

Wendy's Co  
Form 10-K  
March 01, 2012

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

FORM 10-K

(X) ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED JANUARY 1, 2012

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

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THE WENDY'S COMPANY  
(Exact name of registrants as specified in its charter)

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Commission file number: 1-2207

Delaware 38-0471180  
(State or other jurisdiction of (I.R.S. Employer Identification No.)  
incorporation or organization)

One Dave Thomas Blvd., Dublin, Ohio 43017  
(Address of principal executive offices) (Zip Code)  
Registrant's Telephone Number, Including Area Code: (614) 764-3100

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Securities Registered Pursuant to Section 12(b) of the Act:  
Title of Each Class Name of Each Exchange on Which Registered  
Common Stock, \$.10 par value The NASDAQ Stock Market LLC

Securities Registered Pursuant to Section 12(g) of the Act: None

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WENDY'S RESTAURANTS, LLC  
(Exact name of registrants as specified in its charter)

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Commission file number: 333-161613

Delaware 38-0471180  
(State or other jurisdiction of (I.R.S. Employer Identification No.)  
incorporation or organization)

One Dave Thomas Blvd., Dublin, Ohio 43017  
(Address of principal executive offices) (Zip Code)  
Registrant's Telephone Number, Including Area Code: (614) 764-3100

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Securities Registered Pursuant to Section 12(b) of the Act:

None

Securities Registered Pursuant to Section 12(g) of the Act:

None

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Indicate by check mark if either registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

The Wendy's Company Yes  No

Wendy's Restaurants, LLC Yes  No

Indicate by check mark if each registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.

The Wendy's Company Yes  No

Wendy's Restaurants, LLC Yes  No

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.

The Wendy's Company Yes  No

Wendy's Restaurants, LLC Yes  No \*

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 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).

The Wendy's Company Yes  No

Wendy's Restaurants, LLC Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of each registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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.

The Wendy's Company

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

Wendy's Restaurants, LLC

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

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

The aggregate market value of common equity held by non-affiliates of The Wendy's Company as of July 1, 2011 was approximately \$1,575,521,018. As of February 24, 2011, there were 389,950,170 shares of The Wendy's Company common stock outstanding.

As a limited liability company, Wendy's Restaurants, LLC does not issue common stock but has one member's interest issued and outstanding. Wendy's Restaurants, LLC's sole member is The Wendy's Company. There is no aggregate market value for Wendy's Restaurants, LLC member's interest as of February 24, 2011.

Wendy's Restaurants, LLC meets the conditions set forth in General Instruction (I)(1)(a) and (b) of Form 10-K and is therefore filing this Form 10-K with reduced disclosure format.

\* Wendy's Restaurants, LLC has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the period it was required to file such reports.

#### DOCUMENTS INCORPORATED BY REFERENCE

The information required by Part III of this Form 10-K, to the extent not set forth herein, is incorporated herein by reference from The Wendy's Company's definitive proxy statement to be filed with the Securities and Exchange

Commission pursuant to Regulation 14A not later than 120 days after January 1, 2012.

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## Explanatory Note

This Annual Report on Form 10-K is a combined report being filed separately by The Wendy's Company ("The Wendy's Company") and Wendy's Restaurants, LLC ("Wendy's Restaurants"), a direct 100% owned subsidiary holding company of The Wendy's Company. Unless the context indicates otherwise, any reference in this report to the "Companies," "we," "us," and "our" refers to The Wendy's Company together with its direct and indirect subsidiaries, including Wendy's Restaurants. Each registrant hereto is filing on its own behalf all of the information contained in this annual report that relates to such registrant. Each registrant hereto is not filing any information that does not relate to such registrant, and therefore makes no representation as to any such information. Until July 5, 2011, The Wendy's Company was known as Wendy's/Arby's Group, Inc. and Wendy's Restaurants was known as Wendy's/Arby's Restaurants, LLC.

Where information or an explanation is provided that is substantially the same for each company, such information or explanation has been combined in this Annual Report on Form 10-K. Where information or an explanation is not substantially the same for each company, we have provided separate information and explanation. In addition, separate financial statements for each company are included in Part I Item 8, "Financial Statements and Supplementary Data."

The principal subsidiaries of Wendy's Restaurants for the periods covered in this Annual Report on Form 10-K through July 3, 2011 were Wendy's International, Inc. ("Wendy's") and its subsidiaries and Arby's Restaurant Group, Inc. ("Arby's") and its subsidiaries. On July 4, 2011, Wendy's Restaurants sold 100% of the common stock of Arby's for cash and an indirect 18.5% interest in Arby's (see Note 2 - Discontinued Operations for additional information regarding the sale of Arby's). As a result, substantially all of the continuing operating results of The Wendy's Company are now derived from the operating results of Wendy's and its subsidiaries.

## Part I

### Special Note Regarding Forward-Looking Statements and Projections

This Annual Report on Form 10-K and oral statements made from time to time by representatives of the Companies may contain or incorporate by reference certain statements that are not historical facts, including, most importantly, information concerning possible or assumed future results of operations of the Companies. Those statements, as well as statements preceded by, followed by, or that include the words "may," "believes," "plans," "expects," "anticipates," or the negation thereof, or similar expressions, constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 (the "Reform Act"). All statements that address future operating, financial or business performance; strategies or expectations; future synergies, efficiencies or overhead savings; anticipated costs or charges; future capitalization; and anticipated financial impacts of recent or pending transactions are forward-looking statements within the meaning of the Reform Act. The forward-looking statements are based on our expectations at the time such statements are made, speak only as of the dates they are made and are susceptible to a number of risks, uncertainties and other factors. Our actual results, performance and achievements may differ materially from any future results, performance or achievements expressed or implied by our forward-looking statements. For all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Reform Act. Many important factors could affect our future results and could cause those results to differ materially from those expressed in or implied by the forward-looking statements contained herein. Such factors, all of which are difficult or impossible to predict accurately, and many of which are beyond our control, include, but are not limited to, the following:

- competition, including pricing pressures, couponing, aggressive marketing and the potential impact of competitors' new unit openings on sales of Wendy's restaurants;

- consumers' perceptions of the relative quality, variety, affordability and value of the food products we offer;

• food safety events, including instances of food-borne illness (such as salmonella or E. coli) involving Wendy's or its supply chain;

• consumer concerns over nutritional aspects of beef, poultry, french fries or other products we sell, or concerns regarding the effects of disease outbreaks such as "mad cow disease" and avian influenza or "bird flu";

• success of operating and marketing initiatives, including advertising and promotional efforts and new product and concept development by us and our competitors;

• the impact of general economic conditions and high unemployment rates on consumer spending, particularly in geographic regions that contain a high concentration of Wendy's restaurants;

• changes in consumer tastes and preferences, and in discretionary consumer spending;

• changes in spending patterns and demographic trends, such as the extent to which consumers eat meals away from home;

• certain factors affecting our franchisees, including the business and financial viability of franchisees, the timely payment of such franchisees' obligations due to us or to national or local advertising organizations, and the ability of our franchisees to open new restaurants in accordance with their development commitments, including their ability to finance restaurant development and remodels;

• changes in commodity costs (including beef, chicken and corn), labor, supply, fuel, utilities, distribution and other operating costs;

• availability, location and terms of sites for restaurant development by us and our franchisees;

• development costs, including real estate and construction costs;

• delays in opening new restaurants or completing remodels of existing restaurants;

• the timing and impact of acquisitions and dispositions of restaurants;

• our ability to successfully integrate acquired restaurant operations;

• anticipated or unanticipated restaurant closures by us and our franchisees;

• our ability to identify, attract and retain potential franchisees with sufficient experience and financial resources to develop and operate Wendy's restaurants successfully;

• availability of qualified restaurant personnel to us and to our franchisees, and the ability to retain such personnel;

• our ability, if necessary, to secure alternative distribution of supplies of food, equipment and other products to Wendy's restaurants at competitive rates and in adequate amounts, and the potential financial impact of any interruptions in such distribution;

• availability and cost of insurance;

• adverse weather conditions;

• availability, terms (including changes in interest rates) and deployment of capital;

• changes in, and our ability to comply with, legal, regulatory or similar requirements, including franchising laws, accounting standards, payment card industry rules, overtime rules, minimum wage rates, wage and hour laws, government-mandated health care benefits, tax legislation and menu-board labeling requirements;

• the costs, uncertainties and other effects of legal, environmental and administrative proceedings;

• the effects of charges for impairment of goodwill or for the impairment of other long-lived assets;

• the effects of war or terrorist activities;

expenses and liabilities for taxes related to periods up to the date of sale of Arby's as a result of the indemnification provisions of the Arby's Purchase and Sale Agreement; and

other risks and uncertainties affecting us and our subsidiaries referred to in this Annual Report on Form 10-K (see especially "Item 1A. Risk Factors" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations") and in our other current and periodic filings with the Securities and Exchange Commission.



All future written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. We assume no obligation to update any forward-looking statements after the date of this Annual Report on Form 10-K as a result of new information, future events or developments, except as required by Federal securities laws. In addition, it is our policy generally not to endorse any projections regarding future performance that may be made by third parties.

## Item 1. Business.

### Introduction

The Wendy's Company ("The Wendy's Company") is the parent company of its 100% owned subsidiary holding company Wendy's Restaurants, LLC ("Wendy's Restaurants"). Wendy's Restaurants is the parent company of Wendy's International, Inc. ("Wendy's"), which is the owner and franchisor of the Wendy's® restaurant system in the United States. As used in this report, unless the context requires otherwise, the term "Companies" refers to The Wendy's Company and its direct and indirect subsidiaries, including Wendy's Restaurants.

As of January 1, 2012, the Wendy's restaurant system was comprised of 6,594 restaurants, of which 1,417 were owned and operated by the Companies. References in this Annual Report on Form 10-K (the "Form 10-K") to restaurants that we "own" or that are "company-owned" include owned and leased restaurants. The Wendy's Company's corporate predecessor was incorporated in Ohio in 1929 and was reincorporated in Delaware in June 1994. Effective September 29, 2008, in conjunction with the merger with Wendy's, The Wendy's Company's corporate name was changed from Triarc Companies, Inc. ("Triarc") to Wendy's/Arby's Group, Inc. Effective July 5, 2011, in connection with the sale of Arby's Restaurant Group, Inc. ("Arby's"), Wendy's/Arby's Group, Inc. changed its name to The Wendy's Company. The Companies' principal executive offices are located at One Dave Thomas Blvd., Dublin, Ohio 43017, and their telephone number is (614) 764-3100. We make our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to such reports, as well as The Wendy's Company annual proxy statement, available, free of charge, on our website as soon as reasonably practicable after such reports are electronically filed with, or furnished to, the Securities and Exchange Commission. Our website address is [www.aboutwendys.com](http://www.aboutwendys.com). Information contained on that website is not part of this Form 10-K.

