

BIOMET INC
Form 10-Q
June 04, 2007
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended November 30, 2006

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____

Commission file number: **0-12515**

BIOMET, INC.

(Exact name of registrant as specified in its charter)

INDIANA
(State or other jurisdiction of
incorporation or organization)

35-1418342
(I.R.S. Employer I.D. No.)

56 East Bell Drive Warsaw, Indiana
(Address of principal executive offices)

46582
(Zip Code)

(574) 267-6639

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(Registrant's telephone number, including area code)

Not Applicable

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

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

Indicate by check mark whether the registrant is a large accelerated filer, and accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-Accelerated filer

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

As of November 30, 2006, the registrant had 245, 210, 886 common shares outstanding.

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EXPLANATORY NOTE

As described in further detail below, Biomet, Inc. (*Biomet* or the *Company*) has amended its annual report on Form 10-K for the fiscal year ended May 31, 2006 and quarterly report on Form 10-Q for the fiscal period ended August 31, 2006. The Company has not amended and does not intend to amend any of its previously filed annual reports on Form 10-K or quarterly reports on Form 10-Q for the periods affected by the restatement other than the Company's quarterly report on Form 10-Q for the fiscal period ended August 31, 2006 and the Company's annual report on Form 10-K for the fiscal year ended May 31, 2006. This quarterly report on Form 10-Q for the fiscal period ended November 30, 2006 supersedes in its entirety the Company's preliminary results furnished in Exhibit 99.1 to the Company's current report on Form 8-K filed with the Securities and Exchange Commission (the *SEC*) on January 19, 2007 and subsequently amended on April 23, 2007 (the *Preliminary Results*). Accordingly, the Preliminary Results should not be relied upon.

For a discussion of the restatement to the previously furnished preliminary results see Note 2 (Restatement of Previously Furnished Preliminary Financial Statements).

Following the publication of an analyst report suggesting that certain historical grants of stock options by the Company took place on dates where Biomet's stock price was trading at relatively low prices and the filing of two shareholder derivative lawsuits alleging improper backdating of stock options, the Company's Board of Directors (the *Board*) formed a special committee (the *Special Committee*) to conduct an independent investigation of the Company's stock option grants for the period from March 1996 to May 2006 and to determine whether the Company had any claims arising out of any inappropriate stock option backdating and, if so, whether it was in the best interest of the Company and its stakeholders to pursue any such claim. The Special Committee retained independent counsel to advise it in connection with and to conduct its investigation. Counsel to the Special Committee also hired independent accountants to assist in the investigation.

On December 18, 2006 and March 30, 2007, the Company announced preliminary reports from the Special Committee presented by counsel to the Special Committee and the independent accountants retained by counsel to the Special Committee. On May 25, 2007, the Board received and discussed the updated findings contained in the Special Committee's final report. The Special Committee's review did not cover any periods subsequent to May 31, 2006. As a result, stock option awards granted during the Company's six-month period ended November 30, 2006 were not examined by the Special Committee.

This quarterly report on Form 10-Q should be read in conjunction with the Company's other filings with the SEC, such as the Company's current reports on Form 8-K, the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006, the Company's amended quarterly report on Form 10-Q/A for the period ended August 31, 2006 and the Company's definitive proxy statement on Schedule 14A filed with the SEC on April 24, 2007, and any amendments to these filings.

Amended Annual Report on Form 10-K/A

On May 29, 2007 the Company filed with the SEC an amended annual report on Form 10-K/A for its fiscal year ended May 31, 2006 which contains additional information concerning the Special Committee's investigation and the impact of the Special Committee's findings on certain of the Company's historical financial statements. For further information concerning the Special Committee's investigation and the impact of the Special Committee's findings on certain of the Company's historical financial statements see the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006 filed with the SEC on May 29, 2007.

