarter of fiscal 2013, and franchisees who previously utilized our distribution services now purchase product directly from our distribution service providers or other approved suppliers. In addition, we recognize gains from the sale of company-operated restaurants to franchisees. These gains are presented as a reduction of operating costs and expenses, net in the accompanying condensed consolidated statements of earnings.

The following summarizes the most significant events occurring in fiscal 2013 and certain trends compared to a year ago:

- Restaurant Sales — Sales at restaurants open more than one year ("same-store sales") changed as follows:

	Quarter		Year-to-Date	
	April 14, 2013	April 15, 2012	April 14, 2013	April 15, 2012
Jack in the Box:				
Company	0.9%	5.6%	1.6%	5.5%
Franchise	(0.2)%	3.6%	0.9%	3.1%
System	0.1%	4.2%	1.1%	3.8%
Qdoba:				
Company	(2.0)%	3.8%	(0.1)%	3.7%
Franchise	(0.9)%	2.2%	(0.1)%	3.2%
System	(1.5)%	3.0%	(0.1)%	3.4%

- Commodity Costs — Commodity costs increased approximately 2.6% and 1.8% at our Jack in the Box and Qdoba restaurants, respectively, in the quarter and 1.0% and 1.4%, respectively, year-to-date compared to a year ago. We expect our overall commodity costs to increase approximately 2%-2.5% in fiscal 2013.
- New Unit Development — We continued to grow our brands with the opening of new company-operated and franchise-operated restaurants. Year-to-date, we opened 12 Jack in the Box locations and 32 Qdoba locations system-wide.
- Franchising Program — Qdoba and Jack in the Box franchisees opened a total of 29 restaurants year-to-date, including two Qdoba franchise locations in Canada. Our Jack in the Box system was approximately 76% franchised at the end of the second quarter and we plan to ultimately increase franchise ownership to be between 80% to 85%.
- Credit Facility — In November 2012, we entered into a new credit agreement consisting of a $400.0 million revolving credit facility and a $200.0 million term loan, both with a five-year maturity.
- Distribution Outsourcing — During the first quarter of 2013, we completed the outsourcing of our Jack in the Box distribution business. As a result, we recorded after-tax charges in the second quarter totaling $0.1 million, or $0.00 per diluted share, and $3.4 million, or $0.08 per diluted share, year-to-date. These charges are presented as discontinued operations in each period.
- Share Repurchases — Pursuant to a share repurchase program authorized by our Board of Directors, we repurchased approximately 1.4 million shares of our common stock at an average price of $29.39 per share during the year, including the cost of brokerage fees.

RESULTS OF OPERATIONS

The following table presents certain income and expense items included in our condensed consolidated statements of earnings as a percentage of total revenues, unless otherwise indicated. Percentages may not add due to rounding.
CONSOLIDATED STATEMENTS OF EARNINGS DATA

	Quarter				Year-to-Date			
	April 14, 2013		April 15, 2012		April 14, 2013		April 15, 2012	
Revenues:								
Company restaurant sales	77.9	%	79.3	%	77.6	%	79.4	%
Franchise revenues	22.1	%	20.7	%	22.4	%	20.6	%
Total revenues	100.0	%	100.0	%	100.0	%	100.0	%
Operating costs and expenses, net:								
Company restaurant costs:								
Food and packaging (1)	32.7	%	32.6	%	32.4	%	33.1	%
Payroll and employee benefits (1)	28.7	%	29.1	%	28.8	%	29.2	%
Occupancy and other (1)	22.8	%	22.8	%	23.0	%	23.2	%
Total company restaurant costs (1)	84.2	%	84.5	%	84.3	%	85.6	%
Franchise costs (1)	50.6	%	50.2	%	50.1	%	51.8	%
Selling, general and administrative expenses	14.9	%	14.9	%	14.7	%	14.6	%
Impairment and other charges, net	0.7	%	1.4	%	0.7	%	1.1	%
Losses (gains) on the sale of company-operated restaurants	0.7	%	(3.8	)%	0.2	%	(1.8	)%
Earnings from operations	7.0	%	10.2	%	7.8	%	7.5	%
Income tax rate (2)	37.1	%	34.1	%	32.8	%	34.2	%

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(1) As a percentage of the related sales and/or revenues.
(2) As a percentage of earnings from continuing operations and before income taxes.

The following table presents Jack in the Box and Qdoba company restaurant sales, costs and costs as a percentage of the related sales. Percentages may not add due to rounding.
SUPPLEMENTAL COMPANY-OPERATED RESTAURANTS STATEMENTS OF EARNINGS DATA
(dollars in thousands)

	Quarter						Year-to-Date					
	April 14, 2013			April 15, 2012			April 14, 2013			April 15, 2012		
Jack in the Box:												
Company restaurant sales	$203,439			$227,828			$470,615			$522,181		
Company restaurant costs:												
Food and packaging	68,195	33.5	%	76,508	33.6	%	155,993	33.1	%	178,098	34.1	%
Payroll and employee benefits	58,108	28.6	%	67,128	29.5	%	135,110	28.7	%	153,697	29.4	%
Occupancy and other	42,421	20.9	%	48,900	21.5	%	99,009	21.0	%	114,191	21.9	%
Total company restaurant costs	$168,724	82.9	%	$192,536	84.5	%	$390,112	82.9	%	$445,986	85.4	%
Qdoba:												
Company restaurant sales	$73,758			$62,975			$166,676			$132,724		
Company restaurant costs:												
Food and packaging	22,493	30.5	%	18,402	29.2	%	50,796	30.5	%	38,919	29.3	%
Payroll and employee benefits	21,512	29.2	%	17,438	27.7	%	48,574	29.1	%	37,680	28.4	%
Occupancy and other	20,731	28.1	%	17,284	27.4	%	47,497	28.5	%	37,936	28.6	%
Total company restaurant costs	$64,736	87.8	%	$53,124	84.4	%	$146,867	88.1	%	$114,535	86.3	%

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The following table summarizes the year-to-date changes in the number of Jack in the Box ("JIB") and Qdoba company and franchise restaurants:

	April 14, 2013			April 15, 2012		
	Company	Franchise	Total	Company	Franchise	Total
Jack in the Box:						
Beginning of year	547	1,703	2,250	629	1,592	2,221
New	3	9	12	9	14	23
Refranchised	(4)	4	—	(37)	37	—
Acquired from franchisees	1	(1)	—	—	—	—
Closed	(1)	(5)	(6)	—	(2)	(2)
End of period	546	1,710	2,256	601	1,641	2,242
% of JIB system	24%	76%	100%	27%	73%	100%
% of consolidated system	62%	85%	78%	68%	84%	79%
Qdoba:						
Beginning of year	316	311	627	245	338	583
New	12	20	32	8	15	23
Acquired from franchisees	12	(12)	—	36	(36)	—
Closed	—	(12)	(12)	—	(1)	(1)
End of period	340	307	647	289	316	605
% of Qdoba system	53%	47%	100%	48%	52%	100%
% of consolidated system	38%	15%	22%	32%	16%	21%
Consolidated:						
Total system	886	2,017	2,903	890	1,957	2,847
% of consolidated system	31%	69%	100%	31%	69%	100%

Revenues

As we execute our refranchising strategy for Jack in the Box, which includes the sale of restaurants to franchisees, we expect the number of company-operated restaurants and the related sales to decrease while revenues from franchise restaurants increase. As such, company restaurant sales decreased $13.6 million, or 4.7%, in the quarter and $17.6 million, or 2.7%, year-to-date compared with the prior year. The decreases in restaurant sales are due primarily to decreases in the average number of Jack in the Box company-operated restaurants, partially offset by increases in the number of Qdoba company-operated restaurants and increases in average unit sales volumes ("AUVs") at our Jack in the Box restaurants in both periods and at our Qdoba restaurants year-to-date.