### Merger with Wendy's

On September 29, 2008, Triarc and Wendy's completed their merger (the "Wendy's Merger") in an all-stock transaction in which Wendy's shareholders received 4.25 shares of Wendy's/Arby's Class A common stock for each Wendy's common share owned.

In the Wendy's Merger, approximately 377,000,000 shares of Wendy's/Arby's Class A common stock were issued to Wendy's shareholders. The merger value of approximately \$2.5 billion for financial reporting purposes was based on the 4.25 conversion factor of the Wendy's outstanding shares as well as previously issued restricted stock awards, both at a value of \$6.57 per share which represented the average closing market price of Triarc Class A common stock two days before and after the merger announcement date of April 24, 2008. Wendy's shareholders held approximately 80%, in the aggregate, of Wendy's/Arby's outstanding Class A common stock immediately following the Wendy's Merger. In addition, effective on the date of the Wendy's Merger, Wendy's/Arby's Class B common stock was converted into Class A common stock. In connection with the May 28, 2009 amendment and restatement of Wendy's/Arby's Certificate of Incorporation, Class A common stock was redesignated as "Common Stock."

### Sale of Arby's

During January 2011, The Wendy's Company decided to explore strategic alternatives for the Arby's brand, which culminated in the sale of Arby's, in order to focus on the development of the Wendy's brand. On July 4, 2011, Wendy's Restaurants completed the sale of 100% of the common stock of Arby's to ARG IH Corporation ("Buyer"), a wholly owned subsidiary of ARG Holding Corporation ("Buyer Parent"), for \$130 million in cash (subject to customary purchase price adjustments) and 18.5% of the common stock of Buyer Parent (through which Wendy's Restaurants indirectly retained an 18.5% interest in Arby's) with a fair value of \$19.0 million. Buyer and Buyer Parent were formed for purposes of this transaction. The Buyer also assumed approximately \$190 million of Arby's debt, consisting primarily of capital lease and sale-leaseback obligations.

## Fiscal Year

The Companies use a 52/53 week fiscal year convention whereby their fiscal year ends each year on the Sunday that is closest to December 31 of that year. Each fiscal year generally is comprised of four 13-week fiscal quarters, although in the years with 53 weeks, including 2009, the fourth quarter represents a 14-week period.

## Business Segments

The Wendy's Company and Wendy's Restaurants manage and internally report their business geographically. The operation and franchising of Wendy's restaurants in North America (defined as the United States and Canada) comprises virtually all of our current operations and represents a single reportable segment. The revenues and operating results of Wendy's restaurants outside of North America (including through our joint venture in Japan) are not material.

References herein to The Wendy's Company corporate ("Corporate") represent The Wendy's Company parent company only functions and their effect on the Company's consolidated results of operations and financial condition. See Note 28 of the Financial Statements and Supplementary Data included in Item 8 herein, for financial information attributable to our geographic areas.

## The Wendy's Restaurant System

Wendy's is the world's third largest quick-service restaurant company in the hamburger sandwich segment.

Wendy's is primarily engaged in the business of operating, developing and franchising a system of distinctive quick-service restaurants serving high quality food. At January 1, 2012, there were 6,244 Wendy's restaurants in operation in North America. Of these restaurants, 1,417 were operated by Wendy's and 4,827 by a total of 454 franchisees. In addition, at January 1, 2012, there were 350 franchised Wendy's restaurants in operation in 26 countries and territories other than North America. See "Item 2. Properties" for a listing of the number of company-owned and franchised locations in the United States and in foreign countries and United States territories.

The revenues from our restaurant business are derived from three principal sources: (1) sales at company-owned restaurants; (2) sales of bakery items; and (3) franchise royalties received from Wendy's franchised restaurants.

Wendy's is also a 50% partner in a Canadian restaurant real estate joint venture with Tim Hortons Inc., a quick-service restaurant chain specializing in coffee, baked goods and homestyle lunches. The joint venture owns Wendy's/Tim Hortons combo units in Canada. As of January 2, 2011, there were 105 Wendy's restaurants in operation that were owned by the joint venture.

During the second quarter of 2011, Wendy's became a 49% partner in a joint venture for the operation of Wendy's restaurants in Japan. This joint venture opened its first restaurant in December 2011.

## Wendy's Restaurants

Wendy's opened its first restaurant in Columbus, Ohio in 1969. During 2011, Wendy's opened 20 new company-owned restaurants and closed 15 generally underperforming company-owned restaurants. In addition, Wendy's purchased 18 restaurants from its franchisees. During 2011, Wendy's franchisees opened 69 new restaurants and closed 56 generally underperforming restaurants. In 2009, 71 franchised restaurants were closed in Japan at year-end upon the expiration of the related franchise agreement.

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The following table sets forth the number of Wendy's restaurants at the beginning and end of each year from 2009 to 2011:

	2011	2010	2009
Restaurants open at beginning of period	6,576	6,541	6,630
Restaurants opened during period	89	78	63
Restaurants closed during period	(71 )	(43 )	(152 )
Restaurants open at end of period	6,594	6,576	6,541

During the period from December 29, 2008, through January 1, 2012, 230 Wendy's restaurants were opened and 266 generally underperforming Wendy's restaurants were closed.

## Operations

Each Wendy's restaurant offers a relatively standard menu featuring hamburgers and filet of chicken breast sandwiches, which are prepared to order with the customer's choice of condiments. Wendy's menu also includes chicken nuggets, chili, baked and french fried potatoes, freshly prepared salads, soft drinks, milk, coffee, Frosty™ desserts and kids' meals. In addition, the restaurants sell a variety of promotional products on a limited time basis. Wendy's has been testing breakfast in certain markets in the United States.

Free-standing Wendy's restaurants generally include a pick-up window in addition to a dining room. The percentage of sales at company-owned Wendy's restaurants through the pick-up window was 65.1%, 64.9%, and 64.6% in 2011, 2010, and 2009, respectively.

Wendy's strives to maintain quality and uniformity throughout all restaurants by publishing detailed specifications for food products, preparation and service, continual in-service training of employees, restaurant operational audits and field visits from Wendy's supervisors. In the case of franchisees, field visits are made by Wendy's personnel who review operations, including quality, service and cleanliness and make recommendations to assist in compliance with Wendy's specifications.

Generally, Wendy's does not sell food or supplies, other than sandwich buns, to its franchisees. However, prior to 2010, Wendy's arranged for volume purchases of many food and supply products. Commencing in 2010, the purchasing function was transferred to a new purchasing co-op as described below in "Raw Materials and Purchasing."

The New Bakery Co. of Ohio, Inc. (the "Bakery"), a 100% owned subsidiary of Wendy's, is a producer of buns for some Wendy's restaurants, and to a lesser extent for other outside parties. At January 1, 2012, the Bakery supplied 803 restaurants operated by Wendy's and 2,603 restaurants operated by franchisees. The Bakery also produces and sells some products to customers in the grocery and other food service businesses.

## Raw Materials and Purchasing

As of January 1, 2012, 5 independent processors (6 total production facilities) supplied all of Wendy's hamburger in the United States. In addition, 6 independent processors (7 total production facilities) supplied all of Wendy's chicken in the United States.

Wendy's and its franchisees have not experienced any material shortages of food, equipment, fixtures or other products that are necessary to maintain restaurant operations. Wendy's anticipates no such shortages of products and believes that alternate suppliers are available. Suppliers to the Wendy's system must comply with United States Department of Agriculture ("USDA") and United States Food and Drug Administration ("FDA") regulations governing the manufacture, packaging, storage, distribution and sale of all food and packaging products.

During the 2009 fourth quarter, Wendy's entered into a purchasing co-op relationship agreement (the "Wendy's Co-op") with its franchisees to establish a new Wendy's purchasing co-op, Quality Supply Chain Co-op, Inc. ("QSCC"). QSCC manages food and related product purchases and distribution services for the Wendy's system in the United States and Canada. Through QSCC, Wendy's and Wendy's franchisees purchase food, proprietary paper and operating supplies under national contracts with pricing based upon total system volume.

QSCC's supply chain management facilitates the continuity of supply and provides consolidated purchasing efficiencies while monitoring and seeking to minimize possible obsolete inventory throughout the Wendy's supply

chain in the United States and Canada. Prior to 2010, the system's purchasing function was performed and paid for by Wendy's. In order to facilitate the orderly transition of the 2010 purchasing function for operations in the United States and Canada, Wendy's transferred certain contracts, assets and certain Wendy's purchasing employees to QSCC in 2010. Pursuant to the terms of the Wendy's Co-op, Wendy's paid \$15.5 million to QSCC over an 18 month period through May 2011 in order to provide funding for start-up costs, operating expenses and cash reserves. Since the third quarter of 2010 all QSCC members (including Wendy's) pay sourcing fees to third party vendors on products which are sourced through QSCC. Such sourcing fees are remitted by these vendors to QSCC and are the primary means of funding QSCC's operations.

On April 5, 2010, QSCC and Arby's independent purchasing cooperative ("ARCOP") in consultation with Wendy's Restaurants, established the Strategic Sourcing Group Co-op, LLC ("SSG"). SSG was formed to manage and operate purchasing programs for certain non-perishable goods, equipment and services. In anticipation of the sale of Arby's, effective April 2011, SSG was dissolved and its activities were transferred to QSCC and ARCOP.

#### Trademarks and Service Marks

Wendy's or its subsidiaries have registered certain trademarks and service marks in the United States Patent and Trademark Office and in international jurisdictions, some of which include Wendy's®, Old Fashioned Hamburgers® and Quality Is Our Recipe®. Wendy's believes that these and other related marks are of material importance to its business. Domestic trademarks and service marks expire at various times from 2012 to 2021, while international trademarks and service marks have various durations of 10 to 15 years. Wendy's generally intends to renew trademarks and service marks that are scheduled to expire.

