

MIDDLETON J KEITH  
Form 4  
March 06, 2007

**FORM 4**

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

OMB APPROVAL

OMB Number: 3235-0287  
Expires: January 31, 2005  
Estimated average burden hours per response... 0.5

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
MIDDLETON J KEITH

2. Issuer Name and Ticker or Trading Symbol  
PERFORMANCE FOOD GROUP CO [PFGC]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Date of Earliest Transaction (Month/Day/Year)  
03/02/2007

\_\_\_\_ Director \_\_\_\_\_ 10% Owner  
 Officer (give title below) \_\_\_\_\_ Other (specify below)  
SVP, Controller

C/O PERFORMANCE FOOD GROUP, 12500 WEST CREEK PARKWAY

(Street)

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)  
 Form filed by One Reporting Person  
\_\_\_\_ Form filed by More than One Reporting Person

RICHMOND, VA 23238

(City) (State) (Zip)

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
			Code	V Amount (A) or (D) Price			
Common stock	03/02/2007		A	1,583 A \$ 0 (1)	13,527	D	
Common stock					232.2531	I	By ESOP
Common stock					651.795	I	By 401k

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

**Persons who respond to the collection of information contained in this form are not**

SEC 1474 (9-02)

required to respond unless the form displays a currently valid OMB control number.

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	Amount or Number of Shares
Stock Appreciation Right <sup>(2)</sup>	\$ 29.46	03/02/2007		A	4,748	03/02/2011 03/02/2017	Common stock	4,748

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
MIDDLETON J KEITH C/O PERFORMANCE FOOD GROUP 12500 WEST CREEK PARKWAY RICHMOND, VA 23238			SVP, Controller	

## Signatures

J. Keith  
Middleton 03/06/2007

\*\*Signature of Reporting Person Date

## Explanation of Responses:

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) These shares of restricted stock vest on the fourth anniversary of the grant date.
- (2) These represent stock appreciation rights that vest on the fourth anniversary of the date of grant, provide for a maximum of \$60 appreciation per each stock appreciation right and are to be settled in shares of PFGC common stock.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

Restricted share amortization

19

24

26

Reclassification and other

24

8

12

Balance at end of year

2,161

1,877

1,835

Retained Earnings:

Balance at beginning of year

2,993

Explanation of Responses:

2,781

3,032

Cumulative effect of adoption of FIN 48

(17)

-

-

Net income (loss)

86

268

(196)

Dividends paid

(56)

(56)

(55)

Balance at end of year

3,006

2,993

2,781

Edgar Filing: MIDDLETON J KEITH - Form 4

Accumulated Other Comprehensive Income (Loss), Net of Tax:

Balance at beginning of year

50

17

28

Net hedging (gain) loss recognized in cost of sales

(6)

(20)

Explanation of Responses:

3

Net hedging unrealized gain

4

20

1

Unrealized gain (loss) on investments

(1)

-

1

Currency translation adjustment

(2)

Explanation of Responses:



24

(6)

Net change in postretirement liabilities

(4)

-

-

Net change in pension liability, prior to the adoption of SFAS No. 158

-

6

(10)

Adjustment to initially apply SFAS No. 158

Explanation of Responses:

-

3

-

Balance at end of year

41

50

17

Treasury Stock:

Balance at beginning of year

14

(226)

15

(230)

15

(238)

Purchase of treasury shares

2

(30)

3

(61)

Explanation of Responses:

Edgar Filing: MIDDLETON J KEITH - Form 4

3

(42)

Stock options exercised

-

11

(4)

65

(2)

35

Restricted shares issued

(1)

16

(2)

27

(1)

20

Restricted shares canceled

-

(4)

Explanation of Responses:

Edgar Filing: MIDDLETON J KEITH - Form 4

2

(27)

-

(5)

Balance at end of year

15

(233)

14

(226)

15

(230)

Unamortized Deferred Compensation:

Explanation of Responses:

Balance at beginning of year

-

-

(55)

Cumulative effect of adoption of SFAS No. 123R

-

-

55

Balance at end of year

-

-

-

Total Shareholders' Equity

\$5,014

Explanation of Responses:

\$4,731

\$4,440

Comprehensive Income (Loss):

Net income (loss)

Explanation of Responses:



Edgar Filing: MIDDLETON J KEITH - Form 4

\$86

\$268

\$(196)

Other comprehensive income (loss), net of tax

(9)

30

(11)

Total Comprehensive Income (Loss)

\$77

\$298

\$(207)

Explanation of Responses:

See accompanying notes.

## TYSON FOODS, INC.

## CONSOLIDATED STATEMENTS OF CASH FLOWS

	Three years ended September 27, 2008 in millions		
	2008	2007	2006
Cash Flows From Operating Activities:			
Net income (loss)	\$ 86	\$ 268	\$ (196 )
Adjustments to reconcile net income (loss) to cash provided by operating activities:			
Depreciation	468	482	481
Amortization	25	32	36
Deferred taxes	35	5	(130 )
Cumulative effect of change in accounting principle, before tax	-	-	9
Impairment and write-down of assets	57	14	18
Other, net	26	(15 )	30
(Increase) decrease in accounts receivable	(59 )	(66 )	43
(Increase) decrease in inventories	(376 )	(166 )	8
Increase in trade accounts payable	98	91	38
Increase (decrease) in income taxes payable/receivable	(22 )	24	(132 )
Increase (decrease) in interest payable	-	(35 )	104
Net change in other current assets and liabilities	(50 )	44	63
Cash Provided by Operating Activities	288	678	372
Cash Flows From Investing Activities:			
Additions to property, plant and equipment	(425 )	(285 )	(531 )
Proceeds from sale of property, plant and equipment	26	76	21
Purchases of marketable securities	(115 )	(131 )	(191 )
Proceeds from sale of marketable securities	112	147	214
Proceeds from sale of investments	22	-	-
Proceeds from sale (purchase) of short-term investment	-	770	(750 )
Other, net	(19 )	2	13
Cash Provided by (Used for) Investing Activities	(399 )	579	(1,224 )
Cash Flows From Financing Activities:			
Net borrowings (payments) on revolving credit facilities	(213 )	53	158
Payments of debt	(147 )	(1,263 )	(166 )
Net proceeds from borrowings	449	-	992
Net proceeds from Class A stock offering	274	-	-
Convertible note hedge transactions	(94 )	-	-
Warrant transactions	44	-	-
Purchase of treasury shares	(30 )	(61 )	(42 )
Dividends	(56 )	(56 )	(55 )
Stock options exercised	9	74	32
Increase (decrease) in negative book cash balances	67	9	(85 )
Other, net	18	(8 )	10
Cash Provided by (Used for) Financing Activities	321	(1,252 )	844
Effect of Exchange Rate Change on Cash	(2 )	9	(4 )
Increase (Decrease) in Cash and Cash Equivalents	208	14	(12 )
Cash and Cash Equivalents at Beginning of Year	42	28	40
Cash and Cash Equivalents at End of Year	\$ 250	\$ 42	\$ 28
See accompanying notes.			



TYSON FOODS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1: BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Description of Business:** Tyson Foods, Inc. (collectively, Company, we, us or our ), founded in 1935 with world headquarters in Springdale, Arkansas, is the world's largest processor and marketer of chicken, beef and pork and the second-largest food production company in the *Fortune* 500. We produce a wide variety of brand name protein-based and prepared food products marketed in the United States and more than 90 countries around the world. We are a recognized market leader in the retail and foodservice markets we serve. We have approximately 107,000 employees and more than 300 facilities and offices in 28 states and 22 countries.

**Consolidation:** The consolidated financial statements include the accounts of all wholly-owned subsidiaries, as well as majority-owned subsidiaries for which we have a controlling interest. All significant intercompany accounts and transactions have been eliminated in consolidation.

We have an investment in a joint venture, Dynamic Fuels LLC (Dynamic), in which we have a 50 percent ownership interest. Dynamic qualifies as a variable interest entity under Financial Accounting Standards Board (FASB) Interpretation No. 46(R)

Consolidation of Variable Interest Entities, an interpretation of ARB No. 51 (FIN 46(R)). Effective June 30, 2008, we began consolidating Dynamic since we are the primary beneficiary as defined by FIN 46(R).

**Fiscal Year:** We utilize a 52- or 53-week accounting period ending on the Saturday closest to September 30.

**Reclassification:** In the fourth quarter fiscal 2008, we began to manage and report the operating results and identifiable assets of our logistics operations in the segment in which the product being moved relates. As a result, our operating segments now reflect logistics operations which were previously included in Other. All prior periods have been restated to reflect this change.

**Discontinued Operation:** On June 25, 2008, we executed a letter of intent with XL Foods Inc. to sell the beef processing, cattle feed yard and fertilizer assets of Lakeside Farm Industries Ltd (Lakeside), our wholly-owned Canadian subsidiary. The financial statements report Lakeside as a discontinued operation. See Note 3: Discontinued Operation in the Notes to Consolidated Financial Statements for further information. Accordingly, all prior periods have been restated.

**Cash and Cash Equivalents:** Cash equivalents consist of investments in short-term, highly liquid securities having original maturities of three months or less, which are made as part of our cash management activity. The carrying values of these assets approximate their fair market values. We primarily utilize a cash management system with a series of separate accounts consisting of lockbox accounts for receiving cash, concentration accounts where funds are moved to, and several zero-balance disbursement accounts for funding payroll, accounts payable, livestock procurement, grower payments, etc. As a result of our cash management system, checks issued, but not presented to the banks for payment, may result in negative book cash balances. These negative book cash balances are included in trade accounts payable and other current liabilities. Checks outstanding in excess of related book cash balances totaled approximately \$322 million at September 27, 2008, and \$255

million at September 29, 2007.

**Accounts Receivable:** We record trade accounts receivable at net realizable value. This value includes an appropriate allowance for estimated uncollectible accounts to reflect any loss anticipated on the trade accounts receivable balances and charged to the provision for doubtful accounts. We calculate this allowance based on our history of write-offs, level of past due accounts and relationships with and economic status of our customers. We generally do not have collateral for our receivables, but we do periodically evaluate the credit worthiness of our customers.

**Inventories:** Processed products, livestock and supplies and other are valued at the lower of cost or market. Cost includes purchased raw materials, live purchase costs, growout costs (primarily feed, contract grower pay and catch and haul costs), labor and manufacturing and production overhead, which are related to the purchase and production of inventories.

	2008	in millions 2007
Processed products:		
Weighted-average method - chicken and prepared foods	\$ 920	\$ 773
First-in, first-out method - beef and pork	571	514
Livestock first-in, first-out method	701	573
Supplies and other - weighted-average method	346	299
Total inventory	\$ 2,538	\$ 2,159

**TYSON FOODS, INC.**

**Depreciation:** We primarily use the straight-line method to calculate depreciation, using estimated lives for buildings and leasehold improvements of 10 to 33 years, machinery and equipment of three to 12 years and land improvements and other of three to 20 years.

**Long-Lived Assets:** We review the carrying value of long-lived assets at each balance sheet date if indication of impairment exists. Recoverability is assessed using undiscounted cash flows based on historical results and current projections of earnings before interest and taxes. We measure impairment as the excess of carrying cost over the fair value of an asset. The fair value of an asset is measured using discounted cash flows of future operating results based on a discount rate that corresponds to our cost of capital.

**Goodwill and Other Intangible Assets:** Goodwill and indefinite life intangible assets are initially recorded at fair value and not amortized, but are reviewed for impairment at least annually or more frequently if impairment indicators arise. Our goodwill is allocated by reporting unit, and we follow a two-step process to evaluate if a potential impairment exists. We have estimated the fair value of our reporting units using a discounted cash flow analysis. This analysis requires us to make various judgmental estimates and assumptions about sales, operating margins, growth rates and discount factors. While estimating the fair value of our Beef and Chicken reporting units, we assumed operating margins in future years in excess of the margins realized in the most recent year. The fair value estimates for these reporting units assume normalized operating margin assumptions and improved operating efficiencies based on long-term expectations and operating margins historically realized in the beef and chicken industries. As a result of the first step of our goodwill impairment review, a potential impairment did not exist; therefore, the second step was not considered necessary. While we believe we have made reasonable estimates and assumptions to determine the fair value of our reporting units, it is possible a material change could occur. If our actual results are not consistent with our estimates and assumptions used to calculate the fair value of our reporting units, we may be required to perform the second step which could result in a material impairment of our goodwill.

During the latter part of the fourth quarter of fiscal 2008 and continuing into November 2008, our market capitalization was below book value. While we considered the market capitalization decline in our evaluation of fair value of goodwill, we determined it did not impact the overall goodwill impairment analysis as we believe the decline to be primarily attributed to the negative market conditions as a result of the credit crisis, indications of a possible recession and current issues within the poultry industry. We will continue to monitor our market capitalization as a potential impairment indicator considering overall market conditions and poultry industry events.

The fair value of trademarks is determined using a royalty rate method based on expected revenues by trademark, and the fair value of our in-process patents is determined using the present value of estimated future cash flows.

**Investments:** We have investments in joint ventures and other entities. We use the cost method of accounting where our voting interests are less than 20 percent and the equity method of accounting where our voting interests are in excess of 20 percent, but we do not have a controlling interest or a variable interest in which we are the primary beneficiary. Investments in joint ventures and other entities are reported in the Consolidated Balance Sheets in Other Assets.

We have investments in marketable debt securities. As of September 27, 2008, and September 29, 2007, \$94 million, were classified in Other Assets in the Consolidated Balance Sheets, with maturities ranging up to 48 years. We have determined all our marketable debt securities are available-for-sale investments. These investments are reported at fair value based on quoted market prices as of the balance sheet date, with unrealized gains and losses, net of tax, recorded in other comprehensive income. The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization is recorded in interest income. The cost of securities sold is based on the specific identification method. Realized gains and losses on the sale of debt securities and declines in value judged to be other than temporary are recorded on a net basis in other income. Interest and dividends on securities classified as available-for-sale are recorded in interest income.

**Accrued Self Insurance:** We use a combination of insurance and self-insurance mechanisms to provide for the potential liabilities for health and welfare, workers compensation, auto liability and general liability risks. Liabilities associated with our risks retained are estimated, in part, by considering claims experience, demographic factors, severity factors and other actuarial assumptions.



**TYSON FOODS, INC.**

**Capital Stock:** We have two classes of capital stock, Class A Common Stock, \$0.10 par value (Class A stock) and Class B Common Stock, \$0.10 par value (Class B stock). Holders of Class B stock may convert such stock into Class A stock on a share-for-share basis. Holders of Class B stock are entitled to 10 votes per share, while holders of Class A stock are entitled to one vote per share on matters submitted to shareholders for approval. As of September 27, 2008, members of the Tyson family beneficially own, in the aggregate, 99.97% of the outstanding shares of Class B stock and 2.31% of the outstanding shares of Class A stock, giving the Tyson family control of approximately 70% of the total voting power of the outstanding voting stock. Cash dividends cannot be paid to holders of Class B stock unless they are simultaneously paid to holders of Class A stock. The per share amount of the cash dividend paid to holders of Class B stock cannot exceed 90% of the cash dividend simultaneously paid to holders of Class A stock. We pay quarterly cash dividends to Class A and Class B shareholders. We paid Class A dividends per share of \$0.16 and Class B dividends per share of \$0.144 in each of fiscal years 2008, 2007 and 2006.