The following table presents the approximate impact of these increases (decreases) on company restaurant sales (in thousands):

	Quarter	Year-to-Date
Decrease in the average number of Jack in the Box restaurants	$(29,900)	$(70,300)
Jack in the Box AUV increase	5,500	18,700
Increase in the average number of Qdoba restaurants	11,100	29,700
Qdoba AUV increase (decrease)	(300)	4,300
Total decrease in company restaurant sales	$(13,600)	$(17,600)

Same-store sales at Jack in the Box company-operated restaurants increased 0.9% in the quarter and 1.6% year-to-date primarily driven by price increases. Same-store sales at Qdoba company-operated restaurants decreased 2.0% in the quarter and 0.1% year-to-date primarily driven by transaction declines and the impact of greater promotional activity, partially offset by a combination of price increases and higher catering sales. The following table summarizes the change in company-operated same-store sales:

10,274

Other	2,195	1,992
Total other assets	$ 11,692	$ 12,266

13) Other Liabilities

	Years Ended December 31,	
	2012	2011
Other Current Liabilities:		
Product warranties	$ 8,266	$ 8,315
Deferred revenue	9,280	11,553
Non-income taxes	3,514	8,319
Other	16,345	12,137
Total other current liabilities	$ 37,405	$ 40,324
Other Liabilities:		
Long-term income tax payable	$ 20,880	$ 16,084
Accrued compensation	18,750	15,174
Other	3,745	953
Total other liabilities	$ 43,375	$ 32,211

MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

14) Product Warranties

The Company provides for the estimated costs to fulfill customer warranty obligations upon the recognition of the related revenue. While the Company engages in extensive product quality programs and processes, including actively monitoring and evaluating the quality of its component suppliers, the Company s warranty obligation is affected by shipment volume, product failure rates, utilization levels, material usage and supplier warranties on parts delivered to the Company. Should actual product failure rates, utilization levels, material usage, or supplier warranties on parts differ from the Company s estimates, revisions to the estimated warranty liability would be required. The product warranty liability is included in other current liabilities in the consolidated balance sheets.

Product warranty activities were as follows:

	Years Ended December 31,	
	2012	2011
Beginning balance	$ 8,315	$ 9,865
Provisions for product warranties	4,514	5,766
Direct charges to warranty liability	(4,985)	(6,857)
Foreign currency translation	422	(459)
Ending balance	$ 8,266	$ 8,315

15) Debt

Credit Agreements and Short-Term Borrowings

The Company s Japanese subsidiary has lines of credit and short-term borrowing arrangements with two financial institutions which, generally expire and are renewed at three month intervals. The lines of credit provide for aggregate borrowings as of December 31, 2012 of up to an equivalent of $26,729 U.S. dollars, with interest rates ranging from 0.63% - 1.475%. There were no borrowings outstanding under these arrangements at December 31, 2012. There were $1,932 total borrowings outstanding under these arrangements at December 31, 2011.

The Company has an available line of credit with a financial institution from the August 2012 Plasmart acquisition. The available line of credit, which expires in 2014, provides for aggregate borrowings as of December 31 2012 of up to an equivalent of $1,401 U.S. dollars at an average interest rate of 5.19%. There were no borrowings outstanding under this arrangement at December 31, 2012.

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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16) Income Taxes

A reconciliation of the Company s effective tax rate to the U.S. federal statutory rate is as follows:

	Years Ended December 31,		
	2012	**2011**	**2010**
U.S. Federal income tax statutory rate	35.0%	35.0%	35.0%
Federal tax credits		(0.7)	(1.1)
State income taxes, net of federal benefit	1.3	1.1	1.0
Effect of foreign operations taxed at various rates	(2.6)	(4.1)	(2.4)
Qualified production activity tax benefit	(0.5)	(1.1)	(0.8)
Deferred tax asset valuation allowance	1.4	0.6	(0.1)
Other	1.5	(0.5)	0.7
	36.1%	30.3%	32.3%

The components of income from continuing operations before income taxes and the related provision for income taxes consist of the following:

	Years Ended December 31,		
	2012	**2011**	**2010**
Income from continuing operations before income taxes:			
United States	$ 28,652	$ 108,474	$ 110,779
Foreign	46,484	77,578	85,645
	$ 75,136	$ 186,052	$ 196,424
Current taxes:			
United States	$ 10,431	$ 25,824	$ 27,789
State	783	2,602	3,323
Foreign	12,074	20,346	22,296
	23,288	48,772	53,408
Deferred taxes:			
United States	2,019	7,795	10,021
State and Foreign	1,800	(246)	76
	3,819	7,549	10,097
Provision for income taxes	$ 27,107	$ 56,321	$ 63,505

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

The significant components of the deferred tax assets and deferred tax liabilities are as follows:

	Years Ended December 31,	
	2012	**2011**
Deferred tax assets:		
Loss carryforwards and credits	$ 29,032	$ 28,053
Inventory and warranty reserves	10,959	8,789
Accounts receivable and other accruals	2,647	6,875
Stock-based compensation	5,032	4,610
Executive supplemental retirement benefits	6,132	4,826
Other		1,245
Total deferred tax assets	$ 53,802	$ 54,398
Deferred tax liabilities:		
Acquired intangible assets	(5,857)	(3,330)
Depreciation and amortization	(4,461)	(3,679)
Other	(1,145)	(22)
Total deferred tax liabilities	(11,463)	(7,031)
Valuation allowance	(27,497)	(26,475)
Net deferred tax assets	$ 14,842	$ 20,892

At December 31, 2012, the Company had gross Massachusetts research and other tax credit carryforwards of $8,229. These credit carryforwards will expire at various dates through 2027. In addition, at December 31, 2012, the Company had U.S. federal capital loss carryforwards of $1,984, and $59,275 that will expire in 2013 and 2015, respectively.

Although the Company believes that its tax positions are consistent with applicable U.S. federal, state and international laws, it maintains certain tax reserves at December 31, 2012 in the event its tax positions were to be challenged by the applicable tax authority and additional tax assessed on audit.

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows:

	Years Ended December 31,		
	2012	**2011**	**2010**
Balance at beginning of year	$ 36,540	$ 22,028	$ 9,085
Decreases for prior years		(3)	(6)
Increases for the current year	4,134	16,663	13,553
Reductions related to settlements with taxing authorities		(2,148)	

Reductions related to expiration of statute of limitations			(604)
Balance at end of year	$ 40,674	$ 36,540	$ 22,028

At December 31, 2012, the total amount of gross unrecognized tax benefits, which excludes interest and penalties, was approximately $40,674. The net increase from December 31, 2011 was primarily attributable to a current year increase in reserves for existing uncertain tax positions. As of December 31, 2012, if these benefits were recognized in a future period, the timing of which is not estimable, the net unrecognized tax benefit of $19,788, excluding interest and penalties, would impact the Company s effective tax rate.

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

The Company accrues interest expense and, if applicable, penalties, for any uncertain tax positions. Interest and penalties are classified as a component of income tax expense. At December 31, 2012, 2011 and 2010, the Company had accrued interest on unrecognized tax benefits of approximately $1,571, $973 and $986, respectively.