Wendy's entered into an Assignment of Rights Agreement with the company's founder, R. David Thomas, and his wife dated as of November 5, 2000 (the "Assignment"). Wendy's had used Mr. Thomas, who was Senior Chairman of the Board until his death on January 8, 2002, as a spokesperson and focal point for its products and services for many years. With the efforts and attributes of Mr. Thomas, Wendy's has, through its extensive investment in the advertising and promotional use of Mr. Thomas' name, likeness, image, voice, caricature, endorsement rights and photographs (the "Thomas Persona"), made the Thomas Persona well known in the United States and throughout North America and a valuable asset for both Wendy's and Mr. Thomas' estate. Under the terms of the Assignment, Wendy's acquired the entire right, title, interest and ownership in and to the Thomas Persona, including the sole and exclusive right to commercially use the Thomas Persona.

#### Seasonality

Wendy's restaurant operations are moderately seasonal. Wendy's average restaurant sales are normally higher during the summer months than during the winter months. Because the business is moderately seasonal, results for any quarter are not necessarily indicative of the results that may be achieved for any other quarter or for the full fiscal year.

#### Competition

Each Wendy's restaurant is in competition with other food service operations within the same geographical area. The quick-service restaurant segment is highly competitive and includes well-established competitors. Wendy's competes with other restaurant companies and food outlets, primarily through the quality, variety, convenience, price, and value perception of food products offered. The number and location of units, quality and speed of service, attractiveness of facilities, effectiveness of marketing and new product development by Wendy's and its competitors are also important factors. The price charged for each menu item may vary from market to market (and within markets) depending on competitive pricing and the local cost structure. Wendy's also competes within the food service industry and the quick service restaurant sector not only for customers, but also for personnel, suitable real estate sites and qualified franchisees.

Wendy's competitive position is differentiated by a focus on quality, its use of fresh, never frozen ground beef in the United States and Canada and certain other countries, its unique and diverse menu, its promotional products, its choice of condiments and the atmosphere and decor of its restaurants.

Many of the leading restaurant chains have focused on new unit development as one strategy to increase market share through increased consumer awareness and convenience. This has led to increased competition for available development sites and higher development costs for those sites, although the recent decline in commercial real estate

values has somewhat offset those costs. Competitors also employ marketing strategies such as frequent use of price discounting, frequent promotions and heavy advertising expenditures. Continued price discounting in the quick service restaurant industry and the emphasis on value menus has had and could continue to have an adverse impact on Wendy's. In addition, we believe that the growth of fast casual chains and other in-line competitors causes some fast food customers to "trade up" to a more traditional dining out experience while keeping the benefits of quick service dining.

Other restaurant chains have also competed by offering high quality sandwiches made with fresh ingredients and artisan breads and there are several emerging restaurant chains featuring high quality food served at in-line locations. Several chains have also sought to compete by targeting certain consumer groups, such as capitalizing on trends toward certain types of diets (e.g., low carbohydrate or low trans fat) by offering menu items that are promoted as being consistent with such diets.



Additional competitive pressures for prepared food purchases come from operators outside the restaurant industry. A number of major grocery chains offer fresh deli sandwiches and fully prepared food and meals to go as part of their deli sections. Some of these chains also have in-store cafes with service counters and tables where consumers can order and consume a full menu of items prepared especially for that portion of the operation. Additionally, convenience stores and retail outlets at gas stations frequently offer sandwiches and other foods.

#### Quality Assurance

Wendy's quality assurance program is designed to verify that the food products supplied to our restaurants are processed in a safe, sanitary environment and in compliance with our food safety and quality standards. Wendy's quality assurance personnel conduct multiple on-site sanitation and production audits throughout the year at all of our core menu product processing facilities, which include beef, poultry, pork, buns, french fries, Frosty™ dessert ingredients, and produce. Animal welfare audits are also conducted every year at all beef, poultry, and pork facilities to confirm compliance with our required animal welfare and handling policies and procedures. In addition to our facility audit program, weekly samples of beef, poultry, and other core menu products from our distribution centers are randomly sampled and analyzed by a third party laboratory to test conformance to our quality specifications. Each year, Wendy's representatives conduct unannounced inspections of all company and franchise restaurants to test conformance to our sanitation, food safety, and operational requirements. Wendy's has the right to terminate franchise agreements if franchisees fail to comply with quality standards.

#### Acquisitions and Dispositions of Wendy's Restaurants

Wendy's has from time to time acquired the interests of and sold Wendy's restaurants to franchisees. Wendy's intends to evaluate strategic acquisitions of franchised restaurants and strategic dispositions of company-owned restaurants to existing and new franchisees. Wendy's generally retains a right of first refusal in connection with any proposed sale of a franchisee's interest.

#### Franchised Restaurants

As of January 1, 2012, Wendy's franchisees operated 4,827 Wendy's restaurants in 49 states and Canada.

The rights and obligations governing the majority of franchised restaurants operating in the United States are set forth in the Wendy's Unit Franchise Agreement (non-traditional locations may operate under an amended agreement). This document provides the franchisee the right to construct, own and operate a Wendy's restaurant upon a site accepted by Wendy's and to use the Wendy's system in connection with the operation of the restaurant at that site. The Unit Franchise Agreement provides for a 20-year term and a 10-year renewal subject to certain conditions. Wendy's has in the past franchised under different agreements on a multi-unit basis; however, Wendy's now generally grants new Wendy's franchises on a unit-by-unit basis.

The Wendy's Unit Franchise Agreement requires that the franchisee pay a royalty of 4% of monthly sales, as defined in the agreement, from the operation of the restaurant or \$1,000, whichever is greater. The agreement also typically requires that the franchisee pay Wendy's a technical assistance fee. In the United States, the standard technical assistance fee required under a newly executed Unit Franchise Agreement is currently \$25,000 for each restaurant.

The technical assistance fee is used to defray some of the costs to Wendy's in providing technical assistance in the development of the Wendy's restaurant, initial training of franchisees or their operator and in providing other assistance associated with the opening of the Wendy's restaurant. In certain limited instances (like the regranting of franchise rights or the relocation of an existing restaurant), Wendy's may charge a reduced technical assistance fee or may waive the technical assistance fee. Wendy's does not select or employ personnel on behalf of franchisees.

Wendy's Restaurants of Canada Inc. ("WROC"), a 100% owned subsidiary of Wendy's, holds master franchise rights for Canada. The rights and obligations governing the majority of franchised restaurants operating in Canada are set forth in a Single Unit Sub-Franchise Agreement. This document provides the franchisee the right to construct, own and operate a Wendy's restaurant upon a site accepted by WROC and to use the Wendy's system in connection with the operation of the restaurant at that site. The Single Unit Sub-Franchise Agreement provides for a 20-year term and a 10-year renewal subject to certain conditions. The sub-franchisee pays to WROC a monthly royalty of 4% of sales, as defined in the agreement, from the operation of the restaurant or C\$1,000, whichever is greater. The agreement also typically requires that the franchisee pay WROC a technical assistance fee. The standard technical assistance fee is currently C\$35,000 for each restaurant.

In order to promote new unit development, Wendy's has established a franchisee assistance program for its North American franchisees that provides (with certain exceptions) for reduced technical assistance fees and a sliding scale of royalties for the first two years of operation for qualifying locations opened between April 1, 2011 and December 31, 2013. In addition, Wendy's Canadian subsidiary has established a lease guarantee program to promote new franchisee unit development for up to an aggregate of C\$5.0 million for periods of up to five years. Franchisees pay the Canadian subsidiary a nominal fee for the guarantee.

In order to facilitate the purchase and related installation of equipment by franchisees required to implement a systemwide core menu initiative, Wendy's initiated incentive programs for franchisees including the partial subsidy of interest rates and a guarantee program.

In order to encourage franchisees to participate in expanded testing of the breakfast daypart, Wendy's has established the following programs:

Wendy's will continue to lease equipment to certain franchisees that are testing the breakfast program. At the time breakfast becomes a required program, the franchisees will be required to purchase the equipment from Wendy's based on its then book value plus installation costs.

Additionally, Wendy's is providing loans to certain franchisees for the purchase and installation of equipment required to implement the breakfast program. The loans are expected to not exceed \$25,000 per restaurant, carry no interest charge and be repayable in full 24 months after the installation is completed.

The above programs also have the following additional features:

For the first three years of an early adopting franchisee's participation in the breakfast program, a portion of franchise royalties (on a sliding scale) will not be payable to Wendy's but will be required to be reinvested in local advertising and promotions for the breakfast program.

Contributions otherwise due to The Wendy's National Advertising Program, Inc. ("Wendy's National Advertising Program") based on breakfast sales will not be made but will be required to be reinvested in local advertising and promotions for the breakfast program until Wendy's National Advertising Program begins to purchase national advertising for the breakfast program.

See "Management Discussion and Analysis - Liquidity and Capital Resources - Guarantees and Other Contingencies" in Item 7 herein, for further information regarding guarantee obligations.

Franchised restaurants are required to be operated under uniform operating standards and specifications relating to the selection, quality and preparation of menu items, signage, decor, equipment, uniforms, suppliers, maintenance and cleanliness of premises and customer service. Wendy's monitors franchisee operations and inspects restaurants periodically to ensure that required practices and procedures are being followed.

See Note 6 and Note 24 of the Financial Statements and Supplementary Data included in Item 8 herein, and the information under "Management's Discussion and Analysis" in Item 7 herein, for further information regarding reserves, commitments and contingencies involving franchisees.

## Advertising and Marketing

In the United States and Canada, Wendy's advertises nationally on network and cable television programs, including nationally televised events. Locally in the United States and Canada, Wendy's primarily advertises through regional network and cable television, radio and newspapers. Wendy's participates in two national advertising funds established to collect and administer funds contributed for use in advertising through television, radio, newspapers, the Internet and a variety of promotional campaigns, including the increasing use of social media. Separate national advertising funds are administered for Wendy's United States and Canadian locations. Contributions to the national advertising funds are required to be made from both company-owned and franchised restaurants and are based on a percent of restaurant retail sales. In addition to the contributions to the national advertising funds, Wendy's requires additional contributions to be made for both company-owned and franchised restaurants based on a percent of restaurant retail sales for the purpose of local and regional advertising programs. Required franchisee contributions to the national advertising funds and for local and regional advertising programs are governed by the Wendy's Unit Franchise Agreement. Required contributions by company-owned restaurants for advertising and promotional programs are at the same percent of retail sales as franchised restaurants within the Wendy's system. As of January 1, 2012, the contribution rate for United States restaurants is generally 3.25% of retail sales for national advertising and .75% of retail sales for local and regional advertising. Prior to January 1, 2012, the rates were generally 3% and 1%, respectively. The contribution rate for Canadian restaurants is generally 3% of retail sales for national advertising and 1% of retail sales for local and regional advertising.