Table of Contents**FORWARD-LOOKING STATEMENTS**

This report contains forward-looking statements within the meaning of federal securities laws. Those statements are often indicated by the use of words such as will, intend, anticipate, estimate, expect, plan and similar expressions, and include, but are not limited to, statements related to the timing and number of planned new product introductions; the effect of anticipated changes in the size, health and activities of population on demand for the Company's products; assumptions and estimates regarding the size and growth of certain market segments; the Company's ability and intent to expand in key international markets; the timing and anticipated outcome of clinical studies; assumptions concerning anticipated product developments and emerging technologies; the future availability of raw materials; the anticipated adequacy of the Company's capital resources to meet the needs of its business; the Company's continued investment in new products and technologies; the ultimate marketability of products currently being developed; the ability to successfully implement new technologies; future declarations of cash dividends; the Company's ability to sustain sales and earnings growth; the Company's goals for sales and earnings growth; the future value of the Company's common stock; the ultimate effect of the Company's share repurchase programs; the Company's success in achieving timely approval or clearance of its products with domestic and foreign regulatory entities; the stability of certain foreign economic markets; the impact of anticipated changes in the musculoskeletal industry and the ability of the Company to react to and capitalize on those changes; the ability of the Company to successfully implement its desired organizational changes; the impact of the Company's managerial changes; the Company's inability to satisfy the conditions to closing the proposed merger with the private equity consortium (including obtaining shareholder approval) and the costs and consequences of not closing the merger; the effect of the pending merger with the private equity consortium on the Company's business and its relationship with customers, distributors, employees and suppliers; the results and related outcomes of the review by the Special Committee, including: the impact of the restatement of the Company's financial statements or other actions that may be taken or required as a result of the Special Committee's review including the restatement of the Company's financial statements announced on March 30, 2007; the impact of the inability of the Company to timely file reports with the Securities and Exchange Commission and distribute such reports or statements to its shareholders; the impact of any tax consequences, including any determination that Biomet's filed tax returns were not true, correct and complete; the impact of any determination that some of the Company's options may not have been validly issued under the stock option plans; the impact of the determination that certain of Biomet's financial statements were not prepared in accordance with GAAP and/or the required reporting under the applicable securities rules and regulations; developments related to the Company's internal controls over financial reporting disclosure controls and procedures; and the impact of any determination that some of Biomet's insurance policies may not be in full force and effect and/or that Biomet may not be in compliance with the terms and conditions of the policies; litigation and governmental investigations or proceedings which may arise out of Biomet's stock option granting practices or the restatement of Biomet's financial statements; and the inability to meet NASDAQ requirements for continued listing. Readers of this report are cautioned that reliance on any forward-looking statement involves risks and uncertainties. Although the Company believes that the assumptions on which the forward-looking statements contained herein are based are reasonable, any of those assumptions could prove to be inaccurate given the inherent uncertainties as to the occurrence or nonoccurrence of future events. Any of the assumptions on which forward-looking statements were made could be inaccurate given the inherent uncertainties on which these forward-looking statements were made. There can be no assurance as to the accuracy of forward-looking statements contained in this report. The inclusion of a forward-looking statement herein should not be regarded as a representation by the Company that the Company's objectives will be achieved. Readers of this report should carefully read the factors set forth under Part I, Item 1A Risk Factors of the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006 filed with the SEC on May 29, 2007 and Part II, Item 1A Risk Factors of the Company's quarterly report on Form 10-Q for the fiscal period ended February 28, 2007 filed with the SEC on June 4, 2007 for a description of certain risks that could, among other things, cause actual results to differ from those contained in forward-looking statements made in this report and presented elsewhere by management from time to time. Such factors, among others, may have a material adverse effect upon the Company's business, financial condition and results of operations. The Company undertakes no obligation to update publicly or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Accordingly, the reader is cautioned not to place undue reliance on forward-looking statements which speak only as of the date on which they were made.

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ENDED NOVEMBER 30, 2006

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Table of Contents**Part I. Financial Information****Item 1. Financial Statements**

BIOMET, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
at November 30, 2006 and May 31, 2006
(in thousands)

	November 30, 2006 As Restated(1) (Unaudited)	May 31, 2006 As Restated(1)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 98,554	\$ 160,963
Investments	6,451	6,380
Accounts and notes receivable, net	554,301	507,883
Inventories	563,231	534,515
Refundable income taxes	25,195	16,880
Deferred income taxes	76,911	75,190
Prepaid expenses and other	75,144	32,342
Total current assets	1,399,787	1,334,153
Property, plant and equipment, at cost	711,883	655,432
Less, Accumulated depreciation	341,033	297,800
Property, plant and equipment, net	370,850	357,632
Investments	62,179	58,128
Goodwill	442,063	441,397
Intangible assets, net	75,730	79,498
Other assets	14,079	11,839
Total assets	\$ 2,364,688	\$ 2,282,647
LIABILITIES AND SHAREHOLDERS EQUITY		
Current liabilities:		
Short-term borrowings	\$ 209,682	\$ 276,561
Accounts payable	56,903	62,276
Accrued wages and commissions	84,415	84,665
Other accrued expenses	107,115	111,960
Total current liabilities	458,115	535,462
Long-term liabilities:		
Deferred income taxes	28,210	26,991
Total liabilities	486,325	562,453

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Contingencies (Note 8)

Shareholders' equity:

Common shares	216,442	206,633
Additional paid-in capital	126,017	116,528
Retained earnings	1,507,892	1,379,303
Accumulated other comprehensive income	28,012	17,730
Total shareholders' equity	1,878,363	1,720,194
Total liabilities and shareholders' equity	\$ 2,364,688	\$ 2,282,647

(1) See Note 2 (Restatement of Previously Furnished Preliminary Financial Statements) in the notes to the consolidated financial statements. The accompanying notes are a part of the consolidated financial statements.