Over the next 12 months it is reasonably possible that the Company may recognize $2,545 to $3,145 of previously unrecognized tax benefits related to various U.S. federal, state and foreign tax positions as a result of the conclusion of various audits and the expiration of the statute of limitations. The Company is subject to examination by federal, state and foreign tax authorities. The Internal Revenue Service commenced an examination of its U.S. federal tax filings for open tax years through 2009 during the quarter ended June 30, 2012. The statute of limitations in the Company s other tax jurisdictions remains open between fiscal year 2006 through present.

On a quarterly basis, the Company evaluates both positive and negative evidence that affects the realizability of net deferred tax assets and assesses the need for a valuation allowance. The future benefit to be derived from its deferred tax assets is dependent upon its ability to generate sufficient future taxable income to realize the assets. During 2012, the Company increased its valuation allowance by $1,022 primarily related to an increase in state tax credit carryforwards because the Company has determined it is more likely than not that the deferred tax assets related to these attributes will not be realized. In 2011, the Company increased its valuation allowance by $1,208 primarily related to capital losses incurred from our foreign affiliates because the Company has determined it is more likely than not that the deferred tax assets related to these attributes will not be realized. In 2011, the Company recorded a net benefit to income tax expense of $2,148, excluding interest and penalties, due to discrete reserve releases primarily related to the effective settlement of a German tax audit for years 2001 through 2005.

Through December 31, 2012, the Company has not provided deferred income taxes on the undistributed earnings of its foreign subsidiaries because such earnings were intended to be permanently reinvested outside the U.S. Determination of the potential deferred income tax liability on these undistributed earnings is not practicable because such liability, if any, is dependent on circumstances existing if and when remittance occurs. At December 31, 2012, the Company had $421,734 of undistributed earnings in its foreign subsidiaries.

During 2006, the Company received a notification letter from the Israeli Ministry of Industry Trade and Labor (MITL) indicating that its Israeli operations were in compliance with requirements relating to the tax holiday granted to its manufacturing operations in Israel in 2001. This tax holiday expired at December 31, 2012 and was subject to meeting continued investment, employment and other requirements under the guidelines of the MITL. This tax holiday resulted in income tax savings of approximately $1,000 and $2,700 for the years 2011 and 2010, respectively. Upon expiration of its tax holiday, the Company elected to be treated under a new preferential Israeli tax regime under which a tax rate of 10% applies for 2012, and is reduced to 7% for 2013.

On January 2, 2013, the American Taxpayer Relief Act of 2012 reinstated certain tax incentives with retroactive application to January 1, 2012, the tax effect of which will be recognized as a discrete event in the first quarter of 2013. Had the extension been enacted prior to January 1, 2013, our effective tax rate would have been reduced by approximately 3%.

MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

17) Discontinued Operations

During 2010, the Company executed a plan to divest two product lines, as their growth potential no longer met the Company s long-term strategic objectives. The Company completed the sale of Ion on May 17, 2010 for $15,092 of net cash proceeds after expenses and recorded a pre-tax gain on the sale of $4,208. The Company completed the sale of the assets of its YDI business on August 11, 2010 for $490 of net cash proceeds after expenses and recorded a pre-tax gain on the sale of $224.

The two product lines have been accounted for as discontinued operations. Accordingly, their results of operations have been reclassified to discontinued operations in the consolidated statements of operations and comprehensive income. The assets and liabilities of these discontinued businesses have not been reclassified or segregated in the consolidated statements of cash flows due to their immaterial amounts. Net revenues and income from discontinued operations are below:

	Years Ended December 31,		
	2012	2011	2010
Net revenues	$	$	$ 11,974
Income from discontinued operations before income taxes			2,320
Gain from disposal of discontinued operations before income taxes			4,432
Income tax benefit			2,916
Income from discontinued operations	$	$	$ 9,668

18) Stockholders Equity

Stock Repurchase

On July 25, 2011, the Company s board of directors approved a share repurchase program for the repurchase of up to an aggregate of $200,000 of its outstanding Common Stock from time to time in open market purchases, privately negotiated transactions or through other appropriate means. The timing and quantity of any shares repurchased will depend upon a variety of factors, including business conditions, stock market conditions and business development activities, including, but not limited to, merger and acquisition opportunities. These repurchases may be commenced, suspended or discontinued at any time without prior notice.

During 2012, the Company repurchased 434,600 shares of its Common Stock for $11,501 at an average price of $26.46 per share. During 2011, the Company repurchased 85,800 shares of its common stock for $2,007 at an average price of $23.40 per share.

Dividends

Holders of the Company s Common Stock are entitled to receive dividends when they are declared by the Company s board of directors. During 2012, the board of directors authorized four quarterly dividends, two quarterly dividends of $0.15 per share and two quarterly dividends of $0.16 per share, which totaled $32,686. Future dividend declarations, if any, as well as the record and payment dates for such dividends, are subject to the final determination of the Company s board of directors.

On February 11, 2013, the Company s board of directors declared a quarterly cash dividend of $0.16 per share to be paid on March 15, 2013 to shareholders of record as of March 1, 2013.

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

19) Stock-Based Compensation
Employee Stock Purchase Plans

The Company s Third Amended and Restated 1999 Employee Stock Purchase Plan (the Purchase Plan) authorizes the issuance of up to an aggregate of 1,950,000 shares of Common Stock to participating employees. Offerings under the Purchase Plan commence on June 1 and December 1 and terminate, respectively, on November 30 and May 31. Under the Purchase Plan, eligible employees may purchase shares of Common Stock through payroll deductions of up to 10% of their compensation or up to an annual maximum amount of $21,250. The price at which an employee s purchase option is exercised is the lower of (1) 85% of the closing price of the Common Stock on the NASDAQ Global Select Market on the day that each offering commences, or (2) 85% of the closing price on the day that each offering terminates. During 2012 and 2011, the Company issued 141,975 and 137,410 shares, respectively, of Common Stock to employees who participated in the Purchase Plan at an exercise price of $22.40 and $22.01 per share in 2012 and $18.26 and $21.62 per share in 2011. As of December 31, 2012, there were 350,748 shares reserved for future issuance under the Purchase Plan.

The Company s Second Amended and Restated International Employee Stock Purchase Plan (the Foreign Purchase Plan) authorizes the issuance of up to an aggregate of 400,000 shares of Common Stock to participating employees. Offerings under the Foreign Purchase Plan commence on June 1 and December 1 and terminate, respectively, on November 30 and May 31. Under the Foreign Purchase Plan, eligible employees may purchase shares of Common Stock through payroll deductions of up to 10% of their compensation or up to an annual maximum amount of $21,250. The price at which an employee s purchase option is exercised is the lower of (1) 85% of the closing price of the Common Stock on the NASDAQ Global Select Market on the day that each offering commences, or (2) 85% of the closing price on the day that each offering terminates. During 2012 and 2011, the Company issued 29,954 and 29,969 shares, respectively, of Common Stock to employees who participated in the Foreign Purchase Plan at an exercise price of $22.40 and $22.01 per share in 2012 and $18.26 and $21.62 per share in 2011. As of December 31, 2012, there were 96,470 shares reserved for future issuance under the Foreign Purchase Plan.

Equity Incentive Plans

The Company has granted options to employees under the 2004 Stock Incentive Plan (the 2004 Plan) and under the Second Restated 1995 Stock Incentive Plan (the 1995 Plan), and to directors under the 1997 Director Stock Plan (the 1997 Director Plan) (collectively, the Plans). The Company has also granted restricted stock units (RSU s) to employees and directors under the 2004 Plan. The Plans are administered by the Compensation Committee of the Company s board of directors.

The Company s equity incentive Plans are intended to attract and retain employees and to provide an incentive for them to assist the Company to achieve long-range performance goals and to enable them to participate in the long-term growth of the Company. Employees may be granted RSUs, options to purchase shares of the Company s stock and other equity incentives under the Plans.