See Note 27 of the Financial Statements and Supplementary Data included in Item 8 herein, for further information regarding advertising.

## International Operations and Franchising

As of January 1, 2012, Wendy's had 350 franchised restaurants in 26 countries and territories other than the United States and Canada. Wendy's intends to grow its international business aggressively, yet responsibly. Since the beginning of 2009, new development agreements have been announced for Wendy's locations in Singapore, the Middle East, North Africa, the Russian Federation, the Eastern Caribbean, Argentina, and the Philippines. New market expansion and further development within existing markets will continue to be components of Wendy's international strategy over the coming years. Wendy's has granted development rights in the certain countries and territories listed under Item 2 of this Form 10-K.

Franchisees who wish to operate Wendy's restaurants outside the United States and Canada enter into agreements with Wendy's that generally provide franchise rights for each restaurant for an initial term of 10 years or 20 years, depending on the country, and typically include a 10-year renewal provision, subject to certain conditions. The agreements license the franchisee to use the Wendy's trademarks and know-how in the operation of a Wendy's restaurant at a specified location. Generally, the franchisee pays Wendy's a technical assistance fee or other per restaurant fee and monthly fees based on a percentage of gross monthly sales of each restaurant. In certain foreign markets, Wendy's may grant the franchisee exclusivity to develop a territory in exchange for the franchisee undertaking to develop a specified number of new Wendy's restaurants in the territory based on a negotiated schedule. In these instances, the franchisee generally pays Wendy's an upfront development fee, annual development fees or a per restaurant fee. In certain circumstances, Wendy's may grant a franchisee the right to sub-franchise in a stated territory, subject to certain conditions.

In 2011, Wendy's entered into a joint venture to develop restaurants in Japan. Wendy's also continually evaluates non-franchise opportunities for development of Wendy's restaurants in other international markets, including through joint ventures with third parties and opening company-owned restaurants.



## General

### Governmental Regulations

Various state laws and the Federal Trade Commission regulate Wendy's franchising activities. The Federal Trade Commission requires that franchisors make extensive disclosure to prospective franchisees before the execution of a franchise agreement. Several states require registration and disclosure in connection with franchise offers and sales and have "franchise relationship laws" that limit the ability of franchisors to terminate franchise agreements or to withhold consent to the renewal or transfer of these agreements. In addition, Wendy's and its franchisees must comply with the federal Fair Labor Standards Act and similar state and local laws, the Americans with Disabilities Act (the "ADA"), which requires that all public accommodations and commercial facilities meet federal requirements related to access and use by disabled persons, and various state and local laws governing matters that include, for example, the handling, preparation and sale of food and beverages, the provision of nutritional information on menu boards, minimum wages, overtime and other working and safety conditions. Compliance with the ADA requirements could require removal of access barriers and non-compliance could result in imposition of fines by the United States government or an award of damages to private litigants. We do not believe that costs relating to compliance with the ADA will have a material adverse effect on the Companies' consolidated financial position or results of operations. We cannot predict the effect on our operations, particularly on our relationship with franchisees, of any pending or future legislation.

### Environmental and Other Matters

The Wendy's Company's and Wendy's Restaurants' past and present operations are governed by federal, state and local environmental laws and regulations concerning the discharge, storage, handling and disposal of hazardous or toxic substances. These laws and regulations provide for significant fines, penalties and liabilities, sometimes without regard to whether the owner or operator of the property knew of, or was responsible for, the release or presence of the hazardous or toxic substances. In addition, third parties may make claims against owners or operators of properties for personal injuries and property damage associated with releases of hazardous or toxic substances. We cannot predict what environmental legislation or regulations will be enacted in the future or how existing or future laws or regulations will be administered or interpreted. We similarly cannot predict the amount of future expenditures that may be required to comply with any environmental laws or regulations or to satisfy any claims relating to environmental laws or regulations. We believe that our operations comply substantially with all applicable environmental laws and regulations. Accordingly, the environmental matters in which we are involved generally relate either to properties that our subsidiaries own, but on which they no longer have any operations, or properties that we or our subsidiaries have sold to third parties, but for which we or our subsidiaries remain liable or contingently liable for any related environmental costs. Our company-owned Wendy's restaurants have not been the subject of any material environmental matters. Based on currently available information, including defenses available to us and/or our subsidiaries, and our current reserve levels, we do not believe that the ultimate outcome of the environmental matters in which we are involved will have a material adverse effect on our consolidated financial position or results of operations.

The Wendy's Company and Wendy's Restaurants are involved in litigation and claims incidental to our current and prior businesses. We provide reserves for such litigation and claims when payment is probable and reasonably estimable. The Companies believe they have adequate reserves for continuing operations for all of their legal and environmental matters. We cannot estimate the aggregate possible range of loss due to most proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur, and significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions is thus inherently difficult. Based on our currently available information, including legal defenses available to us, and given the aforementioned reserves and our insurance coverage, we do not believe that the outcome of these legal and

environmental matters will have a material effect on our consolidated financial position or results of operations.

#### Employees

As of January 1, 2012, the Companies and their subsidiaries had approximately 42,800 employees, including approximately 2,800 salaried employees and approximately 40,000 hourly employees. We believe that our employee relations are satisfactory.

Item 1A. Risk Factors.

We wish to caution readers that in addition to the important factors described elsewhere in this Form 10-K, we have included below the most significant factors that have affected, or in the future could affect, our actual results and could cause our actual consolidated results during 2012, and beyond, to differ materially from those expressed in any forward-looking statements made by us or on our behalf.

Risks Related to The Wendy's Company and Wendy's Restaurants

Our success depends in part upon the continued retention of certain key personnel. In addition, we are relocating the Atlanta restaurant support center.

There were a number of changes in our senior management team in 2011, including the appointment of a new President and Chief Executive Officer. We believe that over time our success has been dependent to a significant extent upon the efforts and abilities of our senior management team. The failure by us to retain members of our senior management team in the future could adversely affect our ability to build on the efforts we have undertaken to increase the efficiency and profitability of our businesses.

We expect to incur significant costs in 2012 for the closure of the Atlanta restaurant support center and its relocation to Ohio for employee severance, retention, recruiting and relocation. In addition, we may incur redundant compensation costs for staff overlap during the relocation transition. We anticipate that our relocation activities will be substantially completed by the third quarter of 2012. During the relocation transition period, we are likely to not retain the services of some experienced corporate personnel, which could distract from and adversely impact the performance of certain corporate, control and administrative functions.

Competition from other restaurant companies, or poor customer experience at Wendy's restaurants, could hurt our brand.

The market segments in which company-owned and franchised Wendy's restaurants compete are highly competitive with respect to, among other things, price, food quality and presentation, service, location, convenience, and the nature and condition of the restaurant facility. If customers have a poor experience at a Wendy's restaurant, whether at a company-owned or franchised restaurant, we may experience a decrease in guest traffic. Further, Wendy's restaurants compete with a variety of locally-owned restaurants, as well as competitive regional and national chains and franchises. Several of these chains compete by offering menu items that are targeted at certain consumer groups or dietary trends. Additionally, many of our competitors have introduced lower cost, value meal menu options. Our revenues and those of our franchisees may be hurt by this product and price competition.

Moreover, new companies, including operators outside the quick service restaurant industry, may enter our market areas and target our customer base. For example, additional competitive pressures for prepared food purchases have come from deli sections and in-store cafes of a number of major grocery store chains, as well as from convenience stores and casual dining outlets. Such competitors may have, among other things, lower operating costs, better locations, better facilities, better management, better products, more effective marketing and more efficient operations. Many of our competitors have substantially greater financial, marketing, personnel and other resources than we do, which may allow them to react to changes in pricing and marketing strategies in the quick service restaurant industry better than we can. Many of our competitors spend significantly more on advertising and marketing than we do, which may give them a competitive advantage through higher levels of brand awareness among consumers. All such competition may adversely affect our revenues and profits by reducing revenues of company-owned restaurants and royalty payments from franchised restaurants.



Changes in consumer tastes and preferences, and in discretionary consumer spending, could result in a decline in sales at company-owned restaurants and in the royalties that we receive from franchisees.

The quick service restaurant industry is often affected by changes in consumer tastes, national, regional and local economic conditions, discretionary spending priorities, demographic trends, traffic patterns and the type, number and location of competing restaurants. Our success depends to a significant extent on discretionary consumer spending, which is influenced by general economic conditions and the availability of discretionary income. Accordingly, we may experience declines in sales during economic downturns. Any material decline in the amount of discretionary spending or a decline in consumer food-away-from-home spending could hurt our revenues, results of operations, business and financial condition.

If company-owned and franchised restaurants are unable to adapt to changes in consumer preferences and trends, company-owned and franchised restaurants may lose customers and the resulting revenues from company-owned restaurants and the royalties that we receive from franchisees may decline.

The disruptions in the national and global economies and the financial markets may adversely impact our revenues, results of operations, business and financial condition.

The disruptions in the national and global economies and financial markets, and the related reductions in the availability of credit, have resulted in high unemployment rates and declines in consumer confidence and spending, and have made it more difficult for businesses to obtain financing. If such conditions persist, then they may result in significant declines in consumer food-away-from-home spending and customer traffic in our restaurants and those of our franchisees. Such conditions may also adversely impact the ability of franchisees to build or purchase restaurants, remodel existing restaurants, renew expiring franchise agreements and make timely royalty and other payments. There can be no assurance that government responses to the disruptions and volatility in the financial markets will restore consumer confidence, stabilize the markets or increase liquidity and the availability of credit. If we or our franchisees are unable to obtain borrowed funds on acceptable terms, or if conditions in the economy and the financial markets do not improve, our revenues, results of operations, business and financial condition could be adversely affected.

Additionally, we have entered into interest rate swaps and other derivative contracts as described in Note 13 to the Financial Statements and Supplementary Data included in Item 8 herein, and we may enter into additional swaps in the future. We are exposed to potential losses in the event of nonperformance by counterparties on these instruments, which could adversely affect our results of operations, financial condition and liquidity.