The Class B stock is considered a participating security requiring the use of the two-class method for the computation of basic earnings per share. The two-class computation method for each period reflects the cash dividends paid for each class of stock, plus the amount of allocated undistributed earnings (losses) computed using the participation percentage, which reflects the dividend rights of each class of stock. Basic earnings per share were computed using the two-class method for all periods presented. The shares of Class B stock are considered to be participating convertible securities since the shares of Class B stock are convertible on a share-for-share basis into shares of Class A stock. Diluted earnings per share were computed assuming the conversion of the Class B shares into Class A shares as of the beginning of each period.

**Financial Instruments:** We purchase certain commodities, such as grains and livestock in the course of normal operations. As part of our commodity risk management activities, we use derivative financial instruments, primarily futures and options, to reduce our exposure to various market risks related to these purchases, as well as to changes in foreign currency exchange rates. Contract terms of a financial instrument qualifying as a hedge instrument closely mirror those of the hedged item, providing a high degree of risk reduction and correlation. Contracts designated and highly effective at meeting risk reduction and correlation criteria are recorded using hedge accounting. If a derivative instrument is accounted for as a hedge, changes in the fair value of the instrument will be offset either against the change in fair value of the hedged assets, liabilities or firm commitments through earnings or recognized in other comprehensive income (loss) until the hedged item is recognized in earnings. The ineffective portion of an instrument's change in fair value is immediately recognized in earnings as a component of cost of sales. Instruments we hold as part of our risk management activities that do not meet the criteria for hedge accounting are marked to fair value with unrealized gains or losses reported currently in earnings. Changes in market value of derivatives used in our risk management activities relating to forward sales contracts are recorded in sales. Changes in market value of derivatives used in our risk management activities surrounding inventories on hand or anticipated purchases of inventories or supplies are recorded in cost of sales. We generally do not hedge anticipated transactions beyond 12 months.

**Revenue Recognition:** We recognize revenue when title and risk of loss are transferred to customers, which is generally on delivery based on terms of sale. Revenue is recognized as the net amount estimated to be received after deducting estimated amounts for discounts, trade allowances and product terms.

**Litigation Reserves:** There are a variety of legal proceedings pending or threatened against us. Accruals are recorded when it is probable a liability has been incurred and the amount of the liability can be reasonably estimated based on current law, progress of each case, opinions and views of legal counsel and other advisers, our experience in similar matters and intended response to the litigation. These amounts, which are not discounted and are exclusive of claims against third parties, are adjusted periodically as assessment efforts progress or additional information becomes available. We expense amounts for administering or litigating claims as incurred. Accruals for legal proceedings are included in Other current liabilities in the Consolidated Balance Sheets.

**Freight Expense:** Freight expense associated with products shipped to customers is recognized in cost of sales.

**Advertising and Promotion Expenses:** Advertising and promotion expenses are charged to operations in the period incurred. Customer incentive and trade promotion activities are recorded as a reduction to sales based on amounts estimated as being due to customers, based primarily on historical utilization and redemption rates, while other advertising and promotional activities are recorded as selling, general and administrative expenses. Advertising and promotion expenses for fiscal years 2008, 2007 and 2006 were \$495 million, \$467 million and \$493 million, respectively.

**TYSON FOODS, INC.**

**Use of Estimates:** The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States, which require us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

**Recently Issued Accounting Pronouncements:** In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, Fair Value Measurements (SFAS No. 157). SFAS No. 157 provides guidance for using fair value to measure assets and liabilities. This standard also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value and the effect of fair value measurements on earnings. SFAS No. 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value. Beginning September 28, 2008, we partially applied SFAS No. 157 as allowed by FASB Staff Position (FSP) 157-2, which delayed the effective date of SFAS No. 157 for nonfinancial assets and liabilities. As of September 28, 2008, we have applied the provisions of SFAS No. 157 to our financial instruments and the impact was not material. Under FSP 157-2, we will be required to apply SFAS No. 157 to our nonfinancial assets and liabilities at the beginning of fiscal 2010. We are currently reviewing the applicability of SFAS No. 157 to our nonfinancial assets and liabilities as well as the potential impact on our consolidated financial statements.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115 (SFAS No. 159). This statement provides companies with an option to report selected financial assets and liabilities firm commitments, and nonfinancial warranty and insurance contracts at fair value on a contract-by-contract basis, with changes in fair value recognized in earnings each reporting period. At September 28, 2008, we did not elect the fair value option under SFAS No. 159 and therefore there was no impact to our consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, Noncontrolling Interests in Consolidated Financial Statements (SFAS No. 160). SFAS No. 160 amends Accounting Research Bulletin No. 51, Consolidated Financial Statements to establish accounting and reporting standards for a noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity and should be reported as equity in the consolidated financial statements, rather than in the liability or mezzanine section between liabilities and equity. SFAS No. 160 also requires consolidated net income be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. The impact of SFAS No. 160 will not have a material impact on our current Consolidated Financial Statements. SFAS No. 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008; therefore, we expect to adopt SFAS No. 160 at the beginning of fiscal 2010.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141R, Business Combinations (SFAS No. 141R). SFAS No. 141R establishes principles and requirements for how an acquirer in a business combination: 1) recognizes and measures in its financial statements identifiable assets acquired, liabilities assumed, and any noncontrolling interest in the acquiree; 2) recognizes and measures goodwill acquired in a business combination or a gain from a bargain purchase; and 3) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of a business combination. SFAS No. 141R is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008; therefore, we expect to adopt SFAS No. 141R for any business combinations entered into beginning in fiscal 2010.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, Disclosures about Derivative Instruments and Hedging Activities - an amendment of FASB Statement No. 133 (SFAS No. 161). SFAS No. 161 establishes enhanced disclosure requirements about: 1) how and why an entity uses derivative instruments; 2) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations; and 3) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008; therefore, we expect to adopt SFAS No. 161 in the second quarter of fiscal 2009.

In May 2008, the FASB issued FASB Staff Position No. APB 14-1, Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement) (FSP APB 14-1). FSP APB 14-1 specifies that issuers of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. The amount allocated to the equity component represents a discount to the debt, which is amortized into interest expense using the effective interest method over the life of the debt. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Early adoption is not permitted. Therefore, we expect to adopt the provisions of FSP APB 14-1 beginning in the first quarter of fiscal 2010. The provisions of FSP APB 14-1 are required to be applied retrospectively to all periods presented. Upon retrospective adoption, we anticipate our effective interest rate on our 3.25% Convertible Senior Notes due 2013 will range from 8.0% to 8.50%, which would result in the recognition of an approximate \$90 million to \$100 million discount to these notes with the offsetting after tax amount recorded to capital in excess of par value. This discount will be accreted until the maturity date at the effective interest rate, which will

**TYSON FOODS, INC.**

not materially impact fiscal 2008 interest expense, but will result in an estimated \$15 million to \$20 million increase to our fiscal 2009 interest expense.

**NOTE 2: CHANGE IN ACCOUNTING PRINCIPLES**

In June 2006, the Financial Accounting Standards Board (FASB) issued Interpretation No. 48, Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109 (FIN 48). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. We adopted FIN 48 at the beginning of fiscal 2008. The adoption of FIN 48 resulted in a change to the opening Consolidated Balance Sheet as follows: \$32 million increase to Other Current Assets, \$17 million decrease to Other Current Liabilities, \$106 million increase to Other Liabilities, \$40 million decrease to Deferred Income Taxes and \$17 million decrease to Retained Earnings. Included in these changes we recognized a \$120 million increase in the liability for unrecognized tax benefits and a \$21 million increase in the related liability for interest and penalties for a total of \$141 million.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 158, Employers Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106, and 132(R) (SFAS No. 158). SFAS No. 158 requires companies to recognize the funded status of a defined benefit postretirement plan as an asset or liability in its consolidated balance sheet and to recognize changes in funded status in the year in which the changes occur through other comprehensive income. We adopted SFAS No. 158 at the end of fiscal 2007 except for the requirement to measure the funded status of a plan as of the date of its annual consolidated balance sheet, which we adopted in fiscal 2008 and which had an immaterial impact. See Note 13, Pensions and Other Postretirement Benefits in the Notes to Consolidated Financial Statements for the impact of the adoption of SFAS No. 158.

In March 2005, the FASB issued FIN 47, an interpretation of SFAS No. 143. SFAS No. 143 was issued in June 2001 and requires an entity to recognize the fair value of a liability for an asset retirement obligation in the period in which it is incurred if a reasonable estimate of fair value can be made. SFAS No. 143 applies to legal obligations associated with the retirement of a tangible long-lived asset that resulted from the acquisition, construction, development and/or the normal operation of a long-lived asset. The associated asset costs are capitalized as part of the carrying amount of the long-lived asset. FIN 47 clarifies the term conditional asset retirement obligations used in SFAS No. 143, which refers to a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement are conditional on a future event that may or may not be within the control of the entity. FIN 47 requires an entity to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value of the liability can be estimated reasonably. Uncertainty about the timing and/or method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. SFAS No. 143 acknowledges in some cases, sufficient information may not be available to reasonably estimate the fair value of an asset retirement obligation (ARO). We adopted FIN 47 in the fourth quarter of fiscal 2006. In connection with the adoption, an ARO liability of \$12 million, a related ARO asset of \$3 million and a cumulative adjustment due to change in accounting principle, net of tax of \$5 million were recorded. The ARO liability is included in Other Liabilities and the ARO asset is included in Property, Plant and Equipment on the Consolidated Balance Sheets. The principal conditional asset retirement obligations relate to the potential future closure, sale or other disposal of certain production facilities. In connection with any such activity, we are legally obligated under various federal, state and local laws to properly retire the related wastewater treatment facility.

**NOTE 3: DISCONTINUED OPERATION**

On June 25, 2008, we executed a letter of intent with XL Foods Inc. to sell the beef processing, cattle feed yard and fertilizer assets of Lakeside for \$104 million. Lakeside was part of our Beef segment. XL Foods will pay an additional amount for cattle inventory, fertilizer inventory and

## Edgar Filing: MIDDLETON J KEITH - Form 4

packaging assets, estimated to approximate \$82 million. This transaction is denominated in Canadian Dollars, thus conversion at the closing date to US Dollars could result in amounts in US Dollars different than noted. We will retain certain working capital items, including finished product inventory, accounts receivable and accounts payable, of the Lakeside operation as of the closing date, which totaled \$89 million at September 27, 2008. Once the transaction is complete, we expect retained working capital, including inventory, at Lakeside will be liquidated and settled over a two-month period.

Approximately \$60 million of Beef segment goodwill relates to Lakeside. In addition, at September 27, 2008, we had \$60 million of currency translation adjustment gain in accumulated comprehensive income related to the Lakeside Canadian dollar translation. Subsequent to September 27, 2008, the Canadian dollar weakened versus the US dollar, which may result in a decrease in the currency translation adjustment gain.

The transaction remains subject to government approvals and execution of a definitive agreement between Tyson and XL Foods. Subject to receipt of such approvals, we anticipate being ready to complete the sale by the end of the first quarter fiscal 2009 and are reporting the Lakeside results as a discontinued operation.

**TYSON FOODS, INC.**

The following is a summary of Lakeside's operating results (in millions):

	2008	2007	2006
Sales	\$ 1,268	\$ 1,171	\$ 970
Pretax loss	-	-	25

The carrying amounts of Lakeside's assets held for sale include the following (in millions):

	2008	2007
Assets of discontinued operation held for sale:		
Inventories	\$ 82	\$ 79
Net property, plant and equipment	77	85
Total assets of discontinued operation held for sale	\$ 159	\$ 164

**NOTE 4: DISPOSITIONS AND OTHER CHARGES**

In fiscal 2008, we recorded charges of \$10 million related to intangible asset impairments. Of this amount, \$8 million is reflected in the Beef segment's Operating Income and \$2 million in the Prepared Foods segment's Operating Income, and both are recorded in the Consolidated Statements of Operations in Cost of Sales. We recorded estimated charges of \$7 million related to flood damage at our Jefferson, Wisconsin, plant. This amount is reflected in the Prepared Foods segment's Operating Income and included in the Consolidated Statements of Operations in Cost of Sales. We also recorded a charge of \$6 million related to the impairment of unimproved real property in Memphis, Tennessee. This amount is reflected in the Chicken segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Cost of Sales. Additionally, we recorded an \$18 million non-operating gain as the result of a private equity firm's purchase of a technology company in which we held a minority interest. This gain was recorded in Other Income in the Consolidated Statements of Operations.

In February 2008, we announced discontinuation of an existing product line and closing of one of our three poultry plants in Wilkesboro, North Carolina. The Wilkesboro Cooked Products plant ceased operations during the second quarter of fiscal 2008. The closure resulted in elimination of approximately 400 jobs. In fiscal 2008, we recorded charges of \$13 million for estimated impairment charges. This amount is reflected in the Chicken segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other Charges. No material adjustments to the accrual are anticipated.

In January 2008, we announced the decision to restructure operations at our Emporia, Kansas, beef plant. Beef slaughter operations ceased during the second quarter of fiscal 2008. However, the facility will still be used to process certain commodity, specialty cuts and ground beef, as well as a cold storage and distribution warehouse. This restructuring resulted in elimination of approximately 1,700 jobs at the Emporia plant. In fiscal 2008, we recorded charges of \$10 million for estimated impairment charges and \$7 million of other closing costs, consisting of \$6 million for employee termination benefits and \$1 million in other plant-closing related liabilities. These amounts were reflected in the Beef segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other Charges. We have fully paid the employee termination benefits and other plant-closing related liabilities. No material adjustments to the accrual are anticipated.

## Edgar Filing: MIDDLETON J KEITH - Form 4

In fiscal 2008, management approved plans for implementation of certain recommendations resulting from the previously announced FAST initiative, which was focused on process improvement and efficiency creation. As a result, in fiscal 2008, we recorded charges of \$6 million related to employee termination benefits resulting from termination of approximately 200 employees. Of these charges, \$2 million, \$2 million, \$1 million and \$1 million, respectively, were recorded in the Chicken, Beef, Pork and Prepared Foods segments' Operating Income (Loss) and included in the Consolidated Statements of Operations in Other Charges. We have fully paid the employee termination benefits. No material adjustments to the accrual are anticipated.

In May 2007, we announced the completion of the sale of two of our Alabama poultry plants and related support facilities. As part of strategic efforts to reduce the production of commodity chicken, we sold our processing plants in Ashland and Gadsden, which also included a nearby feed mill and two hatcheries. These facilities employed approximately 1,200 employees, of which approximately 800 were hired by the acquiring company, while the remaining employees were offered the opportunity to transfer to our other operations in Alabama. We recorded a gain of \$10 million on the sale in fiscal 2007. The gain was recorded in the Chicken segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Cost of Sales.

In July 2006, we announced our decision to implement a Cost Management Initiative as part of a strategy to return to profitability. The cost reductions include staffing costs, consulting and professional fees, sales and marketing costs and other expenses. In fiscal 2006, we recorded charges of approximately \$9 million for employee termination benefits resulting from the termination of approximately 400 employees. Of these charges, \$4 million, \$3 million, \$1 million and \$1 million, respectively, were included in the Chicken, Beef, Pork and Prepared Foods segments' Operating Income (Loss) and included in the Consolidated Statements of Operations in Other



**TYSON FOODS, INC.**

charges in the period ending September 30, 2006. In fiscal 2007, there were no material adjustments to amounts accrued. We have fully paid the estimated employee termination benefits. No material adjustments to the accrual are anticipated.