The Company s 2004 Plan was adopted by the board of directors on March 4, 2004 and approved by the stockholders on May 13, 2004. As of December 31, 2012, there were 15,000,000 shares authorized for issuance under the 2004 Plan. The Company may grant options, RSUs, stock appreciation rights and other stock-based awards to employees, officers, directors, consultants and advisors under the 2004 Plan. As of December 31, 2012, there were 11,394,493 shares available for future grants under the 2004 Plan.

MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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The Company s 1995 Plan expired in November 2005 and no further awards may be granted under the 1995 Plan, although there are still outstanding options which may be exercised under this plan.

The Company s 1997 Director Plan expired in February 2007 and no further awards may be granted under the 1997 Director Plan, although there are still outstanding options which may be exercised under this plan.

Stock options were granted at an exercise price equal to 100% of the fair value of the Company s Common Stock at the date of grant. Generally, stock options granted to employees under the Plans in 2001 and after, vested 25% after one year and 6.25% per quarter thereafter, and expire 10 years after the grant date. Generally, stock options granted under the Plans prior to 2001 vested 20% after one year and 5% per quarter thereafter, and expired 10 years after the grant date. Options granted to directors generally vested at the earliest of (1) one day prior to the next annual meeting, (2) 13 months from date of grant, or (3) the effective date of an acquisition. All stock options are fully vested as of December 31, 2012. RSUs granted in 2012 and 2011 generally vest 33.3% per year after the date of grant. RSUs granted in 2010 and prior, generally vest three years from the date of grant. RSUs granted to employees who are at least 60 years old and have a combined years of age plus years of service (as defined) equal to 70 years or more, are expensed immediately. RSUs granted to directors generally vest at the earliest of (1) one day prior to the next annual meeting, (2) 13 months from date of grant, or (3) the effective date of an acquisition. Certain equity incentive awards involve RSUs that are subject to performance conditions (performance shares) under the Company s stock incentive plans. Such performance shares are available, subject to time-based vesting conditions if, and to the extent that, financial or operational performance criteria for the applicable period are achieved. Accordingly, the number of performance shares earned will vary based on the level of achievement of financial or operational performance objectives for the applicable period.

The following table presents the activity for RSUs under the Plans:

	Years Ended December 31,					
	2012		2011		2010	
	Non-vested RSUs	Weighted Average Grant Date Fair Value	Non-vested RSUs	Weighted Average Grant Date Fair Value	Non-vested RSUs	Weighted Average Grant Date Fair Value
Non-vested RSUs beginning of period	1,115,005	$ 21.50	1,327,306	$ 18.34	1,581,883	$ 19.77
Granted	426,583	$ 29.14	397,492	$ 30.27	555,995	$ 19.63
Vested	(557,314)	$ 19.01	(569,891)	$ 20.42	(706,224)	$ 20.65
Forfeited or expired	(42,071)	$ 22.36	(39,902)	$ 18.36	(104,348)	$ 18.32
Non-vested RSUs end of period	942,203	$ 26.58	1,115,005	$ 21.50	1,327,306	$ 18.34

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

The following table presents the activity for options under the Plans:

	Years Ended December 31,					
	2012		2011		2010	
	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
Outstanding beginning of period	420,712	$ 21.97	1,793,214	$ 22.38	2,514,822	$ 21.67
Exercised	(123,650)	$ 18.78	(1,351,684)	$ 22.46	(568,464)	$ 16.49
Forfeited or expired	(41,413)	$ 32.32	(20,818)	$ 22.66	(153,144)	$ 32.51
Outstanding end of period	255,649	$ 21.74	420,712	$ 21.97	1,793,214	$ 22.38
Exercisable at end of period	255,649	$ 21.74	420,712	$ 21.97	1,793,214	$ 22.38

The following table summarizes information with respect to options outstanding and exercisable under the Plans at December 31, 2012:

		Options Outstanding and Exercisable			
		Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (In Years)	Aggregate Intrinsic Value (In Thousands)
$13.54	$18.38	109,614	$ 15.42	1.87	$ 1,135
$20.07	$29.93	146,035	$ 26.48	1.37	128
		255,649			$ 1,263

The weighted average remaining contractual life of options exercisable was 1.6 years at December 31, 2012.

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value, based on the Company s closing stock price of $25.78 as of December 31, 2012, which would have been received by the option holders had all option holders exercised their options as of that date. The total number of in-the-money options exercisable as of December 31, 2012 was 151,239.

The total cash received from employees as a result of employee stock option exercises during the years 2012 and 2011 was approximately $2,322 and $30,362, respectively. In connection with these exercises, the tax benefit realized by the Company for the years 2012 and 2011 were approximately $299 and $2,972, respectively.

The Company settles employee stock option exercises and restricted stock vesting with newly issued common shares.

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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Stock-based compensation expense

The Company recognized the full impact of its share-based payment plans in the consolidated statements of operations and comprehensive income for the years 2012, 2011 and 2010. As of December 31, 2012 and 2011, the Company capitalized $471 of such cost on its consolidated balance sheet. The following table reflects the effect of recording stock-based compensation for the years 2012, 2011 and 2010:

	Years Ended December 31,		
	2012	2011	2010
Stock-based compensation expense by type of award:			
Restricted stock	$ 11,836	$ 10,126	$ 10,026
Employee stock purchase plan	1,195	1,099	578
Total stock-based compensation	13,031	11,225	10,604
Tax effect on stock-based compensation	(1,862)	(5,019)	(1,253)
Net effect on net income	$ 11,169	$ 6,206	$ 9,351
Effect on net earnings per share:			
Basic	$ 0.21	$ 0.12	$ 0.19
Diluted	$ 0.21	$ 0.12	$ 0.18

The pre-tax effect within the consolidated statements of operations and comprehensive income of recording stock-based compensation for the years 2012, 2011 and 2010 was as follows:

	Years Ended December 31,		
	2012	2011	2010
Cost of sales	$ 1,867	$ 1,511	$ 1,452
Research and development expense	2,278	2,197	2,391
Selling, general and administrative expense	8,886	7,517	6,761
Total pre-tax stock-based compensation expense	$ 13,031	$ 11,225	$ 10,604

Valuation Assumptions

The Company determines the fair value of restricted stock based on the number of shares granted and the closing market price of the Company s Common Stock on the date of the award, and estimates the fair value of stock options and employee stock purchase rights using the Black-Scholes valuation model. Such values are recognized as expense on a straight-line basis over the requisite service periods, net of estimated forfeitures except for retirement eligible employees in which the Company expenses the fair value of the grant in the period the grant is issued. The estimation of stock-based awards that will ultimately vest requires significant judgment. The Company considers many factors when estimating expected forfeitures, including types of awards and historical experience. Actual results, and future changes in estimates, may differ substantially from the Company s current estimates.

There were no options granted during 2012, 2011 and 2010. The total intrinsic value of options exercised during 2012, 2011 and 2010 was approximately $1,228, $9,458 and $3,518, respectively.

MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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The weighted average fair value per share of employee stock purchase rights granted in 2012, 2011 and 2010 was $7.24, $5.87 and $5.48, respectively. The fair value of the employees purchase rights was estimated using the Black-Scholes option-pricing model with the following weighted average assumptions:

	Years Ended December 31,		
	2012	**2011**	**2010**
Employee stock purchase rights:			
Expected life (years)	0.5	0.5	0.5
Risk-free interest rate	0.1%	0.2%	0.2%
Expected volatility	32.2%	31.9%	48.7%
Expected annual dividends per share	$ 0.62	$ 0.60	$

Expected volatilities for 2012, 2011 and 2010 are based on a combination of implied and historical volatilities of the Company s Common Stock; the expected life represents the weighted average period of time that options granted are expected to be outstanding giving consideration to vesting schedules and the Company s historical exercise patterns; and the risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for periods corresponding with the expected life of the option.