Changes in commodity costs (including beef, chicken and corn), supply, fuel, utilities, distribution and other operating costs could harm results of operations.

Our profitability depends in part on our ability to anticipate and react to changes in commodity costs (including beef, chicken and corn), supply, fuel, distribution and other operating costs. Any increase in these costs, especially beef or chicken prices, could harm operating results. In addition, our brand is susceptible to increases in these costs as a result of other factors beyond its control, such as weather conditions, global demand, food safety concerns, product recalls and government regulations. Additionally, prices for feed ingredients used to produce beef and chicken could be adversely affected by changes in global weather patterns, which are inherently unpredictable. Increases in gasoline prices would result in the imposition of fuel surcharges by our distributors, which would increase our costs. Significant increases in gasoline prices could also result in a decrease in customer traffic at our restaurants, which could adversely affect our business. We cannot predict whether we will be able to anticipate and react to changing food costs by adjusting our purchasing practices and menu prices, and a failure to do so could adversely affect our operating results. In addition, we may not seek to or be able to pass along price increases to our customers.

Shortages or interruptions in the supply or delivery of perishable food products could damage the Wendy's brand reputation and adversely affect our operating results.

Wendy's and its franchisees are dependent on frequent deliveries of perishable food products that meet brand specifications. Shortages or interruptions in the supply of perishable food products caused by unanticipated demand, problems in production or distribution, disease or food-borne illnesses, inclement weather or other conditions could adversely affect the availability, quality and cost of ingredients, which could lower our revenues, increase operating costs, damage brand reputation and otherwise harm our business and the businesses of our franchisees.

Food safety events, including instances of food-borne illness (such as salmonella or E. Coli) involving Wendy's or its supply chain, could create negative publicity and adversely affect sales at the brand.

Food safety is a top priority, and we dedicate substantial resources to ensure that our customers enjoy safe, quality food products. However, food safety events, including instances of food-borne illness (such as salmonella or E. Coli), have occurred in the food industry in the past, and could occur in the future.

Food safety events could adversely affect the price and availability of beef, poultry or other meats. As a result, Wendy's restaurants could experience a significant increase in food costs if there are food safety events whether or not such events involve Wendy's restaurants or restaurants of competitors.

In addition, food safety events, whether or not involving Wendy's, could result in negative publicity for Wendy's or for the industry or market segments in which we operate. This negative publicity, as well as any other negative publicity concerning types of food products Wendy's serves, may reduce demand for Wendy's food and could result in a decrease in guest traffic to our restaurants as consumers shift their preferences to other products or food types. A decrease in guest traffic to our restaurants as a result of these health concerns or negative publicity could result in a decline in sales at company-owned restaurants or in royalties from sales at franchised restaurants.

Consumer concerns regarding the nutritional aspects of beef, poultry, french fries or other products we sell or concerns regarding the effects of disease outbreaks such as "mad cow disease" and avian influenza or "bird flu," could affect demand for our products.

Consumer concerns regarding the nutritional aspects of beef, poultry, french fries or other products we sell or concerns regarding the effects of disease outbreaks such as "mad cow disease" and avian influenza or "bird flu," could result in less demand for our products and a decline in sales at company-owned restaurants and in the royalties that we receive from franchisees.

Growth of our restaurant businesses is significantly dependent on new restaurant openings, which may be affected by factors beyond our control.

Our restaurant businesses derive earnings from sales at company-owned restaurants, franchise royalties received from franchised restaurants and franchise fees from franchise restaurant operators for each new unit opened. Growth in our restaurant revenues and earnings is significantly dependent on new restaurant openings. Numerous factors beyond our control may affect restaurant openings. These factors include but are not limited to:

- our ability to attract new franchisees;
- the availability of site locations for new restaurants;
- the ability of potential restaurant owners to obtain financing;
- the ability of restaurant owners to hire, train and retain qualified operating personnel;
- construction and development costs of new restaurants, particularly in highly-competitive markets;
- the ability of restaurant owners to secure required governmental approvals and permits in a timely manner, or at all;
- and
- adverse weather conditions.

Wendy's franchisees could take actions that could harm our business.

Wendy's franchisees are contractually obligated to operate their restaurants in accordance with the standards set forth in agreements with them. Wendy's also provides training and support to franchisees. However, franchisees are independent third parties that we do not control, and the franchisees own, operate and oversee the daily operations of their restaurants. As a result, the ultimate success and quality of any franchise restaurant rests with the franchisee. If franchisees do not successfully operate restaurants in a manner consistent with required standards, royalty payments to us will be adversely affected and the brand's image and reputation could be harmed, which in turn could hurt our business and operating results.

Our success depends on franchisees' participation in brand strategies.

Wendy's franchisees are an integral part of our business. Wendy's may be unable to successfully implement the strategies that it believes are necessary for further growth if franchisees do not participate in that implementation. Our business and operating results could be adversely affected if a significant number of franchisees do not participate in brand strategies.



Our financial results are affected by the operating results of franchisees.

As of January 1, 2012, approximately 79% of the Wendy's system were franchise restaurants. We receive revenue in the form of royalties, which are generally based on a percentage of sales at franchised restaurants, rent and fees from franchisees. Accordingly, a substantial portion of our financial results is to a large extent dependent upon the operational and financial success of our franchisees. If sales trends or economic conditions worsen for franchisees, their financial results may worsen and our royalty, rent and other fee revenues may decline. In addition, accounts receivable and related allowance for doubtful accounts may increase. When company-owned restaurants are sold, one of our subsidiaries is often required to remain responsible for lease payments for these restaurants to the extent that the purchasing franchisees default on their leases. During periods of declining sales and profitability of franchisees, the incidence of franchisee defaults for these lease payments increases and we are then required to make those payments and seek recourse against the franchisee or agree to repayment terms. Additionally, if franchisees fail to renew their franchise agreements, or if we decide to restructure franchise agreements in order to induce franchisees to renew these agreements, then our royalty revenues may decrease. Further, we may decide from time to time to acquire restaurants from franchisees that experience significant financial hardship, which may reduce our cash and equivalents.

Wendy's may be unable to manage effectively the acquisition and disposition of restaurants, which could adversely affect our business and financial results.

Wendy's acquires restaurants from franchisees and in some cases "re-franchises" restaurants by selling them to new or existing franchisees. The success of these transactions is dependent upon the availability of sellers and buyers, the availability of financing, and the brand's ability to negotiate transactions on terms deemed acceptable. In addition, the operations of restaurants that the brand acquires may not be integrated successfully, and the intended benefits of such transactions may not be realized. Acquisitions of franchised restaurants pose various risks to brand operations, including:

- diversion of management attention to the integration of acquired restaurant operations;
- increased operating expenses and the inability to achieve expected cost savings and operating efficiencies;
- exposure to liabilities arising out of sellers' prior operations of acquired restaurants; and
- incurrence or assumption of debt to finance acquisitions or improvements and/or the assumption of long-term, non-cancelable leases.

In addition, engaging in acquisitions and dispositions places increased demands on the brand's operational and financial management resources and may require us to continue to expand these resources. If Wendy's is unable to manage the acquisition and disposition of restaurants effectively, our business and financial results could be adversely affected.

Current restaurant locations may become unattractive, and attractive new locations may not be available for a reasonable price, if at all.

The success of any restaurant depends in substantial part on its location. There can be no assurance that our current restaurant locations will continue to be attractive as demographic patterns change. Neighborhood or economic conditions where our restaurants are located could decline in the future, thus resulting in potentially reduced sales in those locations. In addition, rising real estate prices in some areas may restrict our ability and the ability of franchisees to purchase or lease new desirable locations. If desirable locations cannot be obtained at reasonable prices, the brand's ability to execute its growth strategies will be adversely affected.

Wendy's leasing and ownership of significant amounts of real estate exposes it to possible liabilities and losses, including liabilities associated with environmental matters.

As of January 1, 2012, Wendy's leased or owned the land and/or the building for 1,417 Wendy's restaurants. Accordingly, we are subject to all of the risks associated with leasing and owning real estate. In particular, the value of our real property assets could decrease, and costs could increase, because of changes in the investment climate for real estate, demographic trends, supply or demand for the use of the restaurants, which may result from competition from similar restaurants in the area, and liability for environmental matters.

Wendy's is subject to federal, state and local environmental, health and safety laws and regulations concerning the discharge, storage, handling, release and disposal of hazardous or toxic substances. These environmental laws provide for significant fines, penalties and liabilities, sometimes without regard to whether the owner, operator or occupant of the property knew of, or was responsible for, the release or presence of the hazardous or toxic substances. Third parties may also make claims against owners, operators or occupants of properties for personal injuries and property damage associated with releases of, or actual or alleged exposure to, such substances. A number of our restaurant sites were formerly gas stations or are adjacent to current or former gas stations, or were used for other commercial activities that can create environmental impacts. We may also acquire or lease these types of sites in the future. We have not conducted a comprehensive environmental review of all of our properties. We may not have identified all of the potential environmental liabilities at our leased and owned properties, and any such liabilities identified in the future could cause us to incur significant costs, including costs associated with litigation, fines or clean-up responsibilities. In addition, we cannot predict what environmental legislation or regulations will be enacted in the future or how existing or future laws or regulations will be administered or interpreted. We cannot predict the amount of future expenditures that may be required in order to comply with any environmental laws or regulations or to satisfy any such claims. See "Item 1. Business - General - Environmental and Other Matters."

Wendy's leases real property generally for initial terms of 20 years with two to four additional options to extend the term of the leases in consecutive five-year increments. Many leases provide that the landlord may increase the rent over the term of the lease and any renewals thereof. Most leases require us to pay all of the costs of insurance, taxes, maintenance and utilities. We generally cannot cancel these leases. If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each lease expires, we may fail to negotiate additional renewals or renewal options, either on commercially acceptable terms or at all, which could cause us to close stores in desirable locations.

Due to the concentration of Wendy's restaurants in particular geographic regions, our business results could be impacted by the adverse economic conditions prevailing in those regions regardless of the state of the national economy as a whole.