In August 2006, we announced our decision to close the Boise, Idaho, beef slaughter plant and to scale back processing operations at our Pasco, Washington, complex. This decision resulted in the elimination of approximately 770 positions. The closure and processing change occurred in October 2006 and did not result in a significant charge.

In February 2006, we announced our decision to close the Norfolk, Nebraska, beef processing plant and the West Point, Nebraska, beef slaughter plant. These facilities closed in February 2006. Production from these facilities was shifted primarily to our beef complex in Dakota City, Nebraska. Combined, these two facilities employed approximately 1,665 employees. We sold the West Point plant in fiscal 2007, while the Norfolk plant and related property are currently offered for sale. In fiscal 2006, we recorded charges of \$38 million for estimated impairment charges and \$9 million of other closing costs, consisting of \$5 million for employee termination benefits and \$4 million in other plant closing related liabilities. These amounts were reflected in the Beef segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other charges. We have fully paid the estimated employee termination benefits and other plant closing related liabilities. No material adjustments to the accrual are anticipated.

In January 2006, we announced our decision to close two processed meats facilities in northeast Iowa. The Independence and Oelwein plants, which produced chopped ham and sliced luncheon meats, closed in March 2006. Combined, these two facilities employed approximately 400 employees. Equipment from these facilities was removed and either sold or transferred to our other locations, while the plants and related property are currently offered for sale. In fiscal 2006, we recorded charges of \$12 million for estimated impairment charges and \$1 million for employee termination benefits. These amounts were reflected in the Prepared Foods segment's Operating Income (Loss) and included in the Consolidated Statements of Operations in Other charges. We have fully paid the estimated employee termination benefits. No material adjustments to the accrual are anticipated.

**NOTE 5: FINANCIAL INSTRUMENTS**

We had derivative related balances of \$29 million and \$16 million recorded in other current assets at September 27, 2008, and September 29, 2007, respectively, and \$45 million and \$48 million in other current liabilities at September 27, 2008, and September 29, 2007, respectively.

**Cash flow hedges:** Derivative products, such as futures and options, are designated as hedges against changes in the amount of future cash flows related to commodities procurement. We do not purchase derivative products related to grain procurement in excess of our physical grain consumption requirements. Related to our grain hedges, there were \$5 million of net losses recorded in accumulated other comprehensive income at September 27, 2008. These losses will be recognized within the next 12 months. Of these losses, the portion resulting from our open hedge positions was a net loss of \$4 million as of September 27, 2008. Ineffectiveness related to our cash flow hedges was not significant during fiscal 2008, 2007 or 2006.

**Fair value hedges:** We designate certain futures contracts as fair value hedges of firm commitments to purchase livestock for slaughter. Changes in the fair value of a derivative that is designated and qualifies as a fair value hedge, along with changes in fair value of the hedged asset or liability attributable to the hedged risk (including gains or losses on firm commitments), are recorded in current period earnings. Ineffectiveness results when the change in the fair value of the hedge instrument differs from the change in fair value of the hedged item.

## Edgar Filing: MIDDLETON J KEITH - Form 4

Ineffectiveness related to fair value hedges was not significant during fiscal 2008, 2007 and 2006.

During fiscal 2006, we discontinued the use of hedge accounting for certain financial instruments to hedge forward cattle purchases. Hedge accounting was discontinued to provide a natural offset to the gains and losses resulting from our derivatives tied to forward fixed price sales of boxed beef, as this activity does not qualify for hedge accounting. The contracts for which hedge accounting was discontinued had a fair value of approximately \$28 million at the discontinued date, and was primarily recognized as a component of cost of sales in fiscal 2006. However, due to changes in our beef market strategies and business conditions, we now have more forward cattle purchase derivatives relative to fixed forward boxed beef sales derivatives which can and have caused mark-to-market earnings volatility. Accordingly, effective in the fourth quarter fiscal 2008, we began designating certain futures contracts as fair value hedges of forward cattle purchases. We anticipate this change will help reduce volatility of quarterly reported beef earnings.

**Undesignated positions:** We hold positions as part of our risk management activities, primarily futures and options for grains and livestock, for which we do not apply hedge accounting, but instead mark these positions to fair value through earnings at each reporting date. We generally do not enter into undesignated positions beyond 18 months. Related to grain positions for which we did not apply hedge accounting, we recognized pretax net gains of approximately \$169 million, \$50 million and \$8 million, respectively, in cost of sales for fiscal 2008, 2007 and 2006, which included an unrealized pretax loss on open mark-to-market futures positions of \$4 million as of September 27, 2008.

We enter into certain forward sales of boxed beef and boxed pork and forward purchases of cattle at fixed prices. The fixed price sales contracts lock in the proceeds from a sale in the future and the fixed cattle purchases lock in the cost. However, the cost of the livestock and the related boxed beef and boxed pork market prices at the time of the sale or purchase could vary from this fixed price.

**TYSON FOODS, INC.**

As we enter into fixed forward sales of boxed beef and boxed pork and forward purchases of cattle, we also enter into the appropriate number of livestock futures positions to mitigate a portion of this risk. Changes in market value of the open livestock futures positions are marked to market and reported in earnings at each reporting date, even though the economic impact of our fixed prices being above or below the market price is only realized at the time of sale or purchase. In connection with these livestock futures, we recorded realized and unrealized net gains of \$83 million in fiscal 2008, which included an unrealized pretax gain on open mark-to-market futures positions of approximately \$3 million as of September 27, 2008. We recorded realized and unrealized net gains of \$14 million and realized and unrealized net losses of \$39 million in fiscal 2007 and 2006, respectively, related to livestock futures positions.

Additionally, we enter into grain derivatives to manage the risk of costs associated with forward sales to certain customers for which sales prices are determined under cost-plus arrangements. These unrealized positions, which do not qualify for hedge treatment, totaled a loss of \$24 million and a gain of \$9 million at September 27, 2008, and September 29, 2007, respectively. When these positions are liquidated, we expect any realized gains or losses will be reflected in the prices of the poultry products sold. Since these derivative positions do not qualify for hedge treatment, they initially create volatility in our income statement associated with mark-to-market changes. However, once the positions are liquidated and included in the sales price to the customer, there is ultimately no income statement impact as any previous mark-to-market gains or losses are included in the prices of the poultry products.

**Foreign currency positions:** We enter into foreign currency forward contracts to manage the risk from changes in the fair value or future cash flows of receivables, payables and purchase commitments arising from changes in the exchange rates of foreign currencies. We have not applied hedge accounting to these contracts. The fair value of the foreign exchange contracts was not significant as of September 27, 2008, and September 29, 2007.

**Fair Values of Financial Instruments:**

	2008	in millions 2007
Commodity derivative positions, net liability	\$ 16	\$ 32
Total debt	2,659	2,927

Fair values are based on quoted market prices or published forward interest rate curves. Carrying values for derivative positions equal the fair values as of September 27, 2008, and September 29, 2007, and the carrying value of total debt was \$2.9 billion and \$2.8 billion, respectively. All other financial instruments' fair values approximate recorded values at September 27, 2008, and September 29, 2007.

**Concentrations of Credit Risk:** Our financial instruments exposed to concentrations of credit risk consist primarily of cash equivalents and trade receivables. Cash equivalents are in high quality securities placed with major banks and financial institutions. Concentrations of credit risk with respect to receivables are limited due to the large number of customers and their dispersion across geographic areas. We perform periodic credit evaluations of our customers' financial condition and generally do not require collateral. At September 27, 2008, and September 29, 2007, 12.2% and 12.1%, respectively, of our net accounts receivable balance was due from Wal-Mart Stores, Inc. No other single customer or customer group represents greater than 10% of net accounts receivable.

**NOTE 6: PROPERTY, PLANT AND EQUIPMENT**

Major categories of property, plant and equipment and accumulated depreciation at cost, at September 27, 2008, and September 29, 2007:

Explanation of Responses:

Edgar Filing: MIDDLETON J KEITH - Form 4

		in millions
	2008	2007
Land	\$ 89	\$ 99
Building and leasehold improvements	2,440	2,423
Machinery and equipment	4,382	4,255
Land improvements and other	210	200
Buildings and equipment under construction	352	245
	7,473	7,222
Less accumulated depreciation	3,954	3,614
Net property, plant and equipment	\$ 3,519	\$ 3,608

Approximately \$228 million will be required to complete buildings and equipment under construction at September 27, 2008.

**TYSON FOODS, INC.****NOTE 7: GOODWILL AND OTHER INTANGIBLE ASSETS**

Goodwill by segment, net of \$286 million of accumulated amortization at September 27, 2008, and September 29, 2007:

	2008	in millions 2007
Chicken	\$945	\$ 921
Beef	1,185	1,182
Pork	317	317
Prepared Foods	64	65
Total Goodwill	\$2,511	\$ 2,485

Other intangible assets by type at September 27, 2008, and September 29, 2007:

	2008	in millions 2007
Gross Carrying Value:		
Trademarks	\$ 62	\$ 66
Patents	50	50
In-process patents	27	35
Intellectual property	17	-
Less Accumulated Amortization:		
Patents and intellectual property	28	25
Total Intangible Assets	\$ 128	\$ 126

Amortization expense on patents and intellectual property of \$3 million was recognized during each of fiscal years 2008, 2007 and 2006. We estimate amortization expense on intangible assets will be \$5 million in each of the next five years. Patents and intellectual property are amortized using the straight-line method over their estimated period of benefit of five to 15 years and 30 years, respectively, beginning with the date benefits from intangible items are realized.

**NOTE 8: OTHER CURRENT LIABILITIES**

Other current liabilities at September 27, 2008, and September 29, 2007, include:

	2008	in millions 2007
Accrued salaries, wages and benefits	\$ 259	\$ 249
Self-insurance reserves	236	259
Other	383	420
Total other current liabilities	\$ 878	\$ 928

Explanation of Responses:



**TYSON FOODS, INC.**

**NOTE 9: COMMITMENTS**

We lease equipment, properties and certain farms for which total rentals approximated \$163 million, \$133 million and \$146 million, respectively, in fiscal years 2008, 2007 and 2006. Most leases have terms up to seven years with varying renewal periods. The most significant obligations assumed under the terms of the leases are the upkeep of the facilities and payments of insurance and property taxes.

Minimum lease commitments under non-cancelable leases at September 27, 2008	in millions
2009	\$ 80
2010	61
2011	41
2012	30
2013	18
2014 and beyond	23
Total	\$ 253

We guarantee debt of outside third parties, which consist of a lease and grower loans, all of which are substantially collateralized by the underlying assets. Terms of the underlying debt cover periods up to nine years, and the maximum potential amount of future payments as of September 27, 2008, was \$66 million. We also maintain operating leases for various types of equipment, some of which contain residual value guarantees for the market value of assets at the end of the term of the lease. The terms of the lease maturities cover periods up to seven years. The maximum potential amount of the residual value guarantees is approximately \$55 million, of which approximately \$21 million would be recoverable through various recourse provisions and an undeterminable recoverable amount based on the fair market value of the underlying leased assets. The likelihood of material payments under these guarantees is not considered probable. At September 27, 2008, and September 29, 2007, no material liabilities for guarantees were recorded.

Additionally, we enter into future purchase commitments for various items, such as grains, livestock contracts and fixed grower fees. At September 27, 2008, these commitments totaled:

	in millions
2009	\$ 710
2010	42
2011	31
2012	13
2013	7
2014 and beyond	24
Total	\$ 827

## TYSON FOODS, INC.

## NOTE 10: LONG-TERM DEBT

	Maturity	2008	in millions 2007
Revolving credit facility	2010	\$ -	\$ -
Accounts receivable securitization facility	2009, 2010	-	213
Senior notes (rates ranging from 7.00% to 8.25%)	2010 2028	2,400	2,475
3.25% Convertible senior notes	2013	458	-
Lakeside term loan	-	-	25
Other	Various	38	66
Total debt		2,896	2,779
Less current debt		8	137
Total long-term debt		\$ 2,888	\$ 2,642

Annual maturities of long-term debt for the five fiscal years subsequent to September 27, 2008, are: 2009-\$8 million; 2010-\$240 million; 2011-\$1.0 billion; 2012-\$3 million; 2013-\$2 million.

Revolving Credit Facility

We have a revolving credit facility totaling \$1.0 billion that supports short-term funding needs and letters of credit. The facility expires in September 2010. At September 27, 2008, we had outstanding letters of credit totaling approximately \$291 million, none of which were drawn upon, issued primarily in support of workers' compensation insurance programs and derivative activities. The amount available for borrowings under this facility as of September 27, 2008, was \$709 million. All trademarks of our domestic subsidiaries are pledged as collateral under this facility. Additionally, certain domestic subsidiaries guaranteed this facility and pledged their inventory as collateral, which had a book value of \$2.0 billion at September 27, 2008.

Accounts Receivable Securitization Facility

We have a receivables purchase agreement with three co-purchasers to sell up to \$750 million of trade receivables. The agreement includes a \$375 million 364-day facility expiring in August 2009 and a \$375 million 364-day facility with an additional one-year option, which commits funding through August 2010. The receivables purchase agreement has been accounted for as a borrowing and has an interest rate based on commercial paper issued by the co-purchasers. Under this agreement, substantially all of our accounts receivable may be sold to a special purpose entity, Tyson Receivables Corporation (TRC), which is a wholly-owned consolidated subsidiary of the Company. TRC has its own creditors who are entitled to be satisfied out of all of the assets of TRC prior to any value becoming available to the Company as TRC's equity holder. At September 27, 2008, there were no amounts borrowed under the receivables purchase agreement.

3.25% Convertible Senior Notes due 2013

In September 2008, we issued \$458 million principal amount 3.25% convertible senior unsecured notes due October 15, 2013 (Convertible Notes), with interest paid semi-annually in arrears on April 15 and October 15. The conversion rate initially is 59.1935 shares of Class A stock per \$1,000 principal amount of notes, which is equivalent to an initial conversion price of \$16.89 per share of Class A stock. The Convertible Notes may be converted before the close of business on July 12, 2013, only under the following circumstances:



## Edgar Filing: MIDDLETON J KEITH - Form 4

during any fiscal quarter after December 27, 2008, if the last reported sale price of our Class A stock for at least 20 trading days during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is at least 130% of the applicable conversion price on each applicable trading day (which would currently require our shares to trade at or above \$21.96); or during the five business days after any 10 consecutive trading days (measurement period) in which the trading price per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our Class A stock and the applicable conversion rate on each such day; or upon the occurrence of specified corporate events as defined in the supplemental indenture.

On and after July 15, 2013, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their notes at any time, regardless of the foregoing circumstances. Upon conversion, we will deliver cash up to the aggregate principal amount of the Convertible Notes to be converted and shares of our Class A stock in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the Convertible Notes being converted.

The Convertible Notes were accounted for as a combined instrument pursuant to EITF Issue 90-19, Convertible Bonds with Issuer Option to Settle for Cash upon Conversion. Accordingly, we accounted for the entire agreement as one debt instrument because the conversion feature does not meet the requirements to be accounted for separately as a derivative financial instrument.