The total intrinsic value of options exercised and the total fair value of shares vested during 2012, 2011 and 2010 was approximately $16,498, $27,199 and $16,846, respectively. As of December 31, 2012, the unrecognized compensation cost related to restricted stock was approximately $11,238, and will be recognized over an estimated weighted average amortization period of 1.6 years.

20) Employee Benefit Plans

The Company has a 401(k) profit-sharing plan for U.S. employees meeting certain requirements in which eligible employees may contribute between 1% and 50% of their annual compensation to this plan, and, with respect to employees who are age 50 and older, certain specified additional amounts, limited by an annual maximum amount determined by the Internal Revenue Service. The Company, at its discretion, may provide a matching contribution of 50% of each participant s contributions up to 6% of eligible salary. At the discretion of the board of directors, the Company may also make additional contributions for the benefit of all eligible employees. The Company s contributions were $2,245, $2,276 and $1,472 for 2012, 2011 and 2010, respectively.

The Company has one foreign defined benefit plan which is frozen for Company contributions. The total accrual and projected benefit obligation is not material for this plan.

The Company maintains a bonus plan which provides cash awards to key employees, at the discretion of the compensation committee of the board of directors, based upon operating results and employee performance. The bonus expense was $6,248, $7,559, and $18,972 in 2012, 2011 and 2010, respectively.

The Company provides supplemental retirement benefits for certain of its officers and executive officers. The total cost of these benefits was $3,454, $3,931 and $3,428 for 2012, 2011 and 2010, respectively. The accumulated benefit obligation was $16,353 and $12,870 at December 31, 2012 and 2011, respectively and was included in other long-term liabilities.

MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

21) Net Income Per Share

Basic earnings per share (EPS), is computed by dividing income available to common stockholders by the weighted-average number of common shares outstanding during the period. The computation of diluted EPS is similar to the computation of basic EPS except that the denominator is increased to include the number of additional common shares that would have been outstanding (using the treasury stock method), if securities containing potentially dilutive common shares (stock options and restricted stock units) had been converted to such common shares, and if such assumed conversion is dilutive.

The following is a reconciliation of basic to diluted net income per share:

	Years Ended December 31,		
	2012	2011	2010
Numerator:			
Income from continuing operations	$ 48,029	$ 129,731	$ 132,919
Income from discontinued operations, net of tax			9,668
Net income	$ 48,029	$ 129,731	$ 142,587
Denominator:			
Shares used in net income per common share basic	52,686,000	52,169,000	50,077,000
Effect of dilutive securities:			
Stock options, restricted stock and employee stock purchase plan	548,000	678,000	850,000
Shares used in net income per common share diluted	53,234,000	52,847,000	50,927,000
Basic income per common share:			
Continuing operations	$ 0.91	$ 2.49	$ 2.66
Discontinued operations			0.19
Net income	$ 0.91	$ 2.49	$ 2.85
Diluted income per common share:			
Continuing operations	$ 0.90	$ 2.45	$ 2.61
Discontinued operations			0.19
Net income	$ 0.90	$ 2.45	$ 2.80

As of December 31, 2012, 2011 and 2010, stock options and restricted stock units relating to an aggregate of approximately 1,198,000, 1,536,000 and 3,121,000 shares, respectively, were outstanding. In 2012, 2011 and 2010, the potential dilutive effect of 204,000, 259,000 and 1,256,000 weighted average shares, respectively, of stock options were excluded from the computation of diluted weighted-average shares outstanding as the shares would have an anti-dilutive effect on EPS.

22) Business Segment, Geographic Area, Product and Significant Customer Information

Effective in the second quarter of fiscal year 2012, the Company changed its financial reporting structure to include four reportable segments based upon the manner in which information is produced internally and provided to the Company s chief operating decision-maker (CODM). The Company had previously reported as a single operating and reporting segment.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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The Company develops, manufactures, sells and services products that measure, control, power and monitor critical parameters of advanced manufacturing processes. The Company s CODM utilizes consolidated financial information to make decisions about allocating resources and assessing performance for the entire Company. In addition, certain disaggregated financial information is also provided to the CODM. Based upon the information provided to the CODM, the Company has determined it has eight operating segments and four reportable segments.

The eight operating segments are PFMC Products, Controls Products, ASTeX Products, ENI Products, HPS Products (Vacuum Products), Analytical Solutions Group, Europe Region Sales & Service and Asia Region Sales & Service.

PFMC Products, Controls Products, ASTeX Products, ENI Products and HPS Products comprise a single reportable segment due to the similarities of the segments. This reportable segment, Advanced Manufacturing Capital Equipment, includes the development, manufacturing, sales and servicing of instruments and control products, power and reactive gas products and vacuum products, all of which are utilized in semiconductor processing and other similar advanced manufacturing processes. Sales in this segment include both external sales and intercompany sales (which are stated at agreed upon transfer prices). External sales of these products made in Europe or Asia are reported as sales in the Europe Region Sales & Service or Asia Region Sales & Service segments.

Analytical Solutions Group, Europe Region Sales & Service and Asia Region Sales & Service are each separate reportable segments. The Company has reported corporate expenses and certain intercompany pricing transactions in a Corporate, Eliminations and Other reconciling column. The Analytical Solutions Group includes gas composition analysis and information technology products and custom fabrication services. The Europe and Asia sales and service segments mainly resell and service the Advanced Manufacturing Capital Equipment and Analytical Solutions Group products sold in their respective regions.

MKS derives the segment results directly from the manner in which results are reported in its management reporting system. The accounting policies MKS uses to derive reportable segment results are substantially the same as those used for external reporting purposes except that a substantial portion of the sales of the Advanced Manufacturing Capital Equipment and Analytical Solutions Group segments are intercompany sales to the regions at tax-based transfer prices and certain significant costs, including stock-based compensation and management incentive compensation, are not allocated to the segments and are included in Corporate, Eliminations and Other. The CODM reviews several metrics of each operating segment, including net revenues and gross profit (loss).

The following is net revenues by reportable segment:

	Years Ended December 31,		
	2012	2011	2010
Advanced Manufacturing Capital Equipment	$ 479,751	$ 647,908	$ 712,737
Analytical Solutions Group	62,765	61,303	52,888
Europe Region Sales & Service(1)	51,440	75,253	70,153
Asia Region Sales & Service(1)	229,731	305,448	274,912
Corporate, Eliminations and Other	(180,179)	(267,395)	(257,576)
	$ 643,508	$ 822,517	$ 853,114

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

(1) The Europe and Asia foreign sales and service operations do not represent total geographical Europe and Asia financial information. These sales and service operations only represent the sales from the resale and service of Advanced Manufacturing Capital Equipment and Analytical Solutions Group products in their respective regions. The Advanced Manufacturing Capital Equipment and Analytical Solutions Group segments both have sales in each region. Accordingly, total geographical sales include sales from multiple reportable segments.