As of January 1, 2012, we and our franchisees operated Wendy's restaurants in 50 states, the District of Columbia and 27 foreign countries and territories. As of January 1, 2012 as detailed in "Item 2. Properties," the 8 leading states by number of operating units were: Florida, Ohio, Texas, Georgia, Michigan, California, Pennsylvania and North Carolina. This geographic concentration can cause economic conditions in particular areas of the country to have a disproportionate impact on our overall results of operations. It is possible that adverse economic conditions in states or regions that contain a high concentration of Wendy's restaurants could have a material adverse impact on our results of operations in the future.

Our operations are influenced by adverse weather conditions.

Weather, which is unpredictable, can impact Wendy's restaurant sales. Harsh weather conditions that keep customers from dining out result in lost opportunities for our restaurants. A heavy snowstorm in the Northeast or Midwest or a hurricane in the Southeast can shut down an entire metropolitan area, resulting in a reduction in sales in that area. Our first quarter includes winter months and historically has a lower level of sales at company-owned restaurants. Because a significant portion of our restaurant operating costs is fixed or semi-fixed in nature, the loss of sales during these periods hurts our operating margins, and can result in restaurant operating losses. For these reasons, a quarter-to-quarter comparison may not be a good indication of Wendy's performance or how it may perform in the future.

Wendy's business could be hurt by increased labor costs or labor shortages.



Labor is a primary component in the cost of operating our company-owned restaurants. Wendy's devotes significant resources to recruiting and training its managers and hourly employees. Increased labor costs due to competition, increased minimum wage or employee benefits costs (including government-mandated health care benefits) or other factors would adversely impact our cost of sales and operating expenses. In addition, Wendy's success depends on its ability to attract, motivate and retain qualified employees, including restaurant managers and staff. If the brand is unable to do so, our results of operations could be adversely affected.

Wendy's plans to expand its breakfast initiative. The breakfast daypart remains competitive and markets may prove difficult to penetrate.

The breakfast initiative at Wendy's has been accompanied by challenging competitive conditions, varied consumer tastes and discretionary spending patterns that differ from lunch, snack, dinner and late night hours. In addition, breakfast sales can cannibalize sales during other parts of the day and may have negative impacts on food and labor costs, advertising, and restaurant margins. Wendy's plans to expand its breakfast initiative. Capital investments will be required at company-owned restaurants that are added to the breakfast initiative, and franchisees will be required to make capital investments in their restaurants that participate in the breakfast initiative. In addition, Wendy's expects to incur additional advertising expense to encourage customers to purchase breakfast at Wendy's. As a result of all of these factors, breakfast sales and resulting profits may take longer than expected to reach targeted levels and the expansion of the breakfast initiative may be slower than planned.

Complaints or litigation may hurt the Wendy's brand.

Wendy's customers file complaints or lawsuits against us alleging that we are responsible for an illness or injury they suffered at or after a visit to a Wendy's restaurant, or alleging that there was a problem with food quality or operations at a Wendy's restaurant. We are also subject to a variety of other claims arising in the ordinary course of our business, including personal injury claims, contract claims, claims from franchisees (which tend to increase when franchisees experience declining sales and profitability) and claims alleging violations of federal and state law regarding workplace and employment matters, discrimination and similar matters, including class action lawsuits related to these matters. Regardless of whether any claims against us are valid or whether we are found to be liable, claims may be expensive to defend and may divert management's attention away from operations and hurt our performance. We cannot estimate the aggregate possible range of loss due to most proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur, and significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions are thus inherently difficult. A judgment significantly in excess of our insurance coverage for any claims could materially adversely affect our financial condition or results of operations. Further, adverse publicity resulting from these claims may hurt us and our franchisees.

Additionally, the restaurant industry has been subject to a number of claims that the menus and actions of restaurant chains have led to the obesity of certain of their customers. Adverse publicity resulting from these allegations may harm the reputation of our restaurants, even if the allegations are not directed against our restaurants or are not valid, and even if we are not found liable or the concerns relate only to a single restaurant or a limited number of restaurants. Moreover, complaints, litigation or adverse publicity experienced by one or more of Wendy's franchisees could also hurt our business as a whole.

We may not be able to adequately protect our intellectual property, which could harm the value of the Wendy's brand and hurt our business.

Our intellectual property is material to the conduct of our business. We rely on a combination of trademarks, copyrights, service marks, trade secrets and similar intellectual property rights to protect our brand and other intellectual property. The success of our business strategy depends, in part, on our continued ability to use our existing trademarks and service marks in order to increase brand awareness and further develop our branded products in both existing and new markets. If our efforts to protect our intellectual property are not adequate, or if any third party misappropriates or infringes on our intellectual property, either in print or on the Internet, the value of our brand may be harmed, which could have a material adverse effect on our business, including the failure of our brand to achieve and maintain market acceptance. This could harm our image, brand or competitive position and, if we commence litigation to enforce our rights, cause us to incur significant legal fees.

We franchise our brand to various franchisees. While we try to ensure that the quality of our brand is maintained by all of our franchisees, we cannot assure you that these franchisees will not take actions that hurt the value of our intellectual property or the reputation of the Wendy's restaurant system.

We have registered certain trademarks and have other trademark registrations pending in the United States and certain foreign jurisdictions. The trademarks that we currently use have not been registered in all of the countries outside of the United States in which we do business or may do business in the future and may never be registered in all of these countries. We cannot assure you that all of the steps we have taken to protect our intellectual property in the United States and foreign countries will be adequate. The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States.

In addition, we cannot assure you that third parties will not claim infringement by us in the future. Any such claim, whether or not it has merit, could be time-consuming, result in costly litigation, cause delays in introducing new menu items, require costly modifications to advertising and promotional materials or require us to enter into royalty or licensing agreements. As a result, any such claim could harm our business and cause a decline in our results of operations and financial condition.

Our current insurance may not provide adequate levels of coverage against claims that may be filed.

We currently maintain insurance we believe is adequate for businesses of our size and type. However, there are types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure, such as losses due to natural disasters or acts of terrorism. In addition, we currently self-insure a significant portion of expected losses under workers compensation, general liability and property insurance programs. Unanticipated changes in the actuarial assumptions and management estimates underlying our reserves for these losses could result in materially different amounts of expense under these programs, which could harm our business and adversely affect our results of operations and financial condition.

Changes in legal or regulatory requirements, including franchising laws, accounting standards, payment card industry rules, overtime rules, minimum wage rates, government-mandated health care benefits, tax legislation and menu-board labeling requirements, may hurt our ability to open new restaurants or otherwise hurt our existing and future operations and results.

Each Wendy's restaurant is subject to licensing and regulation by health, sanitation, safety and other agencies in the state and/or municipality in which the restaurant is located, as well as to Federal laws, rules and regulations and requirements of non-governmental entities such as payment card industry rules. State and local government authorities may enact laws, rules or regulations that impact restaurant operations and the cost of conducting those operations. For example, recent efforts to require the listing of specified nutritional information on menus and menu boards could adversely affect consumer demand for our products, could make our menu boards less appealing and could increase our costs of doing business. There can be no assurance that we and/or our franchisees will not experience material difficulties or failures in obtaining the necessary licenses or approvals for new restaurants, which could delay the opening of such restaurants in the future. In addition, more stringent and varied requirements of local governmental bodies with respect to tax, zoning, land use and environmental factors could delay or prevent development of new restaurants in particular locations.

Federal laws, rules and regulations address many aspects of our business, such as franchising, minimum wages and taxes. We and our franchisees are also subject to the Fair Labor Standards Act, which governs such matters as minimum wages, overtime and other working conditions, along with the ADA, family leave mandates and a variety of other laws enacted by the states that govern these and other employment law matters.

Federal legislation regarding changes in government-mandated health care benefits is also anticipated to increase our costs and the costs of our franchisees and may result in significant modifications to our employment and hiring practices. Because of the absence of implementing regulations, we currently cannot predict the timing or amount of those cost increases or modifications to our business practices. However, the cost increases may be material and such modifications to our business practices may be disruptive to our operations and impact our ability to attract and retain personnel.

Wendy's does not exercise ultimate control over purchasing for its restaurant system, which could harm sales or profitability and the brand.

Although Wendy's ensures that all suppliers to the Wendy's system meet quality control standards, Wendy's franchisees control the purchasing of food, proprietary paper, equipment and other operating supplies from such suppliers through

the purchasing co-op controlled by Wendy's franchisees, QSCC. QSCC negotiates national contracts for such food, equipment and supplies. Wendy's is entitled to appoint two representatives (of the total of 11) on the board of directors of QSCC and participates in QSCC through its company-owned restaurants, but does not control the decisions and activities of QSCC except to ensure that all suppliers satisfy Wendy's quality control standards. If QSCC does not properly estimate the product needs of the Wendy's system, makes poor purchasing decisions, or decides to cease its operations, system sales and operating costs could be adversely affected and our results of operations and financial condition or the financial condition of Wendy's franchisees could be hurt.

Our international operations are subject to various factors of uncertainty and there is no assurance that international operations will be profitable.

In addition to many of the risk factors described throughout this Item 1A, Wendy's business outside of the United States is subject to a number of additional factors, including international economic and political conditions, risk of corruption and violations of the United States Foreign Corrupt Practices Act or similar laws of other countries, differing cultures and consumer preferences, the inability to adapt to international customer preferences, inadequate brand infrastructure within foreign countries to support our international activities, inability to obtain adequate supplies meeting our quality standards and product specifications or interruptions in obtaining such supplies, currency regulations and fluctuations, diverse government regulations and tax systems, uncertain or differing interpretations of rights and obligations in connection with international franchise agreements and the collection of royalties from international franchisees, the availability and cost of land, construction costs, other legal, financial or regulatory impediments to the development and/or operation of new restaurants, and the availability of experienced management, appropriate franchisees, and joint venture partners. Although we believe we have developed the support structure required for international growth, there is no assurance that such growth will occur or that international operations will be profitable.

We rely on computer systems and information technology to run our business. Any material failure, interruption or security breach of our computer systems or information technology may result in adverse publicity and adversely affect the operation of our business and results of operations.

We are significantly dependent upon our computer systems and information technology to properly conduct our business. A failure or interruption of computer systems or information technology could result in the loss of data, business interruptions or delays in business operations. Also, despite our considerable efforts and technological resources to secure our computer systems and information technology, security breaches, such as unauthorized access and computer viruses, may occur resulting in system disruptions, shutdowns or unauthorized disclosure of confidential information. A significant security breach of our computer systems or information technology could require us to notify customers, employees or other groups, result in adverse publicity, loss of sales and profits, and incur penalties or other costs that could adversely affect the operation of our business and results of operations.