**TYSON FOODS, INC.**

Convertible Note Hedge and Warrant Transactions

In connection with the issuance of the Convertible Notes, we entered into separate convertible note hedge transactions with respect to our common stock to minimize the potential economic dilution upon conversion of the Convertible Notes. We also entered into separate warrant transactions. We recorded the purchase of the note hedge transactions as a reduction to capital in excess of par value, net of \$36 million pertaining to the related deferred tax asset, and we recorded the proceeds of the warrant transactions as an increase to capital in excess of par value. Subsequent changes in fair value of these instruments are not recognized in the financial statements as long as the instruments continue to meet the criteria for equity classification.

We purchased call options in private transactions for \$94 million that permit us to acquire up to approximately 27 million shares of our Class A stock at an initial strike price of \$16.89 per share, subject to adjustment. The call options allow us to acquire a number of shares of our Class A stock initially equal to the number of shares of Class A stock issuable to the holders of the Convertible Notes upon conversion. These call options will terminate upon the maturity of the Convertible Notes.

We sold warrants in private transactions for total proceeds of \$44 million. The warrants permit the purchasers to acquire up to approximately 27 million shares of our Class A stock at an initial exercise price of \$22.31 per share, subject to adjustment. The warrants are exercisable on various dates from January 2014 through March 2014.

These transactions, in effect, increase the initial conversion price of the Convertible Notes from \$16.89 per share to \$22.31 per share, thus reducing the potential future economic dilution associated with conversion of the Convertible Notes. The Convertible Notes and the warrants could have a dilutive effect on our earnings per share to the extent the price of our Class A stock during a given measurement period exceeds the respective exercise prices of those instruments. The call options are excluded from the calculation of diluted earnings per share as their impact is anti-dilutive.

Credit Ratings

On September 4, 2008, S&P downgraded the credit rating applicable to the senior notes due April 1, 2016 (2016 Notes) from BBB- to BB. This downgrade increased the interest rate on the 2016 Notes from 6.85% to 7.35%, effective beginning with the six month interest payment due October 1, 2008.

-

On November 13, 2008, Moody's downgraded the credit rating from Ba1 to Ba3. This downgrade increased the interest rate on the 2016 Notes from 7.35% to 7.85%, effective beginning with the six month interest payment due April 1, 2009.

Debt Covenants

Our debt agreements contain various covenants, the most restrictive of which contain maximum allowed leverage ratios and a minimum required interest coverage ratio. On September 10, 2008, we amended our revolving credit facility agreement to provide a less restrictive maximum allowed leverage ratio, which takes effect in first quarter of fiscal 2009. We were in compliance with all covenants at September 27, 2008.

## Edgar Filing: MIDDLETON J KEITH - Form 4

Tyson Fresh Meats, Inc. (TFM), a wholly-owned subsidiary of the Company, has fully and unconditionally guaranteed \$960 million of our 2016 Notes. The following financial information presents condensed consolidating financial statements, which include Tyson Foods, Inc. (TFI Parent); Tyson Fresh Meats, Inc. (TFM Parent); the Non-Guarantor Subsidiaries on a combined basis; the elimination entries necessary to consolidate the TFI Parent, TFM Parent and the Non-Guarantor Subsidiaries; and Tyson Foods, Inc. on a consolidated basis, is provided as an alternative to providing separate financial statements for the guarantor.

54

---

## TYSON FOODS, INC.

Condensed Consolidating Statement of Income for the year ended September 27, 2008					in millions
	TFI Parent	TFM Parent	Non-Guarantor		Total
			Subsidiaries	Eliminations	
Net Sales	\$ 9	\$ 15,638	\$ 12,052	\$ (837)	\$ 26,862
Cost of Sales	154	15,105	11,194	(837)	25,616
	(145)	533	858	-	1,246
Operating Expenses:					
Selling, general and administrative	118	193	568	-	879
Other charges	1	18	17	-	36
Operating Income (Loss)	(264)	322	273	-	331
Other (Income) Expense:					
Interest expense, net	181	17	8	-	206
Other, net	(13)	(5)	(11	) -	(29)
Equity in net earnings of subsidiaries	(325)	(10)	-	335	-
	(157)	2	(3	) 335	177
Income (Loss) from Continuing Operations					
before Income Taxes	(107)	320	276	(335)	154
Income Tax Expense (Benefit)	(193)	138	123	-	68
Income from Continuing Operations	86	182	153	(335)	86
Income from Discontinued Operation	-	-	-	-	-
Net Income	\$ 86	\$ 182	\$ 153	\$ (335)	\$ 86

Condensed Consolidating Statement of Income for the year ended September 29, 2007					in millions
	TFI Parent	TFM Parent	Non-Guarantor		Total
			Subsidiaries	Eliminations	
Net Sales	\$ 165	\$ 15,189	\$ 11,264	\$ (889)	\$ 25,729
Cost of Sales	(49)	14,885	10,353	(889)	24,300
	214	304	911	-	1,429
Operating Expenses:					
Selling, general and administrative	108	173	533	-	814
Other charges	1	1	-	-	2
Operating Income	105	130	378	-	613
Other (Income) Expense:					
Interest expense, net	186	29	9	-	224
Other, net	(1)	(24)	4	-	(21)
Equity in net earnings of subsidiaries	(321)	(50)	-	371	-
	(136)	(45)	13	371	203
Income from Continuing Operations					
before Income Taxes	241	175	365	(371)	410
Income Tax Expense (Benefit)	(27)	43	126	-	142
Income from Continuing Operations	268	132	239	(371)	268
Income from Discontinued Operation	-	-	-	-	-
Net Income	\$ 268	\$ 132	\$ 239	\$ (371)	\$ 268



## TYSON FOODS, INC.

Condensed Consolidating Statement of Operations for the year ended September 30, 2006						in millions
	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total	
Net Sales	\$ -	\$ 14,227	\$ 11,097	\$ (735)	\$ 24,589	
Cost of Sales	3	14,206	10,165	(735)	23,639	
	(3)	21	932	-	950	
Operating Expenses:						
Selling, general and administrative	130	201	599	-	930	
Other charges	-	51	19	-	70	
Operating Income (Loss)	(133)	(231)	314	-	(50)	
Other (Income) Expense:						
Interest expense, net	192	35	11	-	238	
Other, net	(3)	(3)	(14)	-	(20)	
Equity in net earnings of subsidiaries	(14)	(13)	-	27	-	
	175	19	(3)	27	218	
Income (Loss) from Continuing Operations before Income Taxes	(308)	(250)	317	(27)	(268)	
Income Tax Expense (Benefit)	(112)	(92)	110	-	(94)	
Income (Loss) from Continuing Operations	(196)	(158)	207	(27)	(174)	
Loss from Discontinued Operation	-	-	(17)	-	(17)	
Income (Loss) before Cumulative Effect of Change in Accounting Principle	(196)	(158)	190	(27)	(191)	
Cumulative Effect of Change in Accounting Principle, Net of Tax	-	(1)	(4)	-	(5)	
Net Income (Loss)	\$ (196)	\$ (159)	\$ 186	\$ (27)	\$ (196)	

## TYSON FOODS, INC.

Condensed Consolidating Balance Sheet as of September 27, 2008

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
<b>Assets</b>					
Current Assets:					
Cash and cash equivalents	\$ 140	\$ -	\$ 110	\$ -	\$ 250
Accounts receivable, net	1	726	1,353	(809)	1,271
Inventories	1	724	1,813	-	2,538
Other current assets	261	46	76	(240)	143
Assets of discontinued operation held for sale	-	-	159	-	159
Total Current Assets	403	1,496	3,511	(1,049)	4,361
Net Property, Plant and Equipment	43	960	2,516	-	3,519
Goodwill	-	1,502	1,009	-	2,511
Intangible Assets	-	47	81	-	128
Other Assets	147	91	159	(66)	331
Investment in subsidiaries	8,593	1,000	-	(9,593)	-
Total Assets	\$ 9,186	\$ 5,096	\$ 7,276	\$ (10,708)	\$ 10,850
<b>Liabilities and Shareholders Equity</b>					
Current Liabilities:					
Current debt	\$ 8	\$ -	\$ -	\$ -	\$ 8
Trade accounts payable	108	486	623	-	1,217
Other current liabilities	1,090	272	565	(1,049)	878
Total Current Liabilities	1,206	758	1,188	(1,049)	2,103
Long-Term Debt	2,632	249	7	-	2,888
Deferred Income Taxes	-	50	307	(66)	291
Other Liabilities	334	105	115	-	554
Shareholders Equity	5,014	3,934	5,659	(9,593)	5,014
Total Liabilities and Shareholders Equity	\$ 9,186	\$ 5,096	\$ 7,276	\$ (10,708)	\$ 10,850

## TYSON FOODS, INC.

Condensed Consolidating Balance Sheet as of September 29, 2007

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
<b>Assets</b>					
Current Assets:					
Cash and cash equivalents	\$ 3	\$ -	\$ 39	\$ -	\$ 42
Accounts receivable, net	1	557	1,461	(773)	1,246
Inventories	-	674	1,485	-	2,159
Other current assets	79	32	18	(59)	70
Assets of discontinued operation held for sale	-	-	164	-	164
Total Current Assets	83	1,263	3,167	(832)	3,681
Net Property, Plant and Equipment	44	1,015	2,549	-	3,608
Goodwill	-	1,499	986	-	2,485
Intangible Assets	-	57	69	-	126
Other Assets	137	113	139	(62)	327
Investment in subsidiaries	8,243	976	-	(9,219)	-
Total Assets	\$ 8,507	\$ 4,923	\$ 6,910	\$ (10,113)	\$ 10,227
<b>Liabilities and Shareholders Equity</b>					
Current Liabilities:					
Current debt	\$ 120	\$ -	\$ 17	\$ -	\$ 137
Trade accounts payable	79	517	454	-	1,050
Other current liabilities	1,008	143	609	(832)	928
Total Current Liabilities	1,207	660	1,080	(832)	2,115
Long-Term Debt	2,355	255	32	-	2,642
Deferred Income Taxes	-	168	261	(62)	367
Other Liabilities	214	94	64	-	372
Shareholders Equity	4,731	3,746	5,473	(9,219)	4,731
Total Liabilities and Shareholders Equity	\$ 8,507	\$ 4,923	\$ 6,910	\$ (10,113)	\$ 10,227



## TYSON FOODS, INC.

Condensed Consolidating Statement of Cash Flows for the year ended September 27, 2008 in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Cash Provided by (Used for) Operating Activities	\$ (236)	\$ 271	\$ 268	\$ (15)	\$ 288
Cash Flows From Investing Activities:					
Additions to property, plant and equipment	6	(104)	(327)	-	(425 )
Proceeds from sale of investments	14	7	1	-	22
Purchases of marketable securities, net	(1)	-	(2)	-	(3 )
Other, net	5	4	(2)	-	7
Cash Provided by (Used for) Investing Activities	24	(93)	(330)	-	(399 )
Cash Flows From Financing Activities:					
Net change in debt	145	(5)	(51)	-	89
Net proceeds from Class A stock offering	274	-	-	-	274
Convertible note hedge transactions	(94)	-	-	-	(94 )
Warrant transactions	44	-	-	-	44
Purchase of treasury shares	(30)	-	-	-	(30 )
Dividends	(56)	-	(15)	15	(56 )
Other, net	72	2	20	-	94
Net change in intercompany balances	(6)	(175)	181	-	-
Cash Provided by (Used for) Financing Activities	349	(178)	135	15	321
Effect of Exchange Rate Change on Cash	-	-	(2)	-	(2 )
Increase in Cash and Cash Equivalents	137	-	71	-	208
Cash and Cash Equivalents at Beginning of Year	3	-	39	-	42
Cash and Cash Equivalents at End of Year	\$ 140	\$ -	\$ 110	\$ -	\$ 250

Condensed Consolidating Statement of Cash Flows for the year ended September 29, 2007 in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Cash Provided by (Used for) Operating Activities	\$ (22)	\$ 278	\$ 447	\$ (25)	\$ 678
Cash Flows From Investing Activities:					
Additions to property, plant and equipment	(14)	(40)	(231)	-	(285 )
Proceeds from sale of short-term investment	770	-	-	-	770
Proceeds from sale of marketable securities, net	-	-	16	-	16
Other, net	81	29	(32)	-	78
Cash Provided by (Used for) Investing Activities	837	(11)	(247)	-	579
Cash Flows From Financing Activities:					
Net change in debt	(747)	(4)	(459)	-	(1,210 )
Purchase of treasury shares	(61)	-	-	-	(61 )
Dividends	(56)	-	(25)	25	(56 )
Other, net	80	(7)	2	-	75
Net change in intercompany balances	(30)	(257)	287	-	-
Cash Used for Financing Activities	(814)	(268)	(195)	25	(1,252 )
Effect of Exchange Rate Change on Cash	-	-	9	-	9
Increase (Decrease) in Cash and Cash Equivalents	1	(1)	14	-	14
Cash and Cash Equivalents at Beginning of Year	2	1	25	-	28
Cash and Cash Equivalents at End of Year	\$ 3	\$ -	\$ 39	\$ -	\$ 42



## TYSON FOODS, INC.

Condensed Consolidating Statement of Cash Flows for the year ended September 30, 2006

in millions

	TFI Parent	TFM Parent	Non-Guarantor Subsidiaries	Eliminations	Total
Cash Provided by Operating Activities	\$ 18	\$ 76	\$ 338	\$ (60)	\$ 372
Cash Flows From Investing Activities:					
Additions to property, plant and equipment	(81)	(153)	(297)	-	(531 )
Purchase of short-term investment	(750)	-	-	-	(750 )
Proceeds from sale of marketable securities, net	-	-	23	-	23
Other, net	29	(15)	20	-	34
Cash Used for Investing Activities	(802)	(168)	(254)	-	(1,224 )
Cash Flows From Financing Activities:					
Net change in debt	1,087	(101)	(2)	-	984
Purchase of treasury shares	(42)	-	-	-	(42 )
Dividends	(55)	-	(60)	60	(55 )
Other, net	(57)	(2)	16	-	(43 )
Net change in intercompany balances	(153)	195	(42)	-	-
Cash Provided by (Used for) Financing Activities	780	92	(88)	60	844
Effect of Exchange Rate Change on Cash	-	-	(4)	-	(4 )
Decrease in Cash and Cash Equivalents	(4)	-	(8)	-	(12 )
Cash and Cash Equivalents at Beginning of Year	6	1	33	-	40
Cash and Cash Equivalents at End of Year	\$ 2	\$ 1	\$ 25	\$ -	\$ 28

## TYSON FOODS, INC.

## NOTE 11: COMPREHENSIVE INCOME (LOSS)

The components of accumulated other comprehensive income are as follows:

	2008	in millions	
		2007	
Accumulated other comprehensive income:			
Currency translation adjustment	\$ 60	\$ 62	
Unrealized net hedging losses, net of taxes	(8	) (6	)
Unrealized net loss on investments, net of taxes	(1	) -	)
Postretirement benefits reserves adjustments (1)	(10	) (6	)
Total accumulated other comprehensive income	\$ 41	\$ 50	

(1) Fiscal 2007 includes adjustment of \$3 million, net of tax, related to the initial adoption of SFAS No. 158. Refer to Note 13, Pensions and Other Postretirement Benefits.