The following is gross profit by reportable segment:

	Years Ended December 31,		
	2012	**2011**	**2010**
Advanced Manufacturing Capital Equipment	$ 171,308	$ 263,863	$ 294,502
Analytical Solutions Group	32,741	31,800	25,830
Europe Region Sales & Service(1)	15,156	21,323	19,587
Asia Region Sales & Service(1)	36,962	45,267	48,952
Corporate, Eliminations and Other	13,312	12,735	(10,233)
	$ 269,479	$ 374,988	$ 378,638

(1) The Europe and Asia foreign sales and service operations do not represent total geographical Europe and Asia financial information. These sales and service operations only represent the sales from the resale and service of Advanced Manufacturing Capital Equipment and Analytical Solutions Group products in their respective regions. The Advanced Manufacturing Capital Equipment and Analytical Solutions Group segments both have sales in each region. Accordingly, total geographical sales include sales from multiple reportable segments.

The following is capital expenditures by reportable segment for the years ended December 31, 2012, 2011 and 2010:

	Product Groups		Foreign Sales & Service Operations			
	Advanced Manufacturing Capital Equipment	**Analytical Solutions Group**	**Europe**	**Asia**	**Corporate, Eliminations and Other**	**Total**
December 31, 2012:						
Capital expenditures	$ 11,817	$ 1,228	$ 132	$ 886	$ 3,642	$ 17,705
December 30, 2011:						
Capital expenditures	$ 11,947	$ 868	$ 362	$ 1,552	$ 838	$ 15,567
December 30, 2010:						
Capital expenditures	$ 11,148	$ 1,287	$ 374	$ 1,189	$ 1,821	$ 15,819

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

The following is depreciation and amortization expense by reportable segment for the years ended December 31, 2012, 2011 and 2010:

	Product Groups		Foreign Sales & Service Operations			
	Advanced Manufacturing Capital Equipment	Analytical Solutions Group	Europe	Asia	Corporate, Eliminations and Other	Total
December 31, 2012:						
Depreciation and amortization	$ 9,594	$ 1,176	$ 326	$ 1,711	$ 1,635	$ 14,442
December 30, 2011:						
Depreciation and amortization	$ 8,143	$ 1,470	$ 366	$ 1,539	$ 1,462	$ 12,980
December 30, 2010:						
Depreciation and amortization	$ 7,872	$ 1,432	$ 279	$ 1,473	$ 2,767	$ 13,823

Total income tax expense is impracticable to present by reportable segment because the necessary information is not available.

The following is segment assets by reportable segment:

	Product Groups		Foreign Sales & Service Operations			
	Advanced Manufacturing Capital Equipment	Analytical Solutions Group	Europe	Asia	Corporate, Eliminations and Other	Total
December 31, 2012:						
Segment assets:						
Accounts receivable	$ 9,644	$ 5,889	$ 5,813	$ 32,088	$ 28,626	$ 82,060
Inventory	108,397	3,841	3,691	29,534	(10,824)	134,639
Total segment assets	$ 118,041	$ 9,730	$ 9,504	$ 61,622	$ 17,802	$ 216,699

	Product Groups		Foreign Sales & Service Operations			
	Advanced Manufacturing Capital Equipment	Analytical Solutions Group	Europe	Asia	Corporate, Eliminations and Other	Total
December 31, 2011:						
Segment assets:						
Accounts receivable	$ 24,224	$ 5,099	$ 6,079	$ 60,242	$ 25,250	$ 120,894
Inventory	119,314	4,442	3,828	45,828	(19,780)	153,632

Total segment assets	$ 143,538	$ 9,541	$ 9,907	$ 106,070	$ 5,470	$ 274,526

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

A reconciliation of segment assets to consolidated total assets is as follows:

	Years Ended December 31,	
	2012	2011
Total segment assets	$ 216,699	$ 274,526
Cash and cash equivalents and investments	627,399	573,392
Other current assets	36,242	44,856
Property, plant and equipment, net	80,516	72,487
Goodwill and intangible assets, net	162,294	141,127
Other assets	11,692	12,266
Consolidated total assets	$ 1,134,842	$ 1,118,654

Information about the Company s operations in different geographic regions is presented in the tables below. Net revenues to unaffiliated customers are based on the location in which the sale originated. Transfers between geographic areas are at negotiated transfer prices and have been eliminated from consolidated net revenues.

	Years Ended December 31,		
	2012	2011	2010
Net revenues:			
United States	$ 326,894	$ 391,122	$ 484,139
Japan	81,883	106,003	118,537
Europe	85,362	115,362	96,545
Asia (excluding Japan)	149,369	210,030	153,893
	$ 643,508	$ 822,517	$ 853,114

	Years Ended December 31,	
	2012	2011
Long-lived assets:(1)		
United States	$ 62,203	$ 56,760
Japan	2,562	3,908
Europe	5,844	5,437
Asia (excluding Japan)	12,102	8,374
	$ 82,711	$ 74,479

(1) Long-lived assets include property, plant and equipment, net and certain other assets.

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

Worldwide Product Information

Because the reportable segment information above does not reflect worldwide sales of the Company s products, the Company groups its products into four groups of similar products based upon the similarity of product function. Worldwide net revenue for each group of products is as follows:

	Years Ended December 31,		
	2012	2011	2010
Instruments and Control Products	$ 258,521	$ 348,735	$ 373,909
Power and Reactive Gas Products	251,669	327,151	343,827
Vacuum Products	66,418	81,782	78,819
Analytical Solutions Group Products	66,900	64,849	56,559
	$ 643,508	$ 822,517	$ 853,114

Sales of Instruments and Control Products, Power and Reactive Gas Products and Vacuum Products are included in the Company s Advanced Manufacturing Capital Equipment Products segment as well as in the foreign sales and service operations because the products are sold through the foreign sales and service operations in their respective regions. Sales of the Analytical Solutions Group Products are included in the Analytical Solutions Group Products segment as well as in the foreign sales and service operations because the products are sold through the foreign sales and service operations in their respective regions.

Major Customers

The Company had two customers with net revenues greater than 10% of total net revenues in the periods shown as follows:

	Years Ended December 31,		
	2012	2011	2010
Customer A	14.50%	13.56%	15.76%
Customer B	10.12%	6.52%	9.00%

23) Commitments and Contingencies

During the third quarter of 2012, the Company settled litigation with shareholders of its former subsidiary for $5,316. The complaint alleged certain claims against the Company including breach of contract and implied covenants, and statutory violations. The claims sought unspecified damages and equitable relief. The Company believed that it had meritorious factual and legal defenses to the allegations raised, but reached a settlement primarily to eliminate future legal expenses related to the suit.

The Company is subject to various other legal proceedings and claims, which have arisen in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the Company s results of operations, financial condition or cash flows.

The Company leases certain of its facilities and machinery and equipment under operating leases expiring in various years through 2022. Generally, the facility leases require the Company to pay maintenance, insurance and real estate taxes. Rental expense under operating leases

totaled $8,219, $7,747 and $8,304 for 2012, 2011 and 2010, respectively.

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MKS INSTRUMENTS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(in thousands, except share and per share data)

Minimum lease payments under operating leases are as follows:

		Operating Leases
Year ending December 31,		
2013	$	7,561
2014		5,749
2015		3,973
2016		2,974
2017		2,952
Thereafter		3,252
Total minimum lease payments	$	26,461

As of December 31, 2012, the Company has entered into purchase commitments for certain inventory components and other equipment and services used in its normal operations. The majority of these purchase commitments covered by these arrangements are for periods of less than one year and aggregate to approximately $125,378.

To the extent permitted by Massachusetts law, the Company s Restated Articles of Organization, as amended, require the Company to indemnify any of its current or former officers or directors or any person who has served or is serving in any capacity with respect to any of the Company s employee benefit plans. The Company believes that the estimated exposure for these indemnification obligations is currently not material. Accordingly, the Company has no material liabilities recorded for these requirements as of December 31, 2012.