Failure to comply with laws, regulations and third-party contracts regarding the collection, maintenance and processing of information may result in adverse publicity and adversely affect the operation of our business and results of operations.

We collect, maintain and process certain information about customers and employees. Our use and protection of this information is regulated by various laws and regulations, as well as by third-party contracts. If our systems or employees fail to comply with these laws, regulations or contract terms, it could require us to notify customers, employees or other groups, result in adverse publicity, loss of sales and profits, increase fees payable to third parties, and incur penalties or remediation and other costs that could adversely affect the operation of our business and results of operations.

We may be required to recognize additional asset impairment and other asset-related charges.

We have significant amounts of long-lived assets, goodwill and intangible assets and have incurred impairment charges in the past with respect to those assets. In accordance with applicable accounting standards, we test for impairment generally annually, or more frequently, if there are indicators of impairment, such as:

- significant adverse changes in the business climate;
- current period operating or cash flow losses combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with long-lived assets;
- a current expectation that more-likely-than-not (e.g., a likelihood that is more than 50%) long-lived assets will be sold or otherwise disposed of significantly before the end of their previously estimated useful life; and
- a significant drop in our stock price.

Based upon future economic and capital market conditions, as well as the operating performance of our reporting units, future impairment charges could be incurred.

Wendy's Restaurants and its subsidiaries are subject to various restrictions, and substantially all of their non-real estate assets are pledged and subject to certain restrictions, under a Credit Agreement.

In May 2010, Wendy's Restaurants entered into a \$650.0 million Credit Agreement (the "Credit Agreement"), which includes a \$500.0 million senior secured term loan facility and a \$150.0 million senior secured revolving credit facility. The obligations under the Credit Agreement are secured by substantially all of the non-real estate assets of Wendy's Restaurants and its domestic subsidiaries (other than certain unrestricted subsidiaries), the stock of its domestic subsidiaries (other than certain unrestricted subsidiaries), 65% of the stock of certain of its foreign subsidiaries, as well as by mortgages on certain restaurant properties. The affirmative and negative covenants in the Credit Agreement include, among others, preservation of corporate existence; payment of taxes; and maintenance of insurance; and limitations on: indebtedness (including guarantee obligations of other indebtedness); liens; mergers, consolidations, liquidations and dissolutions; sales of assets; dividends and other payments in respect of capital stock; investments; payments of certain indebtedness; transactions with affiliates; changes in fiscal year; negative pledge clauses and clauses restricting subsidiary distributions; and material changes in lines of business. The financial covenants contained in the Credit Agreement are (i) a consolidated interest coverage ratio, (ii) a consolidated senior secured leverage ratio and (iii) a consolidated senior secured lease adjusted leverage ratio. The covenants generally do not restrict The Wendy's Company or any of its subsidiaries that are not subsidiaries of Wendy's Restaurants. If the Borrowers are unable to generate sufficient cash flow or otherwise obtain the funds necessary to make required payments of interest or principal under, or are unable to comply with covenants of, the Credit Agreement, then they would be in default under the terms of the agreement, which would preclude the payment of dividends to The Wendy's Company, restrict access to the revolving credit facility, and, under certain circumstances, permit the lenders to accelerate the maturity of the indebtedness. See Note 12 of the Financial Statements and Supplementary Data included in Item 8 herein, for further information regarding the Credit Agreement.

Wendy's Restaurants and its subsidiaries have a significant amount of debt outstanding. Such indebtedness, along with the other contractual commitments of our subsidiaries, could adversely affect our business, financial condition and results of operations, as well as the ability of certain of our subsidiaries to meet payment obligations under the Wendy's Restaurants 10.0% Senior Notes due in 2016 (the "Senior Notes") and other debt.

Wendy's Restaurants and certain of its subsidiaries have a significant amount of debt and debt service requirements. As of January 1, 2012, on a consolidated basis, there was approximately \$1.3 billion of outstanding debt.

This level of debt could have significant consequences on our future operations, including:

- making it more difficult to meet payment and other obligations under the Senior Notes and other outstanding debt; resulting in an event of default if our subsidiaries fail to comply with the financial and other restrictive covenants contained in debt agreements, which event of default could result in all of our subsidiaries' debt becoming immediately due and payable;
- reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions and other general corporate purposes, and limiting our ability to obtain additional financing for these purposes;
- subjecting us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates, including borrowings under the Credit Agreement;
- limiting our flexibility in planning for, or reacting to, and increasing our vulnerability to, changes in our business, the industry in which we operate and the general economy; and
- placing us at a competitive disadvantage compared to our competitors that are less leveraged.

In addition, certain of our subsidiaries also have significant contractual requirements for the purchase of soft drinks. Wendy's has also provided loan guarantees to various lenders on behalf of franchisees entering into pooled debt facility arrangements for new store development and equipment financing. Certain subsidiaries also guarantee or are contingently liable for certain leases of their respective franchisees for which they have been indemnified. In addition,



certain subsidiaries also guarantee or are contingently liable for certain leases of their respective franchisees for which they have not been indemnified. These commitments could have an adverse effect on our liquidity and the ability of our subsidiaries to meet payment obligations under the Senior Notes and other debt.

The ability to meet payment and other obligations under the debt instruments of our subsidiaries depends on their ability to generate significant cash flow in the future. This, to some extent, is subject to general economic, financial, competitive, legislative and regulatory factors as well as other factors that are beyond our control. We cannot assure you that our business will generate cash flow from operations, or that future borrowings will be available to us under existing or any future credit facilities or otherwise, in an amount sufficient to enable our subsidiaries to meet their payment obligations under the Senior Notes and other debt and to fund other liquidity needs. If our subsidiaries are not able to generate sufficient cash flow to service their debt obligations, they may need to refinance or restructure debt, including the Senior Notes, sell assets, reduce or delay capital investments, or seek to raise additional capital. If our subsidiaries are unable to implement one or more of these alternatives, they may not be able to meet payment obligations under the Senior Notes and other debt and other obligations.

We and our subsidiaries may still be able to incur substantially more debt. This could exacerbate further the risks associated with our substantial leverage.

We and our subsidiaries may be able to incur substantial additional indebtedness, including additional secured indebtedness, in the future. The terms of the Senior Notes indenture and the Credit Agreement restrict, but do not completely prohibit, us or our subsidiaries from doing so. In addition, the Senior Notes indenture allows Wendy's Restaurants to issue additional Senior Notes under certain circumstances, which will also be guaranteed by the guarantors of the Senior Notes. The indenture also allows Wendy's Restaurants to incur certain secured debt and allows our foreign subsidiaries to incur additional debt, which would be effectively senior to the Senior Notes. In addition, the indenture does not prevent Wendy's Restaurants from incurring other liabilities that do not constitute indebtedness. If new debt or other liabilities are added to our current consolidated debt levels, the related risks that we now face could intensify.

To service debt and meet its other cash needs, Wendy's Restaurants will require a significant amount of cash, which may not be generated or available to it.

The ability of Wendy's Restaurants to make payments on, or repay or refinance, its debt, including the Senior Notes and the Credit Agreement, and to fund planned capital expenditures, dividends and other cash needs will depend largely upon its future operating performance. Future performance, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. In addition, the ability of Wendy's Restaurants to borrow funds in the future to make payments on its debt will depend on the satisfaction of the covenants in its credit facilities and other debt agreements, including the indenture governing the Senior Notes, the Credit Agreement and other agreements it may enter into in the future. Specifically, Wendy's Restaurants will need to maintain specified financial ratios and satisfy financial condition tests. There is no assurance that the Wendy's Restaurants business will generate sufficient cash flow from operations or that future borrowings will be available under its credit facilities or from other sources in an amount sufficient to enable it to pay its debt, including the Senior Notes and Credit Agreement, or to fund its or The Wendy's Company's dividend and other liquidity needs.

As a result of the indemnification provisions of the Purchase and Sale Agreement pursuant to which the sale of Arby's occurred on July 4, 2011, Wendy's Restaurants may incur expenses and liabilities for taxes related to periods up to the date of sale.

As a result of the indemnification provisions of the Purchase and Sale Agreement pursuant to which the sale of Arby's occurred on July 4, 2011, Wendy's Restaurants may incur expenses and liabilities for taxes related to periods up to the date of sale, such as income, sales and use, and other operating taxes. Discontinued operations for the 2011 third and fourth quarters included \$2.1 million for amounts accrued for certain tax liabilities related to Arby's which are the obligations of Wendy's Restaurants pursuant to the indemnification provisions of the Purchase and Sale Agreement and it is possible that further accruals may occur in future periods as audits by various taxing authorities are resolved. Further accruals in future periods would adversely affect our results of operations.

Risks Related to The Wendy's Company

There can be no assurance regarding whether or to what extent The Wendy's Company will pay dividends on its Common Stock in the future.

Holders of The Wendy's Company Common Stock will only be entitled to receive such dividends as its Board of Directors may declare out of funds legally available for such payments. Any dividends will be made at the discretion of the Board of Directors and will depend on The Wendy's Company's earnings, financial condition, cash requirements and such other factors as the Board of Directors may deem relevant from time to time.

Because The Wendy's Company is a holding company, its ability to declare and pay dividends is dependent upon cash, cash equivalents and short-term investments on hand and cash flows from its subsidiaries. The ability of its subsidiaries to pay cash dividends and/or make loans or advances to the holding company will be dependent upon their respective abilities to achieve sufficient cash flows after satisfying their respective cash requirements, including subsidiary-level debt service and revolving credit agreements, to enable the payment of such dividends or the making of such loans or advances. The ability of any of its subsidiaries to pay cash dividends or other payments to The Wendy's Company will also be limited by restrictions in debt instruments currently existing or subsequently entered into by such subsidiaries, including the Credit Agreement and the Senior Notes indenture, which are described earlier in this Item 1A.

A substantial amount of The Wendy's Company Common Stock is concentrated in the hands of certain stockholders.

Nelson Peltz, The Wendy's Company Chairman and former Chief Executive Officer, and Peter May, The Wendy's Company Vice Chairman and former President and Chief Operating Officer, beneficially own shares of The Wendy's Company outstanding Common Stock that collectively constitute more than 25% of its total voting power. Messrs. Peltz and May may, from time to time, acquire beneficial ownership of additional shares of Common Stock.