The components of other comprehensive income (loss) are as follows:

	in millions		
	Before Tax	Income Tax	After Tax
Fiscal 2008:			
Currency translation adjustment	\$ (2	) \$ -	\$ (2
Net change in postretirement liabilities	(10	) 6	(4
Investments unrealized loss	(1	) -	(1
Net hedging gain	6	(2	) 4
Net hedging gain reclassified to income statement	(10	) 4	(6
Other comprehensive loss 2008	\$ (17	) \$ 8	\$ (9
Fiscal 2007:			
Currency translation adjustment	\$ 24	\$ -	\$ 24
Pension unrealized gain, prior to adoption of SFAS No. 158	9	(3	) 6
Net hedging gain	33	(13	) 20
Net hedging gain reclassified to income statement	(33	) 13	(20
Other comprehensive income 2007	\$ 33	\$ (3	) \$ 30
Fiscal 2006:			
Currency translation adjustment	\$ (6	) \$ -	\$ (6
Pension unrealized loss, prior to adoption of SFAS No. 158	(16	) 6	(10
Investments unrealized gain	1	-	1
Net hedging gain	1	-	1
Net hedging loss reclassified to income statement	6	(3	) 3
Other comprehensive loss 2006	\$ (14	) \$ 3	\$ (11

## NOTE 12: STOCK-BASED COMPENSATION

Explanation of Responses:

## Edgar Filing: MIDDLETON J KEITH - Form 4

We issue shares under our stock-based compensation plans by issuing Class A stock from treasury. The total number of shares available for future grant under the Tyson Foods, Inc. 2000 Stock Incentive Plan (Incentive Plan) was 24,823,940 at September 27, 2008.

### Stock Options

Shareholders approved the Incentive Plan in January 2001. The Incentive Plan is administered by the Compensation Committee of the Board of Directors (Compensation Committee). The Incentive Plan includes provisions for granting incentive stock options for shares of Class A stock at a price not less than the fair market value at the date of grant. Nonqualified stock options may be granted at a price equal to, less than or more than the fair market value of Class A stock on the date the option is granted. Stock options under the Incentive Plan generally become exercisable ratably over two to five years from the date of grant and must be exercised within 10 years from the date of grant. Our policy is to recognize compensation expense on a straight-line basis over the requisite service period for the entire award.

## TYSON FOODS, INC.

	Shares Under Option	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (in Years)	Aggregate Intrinsic Value (in millions)
Outstanding, September 29, 2007	15,482,915	\$ 14.20		
Exercised	(699,470)	) 11.98		
Canceled	(1,157,895)	) 15.33		
Granted	3,280,464	15.06		
Outstanding, September 27, 2008	16,906,014	14.38	6.6	\$243
Exercisable, September 27, 2008	7,464,489	\$ 12.94	4.8	\$97

The weighted-average grant-date fair value of options granted during fiscal years 2008, 2007 and 2006, respectively, was \$5.22, \$5.85 and \$6.86. The fair value of each option grant is established on the date of grant using a binomial lattice method for grants awarded after October 1, 2005, and the Black-Scholes option-pricing model for grants awarded before October 1, 2005. The change to the binomial lattice method was made to better reflect the exercise behavior of top management. We use historical volatility for a period of time comparable to the expected life of the option to determine volatility assumptions. Expected life is calculated based on the contractual term of each grant and takes into account the historical exercise and termination behavior of participants. Risk-free interest rates are based on the five-year Treasury bond rate. Weighted average assumptions used in the fair value calculation are outlined in the following table.

	2008	2007	2006
Weighted average expected life	5.5 years	5.6 years	5.9 years
Weighted average risk-free interest rate	4.08%	3.88%	3.70%
Range of risk-free interest rates	3.1-4.6%	2.6-4.6%	2.6-4.8%
Weighted average expected volatility	34.61%	36.85%	37.83%
Range of expected volatility	30.9-40.1%	33.7-40.1%	35.2-40.1%
Expected dividend yield	1.02%	1.11%	1.23%

We recognized stock-based compensation expense related to stock options, net of income taxes, of \$12 million, \$11 million and \$9 million, respectively, during fiscal years 2008, 2007 and 2006, with a \$7 million, \$6 million and \$5 million related tax benefit. We had 2.5 million, 1.9 million and 3.3 million options vest in fiscal years 2008, 2007 and 2006, respectively, with a fair value of \$15 million, \$9 million and \$16 million, respectively.

In fiscal years 2008, 2007 and 2006, we received cash of \$9 million, \$59 million and \$28 million, respectively, for the exercise of stock options. Shares are issued from treasury for stock option exercises. The related tax benefit realized from stock options exercised during fiscal years 2008, 2007 and 2006, was \$1 million, \$12 million and \$4 million. The total intrinsic value of options exercised in fiscal years 2008, 2007 and 2006, was \$3 million, \$31 million and \$10 million, respectively. SFAS No. 123R requires the cash flows resulting from tax deductions in excess of the compensation cost of those options (excess tax deductions) to be classified as financing cash flows. We realized \$0, \$9 million and \$4 million, respectively, in excess tax deductions during fiscal years 2008, 2007 and 2006. As of September 27, 2008, we had \$40 million of total unrecognized compensation cost related to stock option plans that will be recognized over a weighted average period of 2.7 years.

**TYSON FOODS, INC.**Restricted Stock

We issue restricted stock at the market value as of the date of grant, with restrictions expiring over periods through July 1, 2020. Unearned compensation is recognized over the vesting period for the particular grant using a straight-line method.

	Number of Shares	Weighted Average Grant-Date Fair Value Per Share	Weighted Average Remaining Contractual Life (in Years)	Aggregate Intrinsic Value (in millions)
Nonvested, September 29, 2007	6,061,334	\$ 14.95		
Granted	975,727	15.28		
Dividends	54,206	14.49		
Vested	(2,031,907)	) 12.28		
Forfeited	(293,636)	) 15.54		
Nonvested, September 27, 2008	4,765,724	16.16	2.4	\$60

As of September 27, 2008, we had \$37 million of total unrecognized compensation cost related to restricted stock awards that will be recognized over a weighted average period of 2.4 years.

We recognized stock-based compensation expense related to restricted stock, net of income taxes, of \$11 million, \$14 million and \$15 million for years 2008, 2007 and 2006, respectively. The related tax benefit for fiscal years 2008, 2007 and 2006 was \$6 million, \$9 million and \$9 million, respectively. We had 2.0 million, 3.4 million and 0.4 million, respectively, restricted stock awards vest in fiscal years 2008, 2007 and 2006, with a grant date fair value of \$24 million, \$37 million and \$5 million.

Performance-based Shares

In July 2003, our Compensation Committee authorized us to award performance-based shares of our Class A stock to certain senior executive officers on the first business day of each of the Company's 2004, 2005 and 2006 fiscal years. The Compensation Committee later authorized the expansion of the awards to include additional senior officers and to extend out to fiscal year 2008. The vesting of the performance-based shares for the 2006 award is over two and one-half to three years and the vesting for the 2007 and 2008 awards is over three years (the Vesting Period), each award being subject to the attainment of goals determined by the Compensation Committee prior to the date of the award. We review progress toward the attainment of goals each quarter during the Vesting Period. However, the attainment of goals can be determined only at the end of the Vesting Period. If the shares vest, the ultimate cost will be equal to the Class A stock price on the date the shares vest times the number of shares awarded for all performance grants with other than market criteria. For grants with market performance criteria, the ultimate cost will be the fair value of the probable shares to vest regardless if the shares actually vest. Total expense recorded related to performance-based shares was not material for fiscal years 2008, 2007 and 2006.

**NOTE 13: PENSIONS AND OTHER POSTRETIREMENT BENEFITS**

Effective September 29, 2007, we adopted SFAS No. 158, which requires the recognition in pension obligations and accumulated other comprehensive income of actuarial gains or losses, prior service costs or credits and transition assets or obligations previously deferred under the reporting requirements of SFAS No. 87, SFAS No. 106 and SFAS No. 132(R). The following table reflects the effects of adoption of SFAS No. 158 on the Consolidated Balance Sheet as of September 29, 2007.

Edgar Filing: MIDDLETON J KEITH - Form 4

	Before Application of SFAS No. 158	Adjustments	in millions After Application of SFAS No. 158
Other assets	\$ 332	\$ (5)	\$ 327
Total assets	10,232	(5)	10,227
Deferred income taxes	366	1	367
Other liabilities	381	(9)	372
Accumulated other comprehensive income	47	3	50
Total shareholders equity	4,728	3	4,731
Total liabilities and shareholders equity	10,232	(5)	10,227

At September 27, 2008, we had four noncontributory defined benefit pension plans consisting of three funded qualified plans and one unfunded non-qualified plan. All three of our qualified plans are frozen and provide benefits based on a formula using years of service and a specified benefit rate. Effective January 1, 2004, we implemented a non-qualified defined benefit plan for certain



**TYSON FOODS, INC.**

contracted officers that uses a formula based on years of service and final average salary. We also have other postretirement benefit plans for which substantially all of our employees may receive benefits if they satisfy applicable eligibility criteria. The postretirement healthcare plans are contributory with participants' contributions adjusted when deemed necessary.

We have defined contribution retirement and incentive benefit programs for various groups of employees. We recognized expenses of \$48 million, \$46 million and \$55 million in fiscal 2008, 2007 and 2006, respectively.

We use a fiscal year end measurement date for our defined benefit plans and other postretirement plans. We generally recognize the effect of actuarial gains and losses into earnings immediately for other postretirement plans rather than amortizing the effect over future periods.

Other postretirement benefits include postretirement medical costs and life insurance.

**Benefit obligations and funded status**

The following table provides a reconciliation of the changes in the plans' benefit obligations, assets and funded status at September 27, 2008, and September 29, 2007:

	Pension Benefits		Non-Qualified		in millions Other Postretirement Benefits	
	Qualified 2008	2007	2008	2007	2008	2007
Change in benefit obligation						
Benefit obligation at beginning of year	\$ 98	\$ 99	\$ 30	\$ 25	\$ 49	\$ 61
Service cost	-	-	3	6	1	1
Interest cost	6	5	2	2	3	4
Plan participants' contributions	-	-	-	-	2	8
Amendments	-	-	-	-	-	(4)
Actuarial (gain) loss	(6)	-	(2)	(2)	1	12
Benefits paid	(8)	(6)	(1)	(1)	(9)	(16)
Settlement	-	-	-	-	-	(17)
Benefit obligation at end of year	90	98	32	30	47	49
Change in plan assets						
Fair value of plan assets at beginning of year	97	85	-	-	-	-
Actual return on plan assets	(11)	14	-	-	-	-
Employer contributions	1	4	1	1	7	8
Plan participants' contributions	-	-	-	-	1	8
Benefits paid	(8)	(6)	(1)	(1)	(8)	(16)
Fair value of plan assets at end of year	79	97	-	-	-	-
Funded status	\$ (11)	\$ (1)	\$ (32)	\$ (30)	\$ (47)	\$ (49)

Amounts recognized in the Consolidated Balance Sheets consist of:

	Pension Benefits				in millions Other Postretirement Benefits	
	Qualified		Non-Qualified		2008	2007
	2008	2007	2008	2007		
Other assets	\$ -	\$ 7	\$ -	\$ -	\$ -	\$ -
Accrued benefit liability	(11 )	( 8 )	( 32 )	( 30 )	( 47 )	( 49 )
Accumulated other comprehensive (income)/loss:						
Unrecognized actuarial loss	24	13	-	1	-	-
Unrecognized prior service (cost)/credit	-	-	4	5	( 9 )	( 10 )
Net amount recognized	\$ 13	\$ 12	\$ ( 28 )	\$ ( 24 )	\$ ( 56 )	\$ ( 59 )

The increase (decrease) in the pretax minimum liability related to our pension plans included in other comprehensive income (loss) was \$9 million, \$(9) million and \$16 million in fiscal 2008, 2007 and 2006, respectively.

At September 27, 2008, all pension plans had an accumulated benefit obligation in excess of plan assets. At September 29, 2007, three pension plans had an accumulated benefit obligation in excess of plan assets. The accumulated benefit obligation for all qualified pension plans was \$90 million and \$98 million at September 27, 2008, and September 29, 2007, respectively. Plans with accumulated

**TYSON FOODS, INC.**

benefit obligations in excess of plan assets are as follows:

	in millions			
	Pension Benefits Qualified			Non-Qualified
	2008	2007		2008
Projected benefit obligation	\$ 90	\$ 26		\$ 32
Accumulated benefit obligation	90	26		30
Fair value of plan assets	79	18		-

**Net Periodic Benefit Cost**

Components of net periodic benefit cost for pension and postretirement benefit plans recognized in the Consolidated Statements of Operations are as follows:

	Pension Benefits						in millions Other Postretirement Benefits		
	Qualified			Non-Qualified			2008	2007	2006
	2008	2007	2006	2008	2007	2006			
Service cost	\$ -	\$ -	\$ -	\$ 3	\$ 6	\$ 6	\$ 1	\$ 1	\$ 1
Interest cost	6	5	5	2	2	1	3	4	4
Expected return on plan assets	(7	) (7	) (6	) -	-	-	-	-	-
Amortization of prior service cost	-	-	-	1	1	1	(1	) (2	) (2
Recognized actuarial loss, net	1	1	-	-	-	-	1	12	14
Curtailment and settlement gain	-	-	-	-	-	-	-	(27	) (2
Net periodic benefit cost	\$ -	\$ (1	) \$ (1	) \$ 6	\$ 9	\$ 8	\$ 4	\$ (12	) \$ 15

**Assumptions**

Weighted average assumptions are as follows:

	Pension Benefits						in millions Other Postretirement Benefits		
	Qualified			Non-Qualified			2008	2007	2006
	2008	2007	2006	2008	2007	2006			
Discount rate to determine net periodic benefit cost	6.33%	5.93%	5.80%	6.25%	6.00%	6.00%	6.25%	6.00%	6.00%
Discount rate to determine benefit obligations	5.88%	5.39%	5.75%	6.50%	6.25%	6.00%	6.50%	6.25%	6.10%
Rate of compensation increase	N/A	N/A	N/A	3.50%	3.50%	4.00%	N/A	N/A	N/A
Expected return on plan assets	8.02%	7.89%	8.03%	N/A	N/A	N/A	N/A	N/A	N/A

To determine the rate-of-return on assets assumption, we first examined historical rates of return for the various asset classes. We then determined a long-term projected rate-of-return based on expected returns over the next five to 10 years.

## Edgar Filing: MIDDLETON J KEITH - Form 4

We have three postretirement health plans. Two of these consist of fixed, annual payments and account for \$33 million of the postretirement medical obligation at September 27, 2008. A healthcare cost trend is not required to determine this obligation. The remaining plan accounts for \$14 million of the postretirement medical obligation at September 27, 2008. The plan covers retirees who do not yet qualify for Medicare and uses a healthcare cost trend of 10% in the current year, grading down to 6% in fiscal 2012. The decision was made in the fourth quarter of fiscal 2007 to outsource a Post-age 65 plan to a third party insurer. This decision effectively settled the plan in fiscal 2007. We recognized a gain of approximately \$27 million related to this plan change. A one-percentage point change in assumed healthcare cost trend rate would have an immaterial impact on the postretirement benefit obligation and total service and interest cost.

### **Plan Assets**

The fair value of plan assets for domestic pension benefit plans was \$64 million and \$80 million as of September 27, 2008, and September 29, 2007, respectively. The following table sets forth the actual and target asset allocation for pension plan assets:

65

---

**TYSON FOODS, INC.**

	2008		2007	Target Asset Allocation	
Cash	0.9	%	2.2	%	0.0
Fixed income securities	31.1		24.4		30.0
US Stock Funds-Large- and Mid-Cap	24.1		48.8		25.0
US Stock Funds-Small-Cap	20.0		9.7		20.0
International Stock Funds	18.8		14.9		20.0
Real Estate	5.1		0.0		5.0
Total	100.0	%	100.0	%	100.0

A foreign subsidiary pension plan had \$15 million and \$17 million in plan assets at September 27, 2008, and September 29, 2007, respectively. All of this plan's assets are held in annuity contracts consistent with its target asset allocation.