The Company also enters into agreements in the ordinary course of business which include indemnification provisions. Pursuant to these agreements, the Company indemnifies, holds harmless and agrees to reimburse the indemnified party, generally its customers, for losses suffered or incurred by the indemnified party in connection with certain patent or other intellectual property infringement claims, and, in some instances, other claims, by any third party with respect to the Company s products. The term of these indemnification obligations is generally perpetual after execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is, in some instances, not contractually limited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification obligations. As a result, the Company believes the estimated fair value of these obligations is minimal. Accordingly, the Company has no liabilities recorded for these obligations as of December 31, 2012.

As part of past acquisitions and divestitures of businesses or assets, the Company has provided a variety of indemnifications to the sellers and purchasers for certain events or occurrences that took place prior to the date of the acquisition or divestiture. Typically, certain of the indemnifications expire after a defined period of time following the transaction, but certain indemnifications may survive indefinitely. The maximum potential amount of future payments the Company could be required to make for such obligations is undeterminable at this time. Other than obligations recorded as liabilities at the time of the acquisitions, historically the Company has not made significant payments for these indemnifications. Accordingly, no material liabilities have been recorded for these obligations.

In conjunction with certain asset sales, the Company may provide routine indemnifications whose terms range in duration and often are not explicitly defined. Where appropriate, an obligation for such indemnification is recorded as a liability. Because the amounts of liability under these types of indemnifications are not explicitly stated, the overall maximum amount of the obligation under such indemnifications cannot be reasonably estimated. Other than obligations recorded as liabilities at the time of the asset sale, historically the Company has not made significant payments for these indemnifications.

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MKS Instruments, Inc.

Supplemental Financial Data

	Quarter Ended			
	March 31	June 30	Sept. 30	Dec. 31
	(Table in thousands, except per share data)			
	(Unaudited)			
2012				
Statement of Operations Data				
Net sales	$ 190,868	$ 177,397	$ 141,447	$ 133,796
Gross profit	83,791	76,516	56,571	52,601
Income from operations	33,369	27,847	6,392	6,615
Net income	$ 22,768	$ 18,572	$ 2,580	$ 4,109
Net income per share:				
Basic	$ 0.43	$ 0.35	$ 0.05	$ 0.08
Diluted	$ 0.43	$ 0.35	$ 0.05	0.08
Cash dividends paid per common share	$ 0.15	$ 0.15	$ 0.16	$ 0.16
2011				
Statement of Operations Data				
Net sales	$ 231,851	$ 224,487	$ 194,508	$ 171,671
Gross profit	106,361	104,988	87,678	75,961
Income from operations	56,508	57,305	41,112	30,000
Net income	$ 38,043	$ 38,601	$ 30,373	$ 22,714
Net income per share:				
Basic	$ 0.74	$ 0.74	$ 0.58	$ 0.43
Diluted	$ 0.73	$ 0.73	$ 0.57	$ 0.43
Cash dividends paid per common share	$ 0.15	$ 0.15	$ 0.15	$ 0.15

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Item 9. *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure*
None.

Item 9A. *Controls and Procedures*
Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2012. The term disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act), means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer s management, including its principal executive and principal financial officers, or persons performing similar functions as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2012, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer as appropriate to allow timely decisions regarding required disclosure.

Management s Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, the Company s Chief Executive Officer and Chief Financial Officer or persons performing similar functions and effected by the Company s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company;

- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and

- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2012. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control Integrated Framework*.

Based on our assessment, management concluded that, as of December 31, 2012, our internal control over financial reporting was effective based on those criteria.

Management has excluded the operations of Plasmart, Inc. (Plasmart) from its assessment of internal control over financial reporting as of December 31, 2012 because this entity was acquired by the Company in a purchase business combination during the second half of fiscal year 2012. The total assets and total revenues of the acquired businesses of Plasmart represent approximately 2.5% and less than 1%, respectively, of the related consolidated financial statement amounts of the Company as of and for the year ended December 31, 2012.

Our internal controls over financial reporting as of December 31, 2012 have been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their attestation report which appears in Item 8.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. ***Other Information***

None.

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PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

The information required by this item will be set forth under the captions Election of Directors, Executive Officers, Code of Ethics, Directors Audit Committee Financial Expert and Corporate Governance in our definitive proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

We are also required under Item 405 of Regulation S-K to provide information concerning delinquent filers of reports under Section 16 of the Securities and Exchange Act of 1934, as amended. This information will be set forth under the caption Section 16(a) Beneficial Ownership Reporting Compliance in our definitive proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 11. ***Executive Compensation***

The information required by this item will be set forth under the captions Executive Officers Executive Compensation and Executive Officers Compensation Discussion and Analysis in our definitive proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The information required by Item 403 of Regulation S-K will be set forth under the caption Security Ownership of Certain Beneficial Owners and Management in our definitive proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

The information required by Item 201(d) of Regulation S-K will be set forth under the caption Executive Officers Equity Compensation Plan Information in our definitive proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 13. ***Certain Relationships and Related Transactions and Director Independence***

The information required by this item will be set forth under the caption Executive Officers Certain Relationships and Related Transactions and Corporate Governance in our definitive proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

Item 14. ***Principal Accountant Fees and Services***

The information required by this item will be set forth under the caption Independent Registered Public Accounting Firm in our definitive proxy statement for the 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of our fiscal year, and is incorporated herein by reference.

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PART IV

Item 15. ***Exhibits and Financial Statement Schedules***

(a) The following documents are filed as a part of this Report:

1. *Financial Statements*. The following Consolidated Financial Statements are included under Item 8 of this Annual Report on Form 10-K.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Financial Statements:

Report of Independent Registered Public Accounting Firm	43
Consolidated Balance Sheets at December 31, 2012 and 2011	44
Consolidated Statements of Operations and Comprehensive Income for the years ended December 31, 2012, 2011 and 2010	45
Consolidated Statements of Stockholders Equity for the years ended December 31, 2012, 2011 and 2010	46
Consolidated Statements of Cash Flows for the years ended December 31, 2012, 2011 and 2010	47
Notes to Consolidated Financial Statements	48

2. *Financial Statement Schedules*

The following consolidated financial statement schedule is included in this Annual Report on Form 10-K:

Schedule II Valuation and Qualifying Accounts

Schedules other than those listed above have been omitted since they are either not required or information is otherwise included.

3. *Exhibits.* The following exhibits are filed as part of this Annual Report on Form 10-K.