On December 1, 2011, The Wendy's Company entered into an agreement (the "Triam Agreement") with Messrs. Peltz and May and several of their affiliates (the "Covered Persons"). Pursuant to the Triam Agreement, the Board of Directors (the "Board"), including a majority of the independent directors, approved, for purposes of Section 203 of the Delaware General Corporation Law ("Section 203"), the Covered Persons becoming the owners (as defined in Section 203(c)(9) of the DGCL) of or acquiring an aggregate of up to (and including), but not more than, 32.5% (subject to certain adjustments set forth in the Agreement, the "Maximum Percentage") of the outstanding shares of the Company's Common Stock, such that no such persons would be subject to the restrictions set forth in Section 203 solely as a result of such ownership (such approval, the "Section 203 Approval").

Pursuant to the 2011 Agreement, each of the Covered Persons has agreed that, for so long as the Company has a class of equity securities listed on any national securities exchange, (a) he will not purchase or cause to be purchased, or otherwise acquire, beneficial ownership of Company voting securities that would increase the aggregate beneficial ownership of Company voting securities by the Covered Persons above the Maximum Percentage; (b) he will not solicit proxies or submit any proposal for the vote of stockholders of the Company or recommend or request or induce any other person to take any such actions or seek to advise, encourage or influence any other person with respect to the Shares, in each case, if the result of such action would be to cause the Board to be comprised of less than a majority of independent directors; (c) he will not engage in certain affiliate transactions with the Company without the prior approval of a majority of the Audit Committee of the Board or other committee of the Board that is comprised of independent directors; and (iii) except with respect to certain pledged shares, each of the Covered Persons shall cause the Company voting securities owned by it to be present at stockholder meetings for the purposes of establishing a quorum and shall vote any Company voting securities in excess of the shares beneficially owned by them on the date of the Triam Agreement either as recommended by the Board or in the same proportion as Company voting securities not owned by the Covered Persons are actually voted, subject to certain limited exceptions.

The Triam Agreement (other than the provisions relating to the Section 203 Approval and certain miscellaneous provisions that survive the termination of the Agreement) will terminate upon the earliest to occur of (i) the Covered Persons ceasing to own in the aggregate 25% of the outstanding voting power of the Company, (ii) December 1, 2014, (iii) at such time as the Company's Common Stock is no longer listed on a national securities exchange, and (iv) such time as any person other than the Covered Persons or any Affiliate, Associate of, or member of a Schedule 13D group with, the Covered Persons, (a) makes an offer to purchase (x) an amount of shares that when added to the number of shares already beneficially owned by such person and its affiliates and associates equals or exceeds 50% of the outstanding voting power of the Company or (y) all or substantially all of the assets of the Company, (b) solicits proxies with respect to a majority slate of directors or (c) commences or announces an intention to commence a

solicitation of proxies, becomes a “participant” in a “solicitation” or assists any “participant” in, a “solicitation” as such terms are defined in Rule 14a-1 of Regulation 14A under the Securities Exchange Act of 1934, as amended), or submits any proposal for the vote of stockholders of the Company, or recommends or requests or induces or attempts to induce any other person to take any such actions, or to seek to advise, encourage or influence any other person with respect to the voting of Company voting securities, in each case, if the result of any such proposal or solicitation would be to change a majority of the persons serving as directors on the Board.

This concentration of ownership gives Messrs. Peltz and May significant influence over the outcome of actions requiring stockholder approval, including the election of directors and the approval of mergers, consolidations and the sale of all or substantially all of the Company's assets. They are also in a position to have significant influence to prevent or cause a change in control of The Wendy's Company. If in the future Messrs. Peltz and May were to acquire more than a majority of The Wendy's Company outstanding voting power, they would be able to determine the outcome of the election of members of the Board of Directors and the outcome of corporate actions requiring majority stockholder approval, including mergers, consolidations and the sale of all or substantially all of The Wendy's Company assets. They would also be in a position to prevent or cause a change in control of The Wendy's Company.

The Wendy's Company's certificate of incorporation contains certain anti-takeover provisions and permits our Board of Directors to issue preferred stock without stockholder approval and limits its ability to raise capital from affiliates.

Certain provisions in The Wendy's Company's certificate of incorporation are intended to discourage or delay a hostile takeover of control of The Wendy's Company. The Wendy's Company's certificate of incorporation authorizes the issuance of shares of "blank check" preferred stock, which will have such designations, rights and preferences as may be determined from time to time by its Board of Directors. Accordingly, its Board of Directors is empowered, without stockholder approval, to issue preferred stock with dividend, liquidation, conversion, voting or other rights that could adversely affect the voting power and other rights of the holders of its common stock. The preferred stock could be used to discourage, delay or prevent a change in control of The Wendy's Company that is determined by its Board of Directors to be undesirable. Although The Wendy's Company has no present intention to issue any shares of preferred stock, it cannot assure you that it will not do so in the future.

The Wendy's Company's certificate of incorporation prohibits the issuance of preferred stock to affiliates, unless offered ratably to the holders of The Wendy's Company's common stock, subject to an exception in the event that The Wendy's Company is in financial distress and the issuance is approved by its audit committee. This prohibition limits the ability to raise capital from affiliates.

#### Risks Related to Wendy's Restaurants

Wendy's Restaurants is dependent on dividends and/or loans or advances from its subsidiaries to meet its debt service obligations.

The ability of Wendy's Restaurants' subsidiaries to pay cash dividends and/or make loans or advances to Wendy's Restaurants will be dependent upon their respective abilities to achieve sufficient cash flows after satisfying their respective cash requirements, including subsidiary-level debt service and revolving credit agreements, to enable the payment of such dividends or the making of such loans or advances. The ability of any of its subsidiaries to pay cash dividends or other payments to Wendy's Restaurants will also be limited by restrictions in debt instruments currently existing or subsequently entered into by such subsidiaries, including the Credit Agreement and the Senior Notes indenture, which are described above in this Item 1A.

#### Item 1B. Unresolved Staff Comments.

None.

## Item 2. Properties.

We believe that our properties, taken as a whole, are generally well maintained and are adequate for our current and foreseeable business needs.

The following table contains information about our principal office facilities as of January 1, 2012:

ACTIVE FACILITIES	FACILITIES-LOCATION	LAND TITLE	APPROXIMATE SQ. FT. OF FLOOR SPACE
Corporate Headquarters	Dublin, OH	Owned	249,025 *
Atlanta Support Center	Atlanta, GA	Leased	75,663
Former Corporate Headquarters	New York, NY	Leased	31,237 **
Wendy's Restaurants of Canada Inc.	Oakville, Ontario, Canada	Leased	35,125

\* QSCC, the independent Wendy's purchasing cooperative in which Wendy's has non-controlling representation on the board of directors, leases approximately 14,300 square feet of this space from Wendy's.

A management company formed by Messrs. Nelson Peltz, our Chairman and former Chief Executive Officer, Peter W. May, our Vice Chairman and former President and Chief Operating Officer, and Edward P. Garden, our Former Vice Chairman and a member of our Board of Directors subleases approximately 26,600 square feet of this space from us.

At January 1, 2012, Wendy's and its franchisees operated 6,594 Wendy's restaurants. Of the 1,417 company-owned Wendy's restaurants, Wendy's owned the land and building for 643 restaurants, owned the building and held long-term land leases for 487 restaurants and held leases covering land and building for 287 restaurants. Wendy's land and building leases are generally written for terms of 10 to 25 years with one or more five-year renewal options. In certain lease agreements Wendy's has the option to purchase the real estate. Certain leases require the payment of additional rent equal to a percentage, generally less than 6%, of annual sales in excess of specified amounts. As of January 1, 2012, Wendy's also owned 56 and leased 206 properties that were either leased or subleased principally to franchisees. Surplus land and buildings are generally held for sale and are not material to our financial condition or results of operations.

The Bakery operates two facilities in Zanesville, Ohio that produce buns for Wendy's restaurants and other outside parties (including certain distributors to the Arby's system). The buns are distributed to both company-owned and franchised restaurants primarily using the Bakery's fleet of trucks. As of January 1, 2012, the Bakery employed approximately 350 people at the two facilities that had a combined size of approximately 205,000 square feet.

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The location of company-owned and franchised restaurants as of January 1, 2012 is set forth below.

State	Wendy's Company	Franchise
Alabama	—	95
Alaska	—	7
Arizona	46	55
Arkansas	—	64
California	55	214
Colorado	48	80
Connecticut	5	45
Delaware	—	15
Florida	185	303
Georgia	58	236
Hawaii	7	—
Idaho	—	29
Illinois	97	98
Indiana	5	174
Iowa	—	45
Kansas	11	63
Kentucky	4	138
Louisiana	58	71
Maine	5	15
Maryland	—	111
Massachusetts	78	12
Michigan	21	248
Minnesota	—	68
Mississippi	8	88
Missouri	37	57
Montana	—	17
Nebraska	—	34
Nevada	—	46
New Hampshire	4	21
New Jersey	22	118
New Mexico	—	38
New York	65	152
North Carolina	39	214
North Dakota	—	9
Ohio	75	347
Oklahoma	—	39
Oregon	19	32
Pennsylvania	79	179
Rhode Island	11	7
South Carolina	—	132
South Dakota	—	9
Tennessee	—	184
Texas	75	318
Utah	57	30
Vermont	—	5
Virginia	54	160
Washington	29	45



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West Virginia	22	51
Wisconsin	—	62
Wyoming	—	14
District of Columbia	—	3
Domestic subtotal	1,279	4,597
Canada	138	230
North America subtotal	1,417	4,827

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Country/Territory	Wendy's Company	Franchise
Argentina	—	1
Aruba	—	3
Bahamas	—	10
Cayman Islands	—	2
Costa Rica	—	10
Curacao	—	1
Dominican Republic	—	7
El Salvador	—	14
Guam	—	3
Guatemala	—	9
Honduras	—	30
Indonesia	—	27
Jamaica	—	4
Japan	—	1
Malaysia	—	8
Mexico	—	26
New Zealand	—	17
Panama	—	7
Philippines	—	31
Puerto Rico	—	74
Russia	—	5
Singapore	—	10
Trinidad and Tobago	—	2
United Arab Emirates	—	9
Venezuela	—	37
U. S. Virgin Islands	—	2
International subtotal	—	350