The Plan Trustees have established a set of investment objectives related to the assets of the pension plans and regularly monitor the performance of the funds and portfolio managers. Objectives for the pension assets are (1) to provide growth of capital and income, (2) to achieve a target weighted average annual rate of return competitive with other funds with similar investment objectives and (3) to diversify to reduce risk. The investment objectives and target asset allocation were adopted in January 2004 and amended in January 2008.

**Contributions**

Our policy is to fund at least the minimum contribution required to meet applicable federal employee benefit and local tax laws. In our sole discretion, we may from time to time fund additional amounts. Expected contributions to pension plans for fiscal 2009 are approximately \$2 million. For fiscal 2008, 2007 and 2006, we funded \$2 million, \$5 million and \$0, respectively, to defined benefit plans.

**Estimated Future Benefit Payments**

The following benefit payments are expected to be paid:

	Pension Benefits		in millions
	Qualified	Non-Qualified	Other Postretirement Benefits
2009	\$ 6	\$ 1	\$ 6
2010	7	2	6
2011	6	2	6
2012	7	2	5
2013	12	2	5
2014-2018	33	16	22

The above benefit payments for other postretirement benefit plans are not expected to be offset by Medicare Part D subsidies in 2009 or thereafter.

**NOTE 14: SUPPLEMENTAL CASH FLOW INFORMATION**

The following table summarizes cash payments for interest and income taxes:

	in millions		
	2008	2007	2006
Interest	\$ 211	\$ 262	\$ 159
Income taxes, net of refunds	51	97	144

**TYSON FOODS, INC.**

**NOTE 15: TRANSACTIONS WITH RELATED PARTIES**

We have operating leases for farms, equipment and other facilities with Don Tyson, a director of the Company, John Tyson, Chairman of the Company, certain members of their families and the Randal W. Tyson Testamentary Trust. Total payments of \$3 million in fiscal 2008, \$5 million in fiscal 2007, and \$8 million in fiscal 2006, were paid to entities in which these parties had an ownership interest.

In 2008, a lawsuit captioned In re Tyson Foods, Inc. Consolidated Shareholders Litigation was settled. Pursuant to the settlement, Don Tyson and the Tyson Limited Partnership paid us \$4.5 million.

**NOTE 16: INCOME TAXES**

Detail of the provision (benefit) for income taxes from continuing operations consists of:

	in millions			
	2008	2007	2006	
Federal	\$ 56	\$ 129	\$ (79)	)
State	8	16	(12)	)
Foreign	4	(3)	(3)	)
	\$ 68	\$ 142	\$ (94)	)
Current	\$ 33	\$ 137	\$ 32	
Deferred	35	5	(126)	)
	\$ 68	\$ 142	\$ (94)	)

The reasons for the difference between the statutory federal income tax rate and the effective income tax rate from continuing operations are as follows:

	2008	2007	2006	
Federal income tax rate	35.0	% 35.0	% 35.0	%
State income taxes, excluding FIN 48	2.0	2.3	3.3	
Extraterritorial income exclusion	-	(1.1)	-	)
Unrecognized tax benefits, net	4.4	(4.6)	-	)
Medicare Part D	(0.8)	3.2	(1.8)	)
Adjustment for tax review	-	-	(5.1)	)
General business credits	(3.8)	(2.6)	2.6	)
Domestic production deduction	(2.2)	(1.0)	-	)
Fixed asset tax cost correction	-	4.2	-	)
Officers life insurance	3.8	(1.4)	0.8	)
Change in state valuation allowance	5.0	-	-	)
Other	1.2	0.6	0.2	)
	44.6	% 34.6	% 35.0	%

## Edgar Filing: MIDDLETON J KEITH - Form 4

An increase in the state valuation allowance increased the fiscal 2008 tax expense by \$8 million, while non-deductible activity relating to company-owned life insurance increased the fiscal 2008 tax expense by \$6 million. The addition of FIN 48 unrecognized tax benefits in fiscal 2008 caused a net increase to income tax expense of approximately \$7 million. Additionally, estimated general business credits decreased fiscal 2008 tax expense by \$6 million.

During fiscal 2007, we discovered a certain population of our tax cost and accumulated depreciation values were not accurately recorded, primarily related to a property, plant and equipment system conversion in 1999. This system conversion did not impact the recorded book value of the property, plant and equipment. As a result, the net tax basis of property, plant and equipment was overstated, which caused the deferred tax liability in our financial statements to be understated. In fiscal 2007, we increased our deferred tax liabilities \$17 million and recognized additional tax expense of \$17 million.

The fiscal 2007 effective tax rate was reduced by 4.6% due to the reduction of income tax reserves management deemed were no longer required. The net reduction to current income tax expense of approximately \$20 million related to Internal Revenue Service examinations, appeals and United States Tax Court settlement activity, as well as state income tax examination settlements. Additional related adjustments resulted in a \$28 million reduction of goodwill.

During fiscal 2006, we completed a review of our tax account balances, and as a result, reduced our income tax benefit by \$15 million. This included \$12 million related to additional tax reserves for our foreign operations and \$3 million related to a cumulative adjustment to our recorded tax balances attributable to book to tax differences associated with property, plant and equipment



**TYSON FOODS, INC.**

(including synthetic leases) and certain acquired deferred tax liabilities. Additional adjustments resulted in an increase to goodwill of \$12 million, deferred tax liabilities of \$3 million and a reduction of property, plant and equipment of \$9 million.

Deferred income taxes are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The tax effects of major items recorded as deferred tax assets and liabilities are:

	2008		in millions 2007	
	Deferred Tax		Deferred Tax	
	Assets	Liabilities	Assets	Liabilities
Property, plant and equipment	\$ -	\$ 365	\$ -	\$ 399
Suspended taxes from conversion to accrual method	-	96	-	104
Intangible assets	-	30	7	32
Inventory	13	89	13	74
Accrued expenses	167	-	165	-
Net operating loss and other carryforwards	124	-	133	-
Note hedge transactions	36	-	-	-
Insurance reserves	22	-	22	-
Prepays	-	23	-	40
Other	58	48	53	71
	\$ 420	\$ 651	\$ 393	\$ 720
Valuation allowance	\$ (49	)	\$ (55	)
Net deferred tax liability		\$ 280		\$ 382

Net deferred tax liabilities are included in Other Current Assets, Other Current Liabilities and Deferred Income Taxes on the Consolidated Balance Sheets.

The deferred tax liability for suspended taxes from conversion to accrual method represents the 1987 change from the cash to accrual method of accounting and will be recognized by 2027.

We have accumulated undistributed earnings of foreign subsidiaries aggregating approximately \$219 million and \$215 million at September 27, 2008 and September 29, 2007, respectively. These earnings are expected to be indefinitely reinvested outside of the United States. If those earnings were distributed in the form of dividends or otherwise, we would be subject to federal income taxes (subject to an adjustment for foreign tax credits), state income taxes and withholding taxes payable to the various foreign countries. It is not currently practicable to estimate the tax liability that might be payable on the repatriation of these foreign earnings.

The tax effected valuation allowance of \$49 million consists of \$30 million for state tax credit and net operating loss carryforwards, \$3 million for federal net operating loss carryforwards and \$16 million for international net operating loss carryforwards. The state tax credit and net

## Edgar Filing: MIDDLETON J KEITH - Form 4

operating loss carryforwards expire in fiscal years 2009 through 2027. At September 27, 2008, after considering utilization restrictions, our gross federal tax net operating loss carryforwards approximated \$165 million. Gross federal net operating loss carryforwards of \$8 million are subject to utilization limitations due to ownership changes and may be utilized to offset future taxable income subject to limitations. These carryforwards expire during fiscal years 2009 through 2024. The \$49 million valuation allowance described above includes \$3 million that if subsequently recognized, will be allocated to reduce goodwill, which was recorded at the time of acquisition of TFM.

The following table summarizes the activity related to our gross unrecognized tax benefits from the beginning of fiscal 2008 to September 27, 2008.

	in millions Unrecognized Tax Benefits
Balance as of the beginning of fiscal 2008	\$ 210
Increases related to current year tax positions	23
Increases related to prior year tax positions	36
Reductions related to prior year tax positions	(28)
Reductions related to settlements	(14)
Reductions related to expirations of statute of limitations	(7)
Balance as of September 27, 2008	\$ 220

**TYSON FOODS, INC.**

We classify interest and penalties on unrecognized tax benefits as income tax expense. At September 27, 2008, and at the adoption of FIN 48 at the beginning of fiscal 2008, before tax benefits, we had \$67 million and \$70 million, respectively, of accrued interest and penalties on unrecognized tax benefits.

As of September 27, 2008, we are subject to income tax examinations for U.S. federal income taxes for fiscal years 1998 through 2007, and for foreign, state and local income taxes for fiscal years 2001 through 2007. During fiscal 2009, tax audit resolutions could potentially reduce unrecognized tax benefits by approximately \$26 million, either because tax positions are sustained on audit or because we agree to their disallowance.

**NOTE 17: EARNINGS (LOSS) PER SHARE**

The earnings and weighted average common shares used in the computation of basic and diluted earnings (loss) per share are as follows:

	in millions, except per share data		
	2008	2007	2006
Numerator:			
Income (loss) from continuing operations	\$ 86	\$ 268	\$ (174 )
Less Dividends:			
Class A (\$0.16/share)	46	45	41
Class B (\$0.144/share)	10	11	14
Undistributed earnings (losses)	30	212	(229 )
Class A undistributed earnings (losses)	25	170	(170 )
Class B undistributed earnings (losses)	5	42	(59 )
Total undistributed earnings (losses)	\$ 30	\$ 212	\$ (229 )
Denominator:			
Denominator for basic earnings per share:			
Class A weighted average shares	281	273	249
Class B weighted average shares, and shares under if-converted method for diluted earnings per share	70	75	96
Effect of dilutive securities:			
Stock options and restricted stock	5	7	-
Denominator for diluted earnings per share - adjusted weighted average shares and assumed conversions	356	355	345
Earnings (Loss) Per Share from Continuing Operations:			
Class A Basic	\$ 0.25	\$ 0.79	\$ (0.51 )
Class B Basic	\$ 0.22	\$ 0.70	\$ (0.47 )
Diluted	\$ 0.24	\$ 0.75	\$ (0.51 )
Net income (loss):			
Class A Basic	\$ 0.25	\$ 0.79	\$ (0.58 )
Class B Basic	\$ 0.22	\$ 0.70	\$ (0.53 )
Diluted	\$ 0.24	\$ 0.75	\$ (0.58 )

## Edgar Filing: MIDDLETON J KEITH - Form 4

Approximately 10 million, 4 million and 28 million, respectively, in fiscal years 2008, 2007 and 2006, of our option shares were antidilutive and were not included in the dilutive earnings per share calculation.

We have two classes of capital stock, Class A stock and Class B stock. Cash dividends cannot be paid to holders of Class B stock unless they are simultaneously paid to holders of Class A stock. The per share amount of cash dividends paid to holders of Class B stock cannot exceed 90% of the cash dividend paid to holders of Class A stock.

We allocate undistributed earnings (losses) based upon a 1 to 0.9 ratio per share of Class A stock and Class B stock, respectively. We allocate undistributed earnings (losses) based on this ratio due to historical dividend patterns, voting control of Class B shareholders and contractual limitations of dividends to Class B stock.

**TYSON FOODS, INC.**

**NOTE 18: SEGMENT REPORTING**

We operate in four segments: Chicken, Beef, Pork and Prepared Foods. We measure segment profit as operating income (loss).

**Chicken:** Chicken operations include breeding and raising chickens, as well as processing live chickens into fresh, frozen and value-added chicken products and logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. It also includes sales from allied products and our chicken breeding stock subsidiary.

**Beef:** Beef operations include processing live fed cattle and fabricating dressed beef carcasses into primal and sub-primal meat cuts and case-ready products. This segment also includes sales from allied products such as hides and variety meats, as well as logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. Allied products are marketed to manufacturers of pharmaceuticals and technical products.

**Pork:** Pork operations include processing live market hogs and fabricating pork carcasses into primal and sub-primal cuts and case-ready products. This segment also includes our live swine group, related allied product processing activities and logistics operations to move products through the supply chain. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world. We sell allied products to pharmaceutical and technical products manufacturers, as well as a limited number of live swine to pork processors.

**Prepared Foods:** Prepared Foods operations include manufacturing and marketing frozen and refrigerated food products and logistics operations to move products through the supply chain. Products include pepperoni, bacon, beef and pork pizza toppings, pizza crusts, flour and corn tortilla products, appetizers, prepared meals, ethnic foods, soups, sauces, side dishes, meat dishes and processed meats. Products are marketed domestically to food retailers, foodservice distributors, restaurant operators and noncommercial foodservice establishments such as schools, hotel chains, healthcare facilities, the military and other food processors, as well as to international markets throughout the world.

## TYSON FOODS, INC.

in millions

	Chicken	Beef	Pork	Prepared Foods	Other	Consolidated
<b>Fiscal year ended September 27, 2008</b>						
Sales	\$8,900	\$11,664	\$3,587	\$2,711	\$-	\$26,862
Operating income (loss)	(118)	106	280	63	-	331
Other expense						177
Income from continuing operations before income taxes						154
Depreciation (a)	244	117	31	67	-	459
Total assets (b)	4,990	3,169	898	971	663	10,691
Additions to property, plant and equipment (c)	258	83	21	46	15	423
<b>Fiscal year ended September 29, 2007</b>						
Sales	\$8,210	\$11,540	\$3,314	\$2,665	\$-	\$25,729
Operating income	325	51	145	92	-	613
Other expense						203
Income from continuing operations before income taxes						410
Depreciation (a)	260	120	31	61	-	472
Total assets (b)	4,467	3,207	814	961	614	10,063
Additions to property, plant and equipment (c)	164	33	10	25	47	279
<b>Fiscal year ended September 30, 2006</b>						
Sales	\$7,958	\$10,866	\$3,067	\$2,698	\$-	\$24,589
Operating income (loss)	94	(254)	55	55	-	(50)
Other expense						218
Loss from continuing operations before income taxes						(268)
Depreciation (a)	262	117	30	63	-	472
Total assets (b)	4,395	3,139	847	1,021	1,561	10,963
Additions to property, plant and equipment (c)	225	134	14	55	100	528

- a) Excludes depreciation related to discontinued operation of \$9 million, \$10 million and \$9 million for fiscal years 2008, 2007 and 2006, respectively.
- b) Excludes assets held for sale related to discontinued operation of \$159 million, \$164 million and \$158 million for fiscal years 2008, 2007 and 2006, respectively.
- c) Excludes additions to property, plant and equipment related to discontinued operation of \$2 million, \$6 million and \$3 million for fiscal years 2008, 2007 and 2006, respectively.

In the fourth quarter fiscal 2008, we began to manage and report the operating results and identifiable assets of our logistics operations in the segment in which the product being moved relates. As a result, our operating segments now reflect logistics operations which were previously included in Other. All prior periods have been restated to reflect this change.