Exhibit No.	Title
+3.1(1)	Restated Articles of Organization
+3.2(2)	Articles of Amendment, as filed with the Secretary of State of Massachusetts on May 18, 2001
+3.3(3)	Articles of Amendment, as filed with the Secretary of State of Massachusetts on May 16, 2002
+3.4(4)	Amended and Restated By-Laws
+4.1(4)	Specimen certificate representing the Common Stock
+10.1(5)*	Second Amended and Restated 1997 Director Stock Option Plan, and forms of option agreements thereto
+10.2(6)*	2004 Stock Incentive Plan, as amended (the 2004 Plan)
+10.3(7)*	Form of Nonstatutory Stock Option Agreement to be granted under the 2004 Plan
+10.4(8)*	Form of Restricted Stock Unit Agreement for Initial Grant to Non-Employee Directors under the 2004 Plan
+10.5(8)*	Form of Restricted Stock Unit Agreement for Annual Grant to Non-Employee Directors under the 2004 Plan

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Exhibit No.	Title
+10.6(8)*	Form of Performance-Based Restricted Stock Unit Agreement under the 2004 Plan
+10.7(8)*	Form of Time-Based Restricted Stock Unit Agreement under the 2004 Plan
+10.8(6)*	Form of Time-Based Restricted Stock Unit Agreement and Form of Performance-Based Restricted Stock Unit Agreement under the 2004 Plan (grants beginning in 2011)
10.9*	Form of Restricted Stock Unit Agreement under the 2004 Plan (grants beginning in 2013)
+10.10(9)*	Second Restated 1995 Stock Incentive Plan (the 1995 Plan)
+10.11(10)*	Form of Nonstatutory Stock Option Agreement under the 1995 Plan
+10.12(10)*	Employment Agreement dated as of July 30, 2004 between John Smith and the Registrant (the Smith Employment Agreement)
+10.13(11)	Global Supply Agreement dated April 12, 2005 by and between the Registrant and Applied Materials, Inc.
+10.14(11)*	Employment Agreement dated as of April 25, 2005 between Gerald Colella and the Registrant (the Colella Employment Agreement)
+10.15(12)*	Employment Agreement dated as of July 1, 2005 between John Bertucci and the Registrant
+10.16(12)*	Employment Agreement dated as of July 1, 2005 between William D. Stewart and the Registrant
+10.17(13)*	Employment Agreement dated July 1, 2005 between Leo Berlinghieri and the Registrant, as amended on November 13, 2007 (the Berlinghieri Employment Agreement)
+10.18(6)*	Employment Agreement dated as of January 6, 2006 between Seth Bagshaw and the Registrant
+10.19(14)*	Amendment, dated November 10, 2008, to the Berlinghieri Employment Agreement
+10.20(14)*	Amendment, dated November 10, 2008, to the Smith Employment Agreement
+10.21(14)*	Amendment, dated November 10, 2008, to the Colella Employment Agreement
+10.22(15)*	Amendment, dated October 19, 2009, to the Berlinghieri Employment Agreement, as amended
+10.23(15)*	Amendment, dated October 19, 2009, to the Colella Employment Agreement, as amended
10.24*	Amendment, dated December 21, 2012, to the Berlinghieri Employment Agreement, as amended
10.25*	Amendment, dated December 21, 2012, to the Colella Employment Agreement, as amended
10.26*	Amendment, dated December 21, 2012, to the Smith Employment Agreement, as amended
10.27*	2012 Management Incentive Bonus Plan for Named Executive Officers
10.28*	Form of 2013 Management Incentive Bonus Plan for Named Executive Officers
10.29	Amendment, dated October 25, 2012, to Applied Global Supply Agreement
21.1	Subsidiaries of the Registrant
23.1	Consent of PricewaterhouseCoopers LLP
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a)/Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a)/Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended

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Exhibit No.	Title
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document. **
101.SCH	XBRL Taxonomy Extension Schema Document. **
101.CAL	XBRL Taxonomy Calculation Linkbase. **
101.LAB	XBRL Taxonomy Labels Linkbase Document. **
101.PRE	XBRL Taxonomy Presentation Linkbase Document. **
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document. **

+ Previously filed

* Management contract or compensatory plan arrangement filed as an Exhibit to this Form 10-K pursuant to Item 15(b) of this report.

** Submitted electronically herewith.

The following materials from MKS Instrument, Inc. s Annual Report on Form 10-K for the year ended December 31, 2011, formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations and Comprehensive Income, (iii) the Consolidated Statements of Stockholders Equity, (iv) the Consolidated Statements of Cash Flows, (v) Notes to the Consolidated Financial Statements.

Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

(1) Incorporated by reference to the Registration Statement on Form S-4 (File No. 333-49738) filed with the Securities and Exchange Commission on November 13, 2000.

(2) Incorporated by reference to the Registrant s Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.

(3) Incorporated by reference to the Registrant s Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.

(4) Incorporated by reference to the Registration Statement on Form S-1 filed with the Securities and Exchange Commission on March 2, 1999.

(5) Incorporated by reference to the Registrant s Annual Report on Form 10-K for the year ended December 31, 2004.

(6) Incorporated by reference to the Registrant s Annual Report on Form 10-K for the year ended December 31, 2010.

(7) Incorporated by reference to the Registrant s Quarterly Report on Form 10-Q for the quarter ended September 30, 2004.

(8) Incorporated by reference to the Registrant s Annual Report on Form 10-K for the year ended December 31, 2006.

(9) Incorporated by reference to the Registrant s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

(10) Incorporated by reference to the Registrant s Current Report on Form 10-Q filed with the Securities and Exchange Commission on June 30, 2004.

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(11) Incorporated by reference to the Registrant s Current Report on Form 8-K filed with the Securities and Exchange Commission on April 27, 2005.

(12) Incorporated by reference to the Registrant s Current Report on Form 8-K filed with the Securities and Exchange Commission on July 5, 2005.

(13) Incorporated by reference to the Registrant s Annual Report on Form 10-K for the year ended December 31, 2007.

(14) Incorporated by reference to the Registrant s Annual Report on Form 10-K for the year ended December 31, 2008.

(15) Incorporated by reference to the Registrant s Current Report on Form 8-K filed with the Securities and Exchange Commission on October 23, 2009.

(b) Exhibits

MKS hereby files as exhibits to our Annual Report on Form 10-K those exhibits listed in Item 15(a) above.

(c) Financial Statement Schedules

MKS INSTRUMENTS, INC.

SCHEDULE II VALUATION AND QUALIFYING ACCOUNTS

Description	Balance at Beginning of Year	Additions: Charged to Costs and Expenses	Additions: Charged to Other Accounts	Deductions & Write-offs	Balance at End of Year
			(Dollars in thousands)		
Accounts receivable allowance:					
Years ended December 31,					
2012	$ 2,516	$ 3,452	$	$ 3,089	$ 2,879
2011	$ 2,557	$ 3,390	$	$ 3,431	$ 2,516
2010	$ 2,415	$ 3,637	$	$ 3,495	$ 2,557

Description	Balance at Beginning of Year	Additions: Charged to Costs and Expenses	Additions: Charged to Other Accounts	Deductions	Balance at End of Year
			(Dollars in thousands)		
Valuation allowance on deferred tax asset:					
Years ended December 31,					
2012	$ 26,475	$ (44)	$ 1,066		$ 27,497
2011	$ 25,267	$	$ 1,208	$	$ 26,475
2010	$ 5,201	$	$ 20,833	$ 767	$ 25,267

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

MKS INSTRUMENTS, INC.

By: /s/ LEO BERLINGHIERI
LEO BERLINGHIERI

Chief Executive Officer and Director

(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated.

SIGNATURES	TITLE	DATE
/s/ JOHN R. BERTUCCI	Chairman of the Board of Directors	February 18, 2013
John R. Bertucci		
/s/ LEO BERLINGHIERI	Chief Executive Officer and Director	February 26, 2013
Leo Berlinghieri	(Principal Executive Officer)	
/s/ SETH H. BAGSHAW	Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	February 26, 2013
Seth H. Bagshaw		
/s/ CRISTINA H. AMON	Director	February 21, 2013
Cristina H. Amon		
/s/ ROBERT R. ANDERSON	Director	February 21, 2013
Robert R. Anderson		
/s/ GREGORY R. BEECHER	Director	February 19, 2013
Gregory R. Beecher		
/s/ RICHARD S. CHUTE	Director	February 19, 2013
Richard S. Chute		
/s/ PETER R. HANLEY	Director	February 21, 2013
Peter R. Hanley		

/s/ ELIZABETH A. MORA	Director	February 20, 2013
Elizabeth A. Mora		

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