Table of Contents**BIOMET, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF INCOME**

for the six-and three-months ended November 30, 2006 and 2005

(Unaudited, in thousands, except per share data)

	Six-Months Ended November 30,		Three-Months Ended November 30,	
	2006 As Restated(1)	2005 As Restated(1)	2006 As Restated(1)	2005 As Restated(1)
Net Sales	\$ 1,028,491	\$ 979,593	\$ 520,330	\$ 494,690
Cost of sales	289,976	274,306	151,273	139,725
Gross profit	738,515	705,287	369,057	354,965
Selling, general and administrative expenses	380,476	361,022	191,010	182,259
Research and development expense	47,190	42,518	22,917	21,530
Operating income	310,849	301,747	155,130	151,176
Other income, net	3,857	119	2,758	(342)
Income before income taxes	314,706	301,866	157,888	150,834
Provision for income taxes	105,559	101,705	53,121	50,358
Net income	\$ 209,147	\$ 200,161	\$ 104,767	\$ 100,476
Earnings per share:				
Basic	\$ 0.85	\$ 0.80	\$ 0.43	\$ 0.41
Diluted	\$ 0.85	\$ 0.80	\$ 0.43	\$ 0.40
Shares used in the computation of earnings per share:				
Basic	244,976	248,963	245,072	248,337
Diluted	244,976	249,952	245,072	249,276
Cash dividends per common share	\$ 0.30	\$ 0.25	\$	\$

(1) See Note 2 (Restatement of Previously Furnished Preliminary Financial Statements) in the notes to the consolidated financial statements.

The accompanying notes are a part of the consolidated financial statements.

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BIOMET, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
for the six-months ended November 30, 2006 and 2005
(Unaudited, in thousands)

	2006 As Restated(1)	2005 As Restated(1)
Cash flows from (used in) operating activities:		
Net income	\$ 209,147	\$ 200,161
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation	42,633	33,599
Amortization	3,527	4,433
Share-based expense	7,334	1,009
Gain on sale of investments, net	(798)	(132)
Deferred income taxes	(1,601)	(2,859)
Tax benefit from exercise of stock options	(1,279)	244
Changes in current assets and liabilities:		
Accounts and notes receivable, net	(44,500)	(13,830)
Inventories	(23,167)	(41,638)
Accounts payable	(3,481)	4,301
Accrued income taxes	(38,125)	(6,763)
Other	(23,143)	377
Net cash provided by operating activities	126,547	178,902
Cash flows from (used in) investing activities:		
Proceeds from sales and maturities of investments	7,085	28,527
Purchases of investments	(7,558)	(25,185)
Capital expenditures	(52,672)	(50,653)
Other	(1,322)	556
Net cash used in investing activities	(54,467)	(46,755)
Cash flows from (used in) financing activities:		
Increase (decrease) in short-term borrowings, net	(64,661)	11,118
Issuance of common shares	9,986	7,718
Cash dividends	(73,526)	(62,473)
Purchase of common shares	(7,268)	(97,929)
Tax benefit from exercise of stock options	1,279	
Net cash used in financing activities	(134,190)	(141,566)
Effect of exchange rate changes on cash	(299)	3,095
Decrease in cash and cash equivalents	(62,409)	(6,324)
Cash and cash equivalents, beginning of year	160,963	104,706
Cash and cash equivalents, end of period	\$ 98,554	\$ 98,382

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- (1) See Note 2 (Restatement of Previously Furnished Preliminary Financial Statements) in the notes to the consolidated financial statements. The accompanying notes are a part of the consolidated financial statements.

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The accompanying consolidated financial statements include the accounts of Biomet, Inc. and its subsidiaries (individually and collectively referred to as "Biomet" or the "Company"). The unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and notes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included.

Operating results for the six-month period ended November 30, 2006 are not necessarily indicative of the results that may be expected for the fiscal year ending May 31, 2007. For further information, refer to the consolidated financial statements and notes thereto included in the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006.

The accompanying consolidated balance sheet at May 31, 2006, has been derived from the audited Consolidated Financial Statements at that date, but does not include all disclosures required by accounting principles generally accepted in the United States.

The Company operates in one business segment, musculoskeletal products, which includes the designing, manufacturing and marketing of reconstructive products, fixation devices, spinal products and other products. Other products consist primarily of softgoods and bracing products produced by EBI L.P., now operating as Biomet Trauma & Biomet Spine ("BTBS"), Biomet sports medicine's arthroscopy products, general instruments and operating room supplies. The Company manages its business segment primarily on a geographic basis. These geographic markets are comprised of the United States, Europe and the Rest of World. Major markets included in the Rest of World geographic market are Canada, South America, Mexico, Japan and the Pacific Rim.

Net sales of musculoskeletal products by product category and geographic segment are as follows for the six-and three-month periods ended November 30, 2006 and 2005:

	Six-Months Ended		Three-Months Ended	
	November 30, 2006	November 30, 2005	November 30, 2006	November 30, 2005
	(in thousands)			
Net Sales by Product Category				
Reconstructive Products	\$ 719,815	\$ 660,154	\$ 368,078	\$ 336,339
Fixation Devices	119,681	124,854	58,808	60,675
Spinal Products	102,783	110,353	50,850	55,027
Other Products	86,212	84,232		