We allocate expenses related to corporate activities to the segments, while the related assets and additions to property, plant and equipment remain in Other.

The Pork segment had sales of \$517 million, \$515 million and \$467 million for fiscal years 2008, 2007 and 2006, respectively, from transactions with other operating segments. The Beef segment had sales of \$142 million, \$111 million and \$104 million for fiscal years 2008, 2007 and 2006, respectively, from transactions with other operating segments. These sales from intersegment transactions, which are sold at market prices, were excluded from the segment sales in the above table.

Explanation of Responses:

## Edgar Filing: MIDDLETON J KEITH - Form 4

Our largest customer, Wal-Mart Stores, Inc., accounted for 13.3%, 13.4% and 13.0% of consolidated sales in fiscal years 2008, 2007 and 2006, respectively. Sales to Wal-Mart Stores, Inc. were included in the Chicken, Beef, Pork and Prepared Foods segments. Any extended discontinuance of sales to this customer could, if not replaced, have a material impact on our operations.

The majority of our operations are domiciled in the United States. Approximately 98% of sales to external customers for each of fiscal years 2008, 2007 and 2006 were sourced from the United States. Approximately \$3.4 billion, \$3.5 billion and \$3.7 billion, respectively, of property, plant and equipment were located in the United States at September 27, 2008, September 29, 2007, and September 30, 2006. Approximately \$139 million, \$125 million and \$116 million of property, plant and equipment were located in foreign countries, primarily Mexico, at fiscal years ended 2008, 2007 and 2006, respectively.

We sell certain products in foreign markets, primarily Canada, Central America, China, the European Union, Japan, Mexico, the Middle East, Russia, South Korea, and Taiwan. Our export sales totaled \$3.2 billion, \$2.5 billion and \$2.0 billion for fiscal 2008, 2007 and 2006, respectively. Substantially all of our export sales are facilitated through unaffiliated brokers, marketing associations and foreign sales staffs. Foreign sales, which are sales of products produced in a country other than the United States, were less than 10%

**TYSON FOODS, INC.**

of consolidated sales for each of fiscal years 2008, 2007 and 2006. Approximately 22% and 10% of income from continuing operations before income taxes for fiscal 2008 and 2007, respectively, was from foreign operations. In fiscal 2006, we had income from continuing operations before income taxes related to foreign operations of \$13 million.

**NOTE 19: QUARTERLY FINANCIAL DATA (UNAUDITED)**

in millions, except per share data

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	
<b>2008</b>					
Sales	\$ 6,476	\$ 6,336	\$ 6,849	\$ 7,201	
Gross profit	315	315	259	357	
Operating income	94	54	45	138	
Income (loss) from continuing operations	41	3	(3	) 45	
Income (loss) from discontinued operation	(7	) (8	) 12	3	
Net income (loss)	34	(5	) 9	48	
Earnings (loss) from continuing operations:					
Class A Basic	\$ 0.12	\$ 0.01	\$ (0.01	) \$ 0.13	
Class B Basic	\$ 0.11	\$ 0.01	\$ (0.01	) \$ 0.11	
Diluted	\$ 0.12	\$ 0.01	\$ (0.01	) \$ 0.12	
Earnings (loss) from discontinued operation:					
Class A Basic	\$ (0.02	) \$ (0.03	) \$ 0.04	\$ 0.01	
Class B Basic	\$ (0.02	) \$ (0.02	) \$ 0.03	\$ 0.01	
Diluted	\$ (0.02	) \$ (0.03	) \$ 0.04	\$ 0.01	
Net income (loss):					
Class A Basic	\$ 0.10	\$ (0.02	) \$ 0.03	\$ 0.14	
Class B Basic	\$ 0.09	\$ (0.01	) \$ 0.02	\$ 0.12	
Diluted	\$ 0.10	\$ (0.02	) \$ 0.03	\$ 0.13	
<b>2007</b>					
Sales	\$ 6,298	\$ 6,239	\$ 6,618	\$ 6,574	
Gross profit	342	353	428	306	
Operating income	151	148	212	102	
Income from continuing operations	60	61	114	33	
Income (loss) from discontinued operation	(3	) 7	(3	) (1	)
Net income	57	68	111	32	
Earnings from continuing operations:					
Class A Basic	\$ 0.18	\$ 0.18	\$ 0.33	\$ 0.10	
Class B Basic	\$ 0.16	\$ 0.16	\$ 0.30	\$ 0.08	
Diluted	\$ 0.17	\$ 0.17	\$ 0.32	\$ 0.09	
Earnings (loss) from discontinued operation:					
Class A Basic	\$ (0.01	) \$ 0.02	\$ (0.01	) \$ -	
Class B Basic	\$ (0.01	) \$ 0.02	\$ (0.01	) \$ -	
Diluted	\$ (0.01	) \$ 0.02	\$ (0.01	) \$ -	
Net income:					
Class A Basic	\$ 0.17	\$ 0.20	\$ 0.32	\$ 0.10	
Class B Basic	\$ 0.15	\$ 0.18	\$ 0.29	\$ 0.08	
Diluted	\$ 0.16	\$ 0.19	\$ 0.31	\$ 0.09	





**TYSON FOODS, INC.**

In June 2008, we executed a letter of intent to sell the beef processing, cattle feed yard and fertilizer assets of Lakeside Farm Industries Ltd. We are reporting Lakeside as a discontinued operation and have restated the quarterly financial data accordingly.

First quarter fiscal 2008 income from continuing operations before income taxes includes an \$18 million non-operating gain related to sale of an investment and a \$6 million severance charge related to the FAST initiative. Second quarter fiscal 2008 income from continuing operations before income taxes includes \$47 million in charges related to restructuring a beef plant operation, closing a poultry plant, impairment of packaging equipment and software impairments. Third quarter fiscal 2008 loss from continuing operations before income taxes includes \$13 million in charges related to flood damage and impairment of unimproved real property. Fourth quarter fiscal 2008 income from continuing operations before income taxes includes a \$10 million charge related to intangible asset impairments.

Fourth quarter fiscal 2007 income from continuing operations includes tax expense of \$17 million related to a fixed asset tax cost correction.

**NOTE 20: CAPITAL STRUCTURE**

In September 2008, we issued 22.4 million shares of Class A stock as part of a public offering. The shares were offered at \$12.75. Net proceeds, after underwriting discounts and commissions, of approximately \$274 million were used toward the repayment of our borrowings under the accounts receivable securitization facility and for other general corporate purposes. An entity controlled by Don Tyson purchased three million shares of Class A stock in this offering.

During fiscal 2007, Tyson Limited Partnership converted 15.9 million shares of Class B stock to Class A stock on a one-for-one basis.

During fiscal 2006, Tyson Limited Partnership converted 15 million shares of Class B stock to Class A stock on a one-for-one basis. Additionally, Don Tyson, a director, converted 750,000 shares of Class B stock to Class A stock on a one-for-one basis.

**NOTE 21: CONTINGENCIES**

Listed below are certain claims made against the Company and our subsidiaries. In our opinion, we have made appropriate and adequate reserves, accruals and disclosures where necessary, and believe the probability of a material loss beyond the amounts accrued to be remote; however, the ultimate liability for these matters is uncertain, and if accruals and reserves are not adequate, an adverse outcome could have a material effect on the consolidated financial condition or results of operations. We believe we have substantial defenses to the claims made and intend to vigorously defend these cases.

In 2000, the Wage and Hour Division of the U.S. Department of Labor (DOL) conducted an industry-wide investigation of poultry producers, including us, to ascertain compliance with various wage and hour issues. As part of this investigation, the DOL inspected 14 of our processing facilities. On May 9, 2002, the DOL filed a civil complaint styled Elaine L. Chao, Secretary of Labor, United States Department of Labor v.

## Edgar Filing: MIDDLETON J KEITH - Form 4

Tyson Foods, Inc. against us in the U.S. District Court for the Northern District of Alabama. The plaintiffs allege in the complaint that we violated the overtime provisions of the federal Fair Labor Standards Act at our chicken-processing facility in Blountsville, Alabama. The complaint does not contain a definite statement of what acts constituted alleged violations of the statute, although the Secretary of Labor indicated in discovery the case seeks to require us to compensate all hourly chicken processing workers for pre- and post-shift clothes changing, washing and related activities and for one of two unpaid 30-minute meal periods. The Secretary of Labor seeks unspecified back wages for all employees at the Blountsville facility for a period of two years prior to the date of the filing of the complaint, and an additional amount in unspecified liquidated damages and an injunction against future violations at that facility and all other chicken processing facilities we operate. The District Court granted the Company's motion for partial summary judgment in part, ruling that the second meal period is appropriately characterized as non-compensable, and reserving the remaining issues for trial. The trial is presently set for January 5, 2009.

Several private lawsuits are pending against us alleging that we failed to compensate poultry plant employees for all hours worked, including overtime compensation, in violation of the Fair Labor Standards Act. These lawsuits include M.H. Fox, et al. v. Tyson Foods, Inc. (Fox), filed on June 22, 1999, in the U.S. District Court for the Northern District of Alabama, and DeAsencio v. Tyson Foods, Inc. (DeAsencio), filed on August 22, 2000, in the U.S. District Court for the Eastern District of Pennsylvania. Each of these matters involves similar allegations that employees should be paid for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing, obtaining clothing and walking to and from the changing area, work areas and break areas. The plaintiffs in these lawsuits seek or have sought to act as class representatives on behalf of all current and former employees who were allegedly not paid for time worked and seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees. In Fox, the District Court denied class certification on November 16, 2006, and ordered the cases of the 10 named plaintiffs in the matter to proceed individually in the home jurisdictions of the named plaintiffs. Two of these cases (Brothers and Hatchett) were tried in November 2007 in Alabama with jury verdicts in favor of the plaintiffs. The District Court recently entered judgment in the final of these cases (Fox) after the Company made an offer of judgment to Fox, thereby avoiding trial. However, the District Court must now determine the amount of attorneys' fees and costs to be awarded to the plaintiffs. In DeAsencio, plaintiffs appealed a jury verdict and final judgment entered in our favor on June 22, 2006, in the District Court. On September 7, 2007, the U.S.

**TYSON FOODS, INC.**

Court of Appeals for the Third Circuit reversed the jury verdict and remanded the case to the District Court for further proceedings. We sought rehearing en banc, which was denied by the Court of Appeals on October 5, 2007. The United States Supreme Court denied our petition for a writ of certiorari on June 9, 2008.

In addition to Fox and DeAsencio, additional private lawsuits were filed against us since the beginning of fiscal 2007 which allege we failed to compensate poultry plant employees for all hours worked, including overtime compensation, in violation of the Fair Labor Standards Act. These lawsuits are Sheila Ackles, et al. v. Tyson Foods, Inc. (N. Dist. Alabama, October 23, 2006); McCluster, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, December 11, 2006); Dobbins, et al. v. Tyson Chicken, Inc., et al. (N. Dist. Alabama, December 21, 2006); Buchanan, et al. v. Tyson Chicken, Inc., et al. and Potter, et al. v. Tyson Chicken, Inc., et al. (N. Dist. Alabama, December 22, 2006); Jones, et al. v. Tyson Foods, Inc., et al., Walton, et al. v. Tyson Foods, Inc., et al. and Williams, et al. v. Tyson Foods, Inc., et al. (S. Dist. Mississippi, February 9, 2007); Balch, et al. v. Tyson Foods, Inc. (E. Dist. Oklahoma, March 1, 2007); Adams, et al. v. Tyson Foods, Inc. (W. Dist. Arkansas, March 2, 2007); Atkins, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, March 5, 2007); and Laney, et al. v. Tyson Foods, Inc. and Williams, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, May 23, 2007). Similar to Fox and DeAsencio, each of these matters involves allegations employees should be paid for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing, obtaining clothing and walking to and from the changing area, work areas and break areas. The plaintiffs in each of these lawsuits seek or have sought to act as class representatives on behalf of all current and former employees who were allegedly not paid for time worked and seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees. On April 6, 2007, we filed a motion for transfer of the above named actions for coordinated pretrial proceedings before the Judicial Panel on Multidistrict Litigation. The motion for transfer was granted on August 17, 2007. The cases listed above and five other cases subsequently filed involving the same allegations, including Armstrong, et al. v. Tyson Foods, Inc. (W. Dist. Tennessee, January 30, 2008); Maldonado, et al. v. Tyson Foods, Inc. (E. Dist. Tennessee, January 31, 2008); White, et al. v. Tyson Foods, Inc. (E. Dist. Texas, February 1, 2008); Meyer, et al. v. Tyson Foods, Inc. (W. Dist. Missouri, February 2, 2008); and Leak, et al. v. Tyson Foods, Inc. (W. Dist. North Carolina, February 6, 2008), were transferred to the U.S. District Court in the Middle District of Georgia, In re: Tyson Foods, Inc., Fair Labor Standards Act Litigation ( MDL Proceedings ). On January 2, 2008, the Judge in the MDL Proceedings issued a Joint Scheduling and Case Management Order. The Order granted Conditional Class Certification and called for notice to be given to potential putative class members via a third party administrator. The potential class members had until April 18, 2008, to opt in to the class. Approximately 13,800 employees and former employees filed their consents to opt-in to the class. As of April 18, 2008, the parties began conducting discovery for a period of 240 days at eight of our facilities and our corporate headquarters in Springdale, Arkansas. Discovery may be conducted at additional facilities in the future. On October 15, 2008, the Judge in the MDL Proceedings denied the plaintiffs' motion for equitable tolling, which reduces the time period for which the plaintiffs may seek damages.

On June 19, 2005, the Attorney General and the Secretary of the Environment of the State of Oklahoma filed a complaint in the U.S. District Court for the Northern District of Oklahoma against us, three of our subsidiaries and six other poultry integrators. This complaint was subsequently amended. As amended, the complaint asserts a number of state and federal causes of action including, but not limited to, counts under Comprehensive Environmental Response, Compensation, and Liability Act ( CERCLA ), Resource Conservation and Recovery Act ( RCRA ), and state-law public nuisance theories. The amended complaint asserts that defendants and certain contract growers who are not named in the complaint polluted the surface waters, groundwater and associated drinking water supplies of the Illinois River Watershed ("IRW") through the land application of poultry litter. Oklahoma asserts that this alleged pollution has also caused extensive injury to the environment (including soils and sediments) of the IRW and that the defendants have been unjustly enriched. Oklahoma's claims cover the entire IRW, which encompasses more than one million acres of land and the natural resources (including lakes and waterways) contained therein. Oklahoma seeks wide-ranging relief, including injunctive relief, compensatory and punitive damages, attorneys fees and disgorgement. We and the other defendants have denied liability, asserted various defenses, and filed a third-party complaint that asserts claims against other persons and entities whose activities may have contributed to the pollution alleged in the amended complaint. The district court has stayed proceedings on the third party complaint pending resolution of Oklahoma's claims against the defendants. On November 14, 2007, Oklahoma filed a motion under RCRA requesting a preliminary injunction to halt the land application of poultry litter in the IRW. Oklahoma's motion for a preliminary injunction asserted that bacteria from poultry litter are causing an imminent and substantial endangerment to human health and the environment throughout the IRW. A multi-week evidentiary hearing on the preliminary injunction was completed on March 6, 2008. On September 29, 2008, the court entered an order denying the preliminary injunction. On October 17, 2008, Oklahoma filed a notice of appeal of the district court's denial of the preliminary injunction in the United States Court of Appeals for the Tenth Circuit. Discovery in Oklahoma's case against defendants is ongoing. Trial is currently scheduled for September 2009.

## Edgar Filing: MIDDLETON J KEITH - Form 4

We currently have pending eleven separate wage and hour actions involving TFM s plants located in Lexington, Nebraska (Lopez, et al. v. Tyson Foods, Inc., District of Nebraska, June 30, 2006), Garden City and Emporia, Kansas (Garcia, et al. v. Tyson Foods, Inc., Tyson Fresh Meats, Inc., District of Kansas, May 15, 2006), Storm Lake, Iowa (Sharp, et al. v. Tyson Foods, Inc., (N.D. Iowa, February 6, 2007), Columbus Junction, Iowa (Robinson, et al. v. Tyson Foods, Inc., d/b/a Tyson Fresh Meats, Inc., S.D. Iowa, September 12, 2007) , Joslin, Illinois (Murray, et al. v. Tyson Foods, Inc., C.D. Illinois, January 2, 2008), Dakota City, Nebraska (Gomez, et al. v. Tyson Foods, Inc., District of Nebraska, January 16, 2008), Madison, Nebraska (Acosta, et al. v Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., District of Nebraska, February 29, 2008), Perry and Waterloo, Iowa (Edwards, et al. v. Tyson Foods, Inc. d.b.a Tyson Fresh Meats, Inc., S.D. Iowa, March 20, 2008); Council Bluffs, Iowa (Salazar, et al. v. Tyson Foods, Inc. d.b.a. Tyson Fresh Meats, Inc., S.D. Iowa, April 29, 2008; and Logansport, Indiana (Carter, et al. v. Tyson Foods, Inc. and Tyson Fresh Meats, Inc.,

**TYSON FOODS, INC.**

N.D. Indiana, April 29, 2008); and Goodlettsville, Tennessee (Cunningham v. Tyson Fresh Meats, Inc., M.D. Tennessee, May 22, 2008). With the exception of Cunningham, the actions allege TFM failed to pay employees for all hours worked, including overtime compensation for the time it takes to change into protective work uniforms, safety equipment and other sanitary and protective clothing worn by employees, and for walking to and from the changing area, work areas and break areas in violation of the Fair Labor Standards Act and analogous state laws. The plaintiffs seek back wages, liquidated damages, pre- and post-judgment interest, attorneys' fees and costs. Cunningham alleges TFM failed to pay quality assurance technicians overtime compensation for all hours worked in excess of forty hours in each work week. TFM filed a motion for partial summary judgment in Garcia, based upon an injunction entered in Reich v. IBP, which outlined the types of activities at issue here that are compensable. The District Court of Kansas denied the motion, and TFM appealed to the Tenth Circuit Court of Appeals, arguing that the District Court's ruling had the effect of improperly modifying the injunction. On July 23, 2008, Tyson filed a motion to transfer the eleven actions to the District of Kansas for consolidated pretrial proceedings. On October 9, 2008, the motion to transfer was denied by the Judicial Panel on Multidistrict Litigation. The effect of this order will be that the stays previously entered in the individual actions will be lifted and each case will resume.

On November 21, 2002, 10 current and former hourly employees of a TFM case ready facility in Goodlettsville, Tennessee, filed a putative class action lawsuit styled Emily D. Jordan, et al. v. IBP, inc. and Tyson Foods, Inc. in the U.S. District Court for the Middle District of Tennessee against us claiming violations of the overtime provisions of the Fair Labor Standards Act by failing to pay employees for all hours worked. The suit further alleges employees should be paid for the time it takes to collect, assemble and put on, take off and wash their health, safety and production gear at the beginning and end of their shifts and during their meal period. Finally, the suit alleges we deduct 30 minutes per day from employees' paychecks regardless of whether employees use a full 30-minute period for their meal. The plaintiffs seek a declaration that the defendants did not comply with the Fair Labor Standards Act, and an award for an unspecified amount of back pay compensation and benefits, unpaid entitlements, liquidated damages, prejudgment and post-judgment interest, attorney fees and costs. On November 17, 2003, the District Court conditionally certified a collective action based on clothes changing and washing activities and unpaid production work during meal periods, since the plant operations began in April 2001. Approximately 650 current and former employees have opted into the class. On August 20, 2007, both parties filed motions for summary judgment. The court granted in part and denied in part the parties' motions for partial summary judgment on March 13, 2008. A jury trial was set to begin on September 16, 2008, but the parties resolved the litigation. On September 25, 2008, the court entered an agreed order of dismissal with prejudice and approved the confidential settlement agreement of the parties.

**NOTE 22: SUBSEQUENT EVENTS**

In October 2008, Dynamic Fuels received \$100 million in Gulf Opportunity Zone tax-exempt bonds made available by the Federal government to the regions affected by Hurricanes Katrina and Rita in 2005. These floating rate bonds are due October 1, 2033, and have an initial interest rate of 1.3%. We issued a letter of credit as a guarantee for the entire bond issuance. In exchange for our guarantee, Syntroleum Corporation, the other 50 percent investor in Dynamic Fuels, issued to us eight million Syntroleum stock warrants with an exercise price of \$0.01 per share.

In October 2008, we completed the acquisition of three vertically integrated poultry companies in southern Brazil. The purchase price was \$80 million, as well as up to an additional \$15 million of contingent purchase price based on production volumes payable through fiscal 2010. These transactions include the acquisitions of Macedo Agroindustrial, Avicola Itaiopolis and Frangobras. Combined, we expect these companies will have sales of \$150-\$175 million in fiscal 2009.

**TYSON FOODS, INC.**

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Shareholders

of Tyson Foods, Inc.

We have audited the accompanying consolidated balance sheets of Tyson Foods, Inc. as of September 27, 2008 and September 29, 2007, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three years in the period ended September 27, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Tyson Foods, Inc. at September 27, 2008 and September 29, 2007, and the consolidated results of its operations and its cash flows for each of the three years in the period ended September 27, 2008, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As described in Note 2 to the consolidated financial statements, the Company adopted Statement of Financial Accounting Standards Interpretation No. 48, Accounting for Uncertainty in Income Taxes in 2008.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Tyson Foods, Inc.'s internal control over financial reporting as of September 27, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated November 17, 2008, expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Rogers, Arkansas

Explanation of Responses:

November 17, 2008

76

---



**TYSON FOODS, INC.**

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Shareholders

of Tyson Foods, Inc.

We have audited Tyson Foods, Inc.'s internal control over financial reporting as of September 27, 2008, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Tyson Foods, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Report of Management under the caption "Management's Report on Internal Control over Financial Reporting". Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

In our opinion, Tyson Foods, Inc. maintained, in all material respects, effective internal control over financial reporting as of September 27, 2008, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Tyson Foods, Inc. as of September 27, 2008 and September 29, 2007, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three years in the period ended September 27, 2008, and our report dated November 17, 2008, expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Rogers, Arkansas

November 17, 2008

77

---

**TYSON FOODS, INC.**

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

Not applicable.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

An evaluation was performed, under the supervision and with the participation of management, including the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO), of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the 1934 Act)). Based on that evaluation, management, including the CEO and CFO, has concluded that, as of September 27, 2008, our disclosure controls and procedures were effective to ensure that information required to be disclosed in reports we file or submit under the 1934 Act has been recorded, processed, summarized and reported in accordance with the rules and forms of the Securities and Exchange Commission.

**Changes in Internal Control Over Financial Reporting**

In the quarter ended September 27, 2008, there have been no changes in the Company's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**Management's Report on Internal Control Over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) of the Securities Exchange Act of 1934. Our internal control system was designed to provide reasonable assurance to management and the board of directors regarding the preparation and fair presentation of published financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Management conducted an evaluation of the effectiveness of our internal control over financial reporting as of September 27, 2008. In making this assessment, we used criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework.

Based on this evaluation under the framework in Internal Control - Integrated Framework issued by COSO, Management concluded that the Company's internal control over financial reporting was effective as of September 27, 2008.

The Company's independent registered public accounting firm, Ernst & Young LLP, has audited the financial statements included in this Form 10-K and has issued an attestation report on the Company's internal control over financial reporting. The attestation report on the Company's internal control over financial reporting appears in Part II, Item 8.

**ITEM 9B. OTHER INFORMATION**

Not applicable.

Explanation of Responses:



TYSON FOODS, INC.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

See information set forth under the captions "Election of Directors" and "Section 16(a) Beneficial Ownership Reporting Compliance" in the registrant's definitive Proxy Statement for the registrant's Annual Meeting of Shareholders to be held February 6, 2009 (the "Proxy Statement"), which information is incorporated herein by reference. Pursuant to general instruction G(3) of the instructions to Annual Report on Form 10-K, certain information concerning our executive officers is included under the caption "Executive Officers of the Company" in Part I of this Report.

We have a code of ethics as defined in Item 406 of Regulation S-K, which code applies to all of our directors and employees, including our principal executive officers, principal financial officer, principal accounting officer or controller, and persons performing similar functions. This code of ethics, titled "Tyson Foods, Inc. Code of Conduct," is available, free of charge on our website at <http://ir.tyson.com>.

**ITEM 11. EXECUTIVE COMPENSATION**

See the information set forth under the captions "Executive Compensation," "Director Compensation" and "Compensation Committee Interlocks and Insider Participation" in the Proxy Statement, which information is incorporated herein by reference. However, pursuant to Instructions to Item 407(e)(5) of the Securities and Exchange Commission Regulation S-K, the material appearing under the sub-heading "Compensation Committee Report" shall not be deemed to be filed with the Commission, other than as provided in this Item 11.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

See the information included under the captions "Security Ownership of Certain Beneficial Owners" and "Security Ownership of Management" in the Proxy Statement, which information is incorporated herein by reference.

**Securities Authorized for Issuance Under Equity Compensation Plans**

The following information reflects certain information about our equity compensation plans as of September 27, 2008:

	Equity Compensation Plan Information		
	(a)	(b)	(c)
	Number of Securities to be issued upon exercise of outstanding options	Weighted average exercise price of outstanding options	Number of Securities remaining available for future issuance under equity compensation plans (excluding Securities reflected in column (a))
Equity compensation plans approved by security holders	16,646,346	\$14.47	46,033,141
Equity compensation plans not approved by security holders	-	-	-
Total	16,646,346	\$14.47	46,033,141

## Edgar Filing: MIDDLETON J KEITH - Form 4

This table does not include 259,668 options, with a weighted-average exercise price of \$8.27, which were assumed in connection with the acquisition of IBP, inc. in 2001.

- a) Outstanding options granted by the Company
- b) Weighted average price of outstanding options
- c) Shares available for future issuance as of September 27, 2008, under the Stock Incentive Plan (24,823,940), the Employee Stock Purchase Plan (12,826,299) and the Retirement Savings Plan (8,382,902)

79

---

**TYSON FOODS, INC.**

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

See the information included under the captions Election of Directors and Certain Transactions in the Proxy Statement, which information is incorporated herein by reference.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

See the information included under the captions Audit Fees, Audit-Related Fees, Tax Fees and All Other Fees in the Proxy Statement, which information is incorporated herein by reference.

**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

- (a) The following documents are filed as a part of this report:
- Consolidated Statements of Operation for the three years ended September 27, 2008
  - Consolidated Balance Sheets at September 27, 2008, and September 29, 2007
  - Consolidated Statements of Shareholders' Equity for the three years ended September 27, 2008
  - Consolidated Statements of Cash Flows for the three years ended September 27, 2008
  - Notes to Consolidated Financial Statements
  - Reports of Independent Registered Public Accounting Firm

Financial Statement Schedule - Schedule II Valuation and Qualifying Accounts for the three years ended September 27, 2008

All other schedules are omitted because they are neither applicable nor required.

The exhibits filed with this report are listed in the Exhibit Index at the end of Item 15.

**TYSON FOODS, INC.**

**EXHIBIT INDEX**

Exhibit No.

- 2.1 Agreement and Plan of Merger dated as of January 1, 2001, among the Company, IBP, inc. and Lasso Acquisition Corporation (previously filed as Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the period ended December 30, 2000, Commission File No. 001-14704, and incorporated herein by reference).
- 3.1 Restated Certificate of Incorporation of the Company (previously filed as Exhibit 3.1 to the Company's Annual Report on Form 10-K for the fiscal year ended October 3, 1998, Commission File No. 001-14704, and incorporated herein by reference).
- 3.2 Fourth Amended and Restated By-laws of the Company (previously filed as Exhibit 3.2 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 4.1 Indenture between the Company and The Chase Manhattan Bank, N.A., as Trustee (the Company Indenture ) (previously filed as Exhibit 4 to Registration Statement on Form S-3, filed with the Commission on December 18, 1997, Registration No. 333-42525, and incorporated herein by reference).
- 4.2 Form of 7.0% Note due May 1, 2018 issued under the Company Indenture (previously filed as Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 28, 1998, Commission File No. 001-14704, and incorporated herein by reference).
- 4.3 Supplemental Indenture between the Company and The Chase Manhattan Bank, N.A., as Trustee, dated as of October 2, 2001, supplementing the Company Indenture, together with form of 8.250% Note (previously filed as Exhibit 4.14 to the Company s Annual Report on Form 10-K for the fiscal year ended September 29, 2001, Commission File No. 001-14704, and incorporated herein by reference).
- 4.4 Form of 6.60% Senior Notes due April 1, 2016 issued under the Company Indenture (previously filed as Exhibit 4.1 to the Company s Current Report on Form 8-K filed March 22, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 4.5 Supplemental Indenture among the Company, Tyson Fresh Meats, Inc. and JPMorgan Chase Bank, National Association, dated as of September 18, 2006, supplementing the Company Indenture (previously filed as Exhibit 10.1 to the Company s Current Report on Form 8-K filed September 19, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 4.6 Indenture, dated January 26, 1996, between IBP, inc. (IBP) and The Bank of New York (the IBP Indenture) (previously filed as Exhibit 4 to IBP's Registration Statement on Form S-3, filed with the Commission on November 20, 1995, Commission File No. 33-64459, and incorporated herein by reference).
- 4.7 Form of Senior Note issued under the IBP Indenture for the issuance of (a) 7.125% Senior Notes due February 1, 2026, and (b) 7.95% Senior Notes due February 1, 2010 (previously filed as Exhibit 4.16 to the Company s Annual Report on Form 10-K for the fiscal year ended September 29, 2001, Commission File No. 001-14704, and incorporated herein by reference).
- 4.8 First Supplemental Indenture, dated as of September 28, 2001, among the Company, Lasso Acquisition Corporation and The Bank of New York (previously filed as Exhibit 4.18 to the Company s Annual Report on Form 10-K for the fiscal year ended September 29, 2001, Commission File No. 001-14704, and incorporated herein by reference).
- 4.9 Supplemental Indenture dated as of September 15, 2008, between the Company and The Bank of New York Mellon Trust Company, National Association (as successor to JPMorgan Chase Bank, N.A. (formerly The Chase Manhattan Bank, N.A.)), as Trustee (including the form of Notes) (previously filed as Exhibit 4.2 to the Company s Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).

81

---



**TYSON FOODS, INC.**

- 10.1 Amended and Restated Receivable Transfer Agreement, dated as of August 6, 2008, by and among Tyson Receivables Corporation, a Delaware corporation, Tyson Foods, Inc., a Delaware corporation, the several commercial paper conduits identified therein as CP Conduit Purchasers and the several financial institutions identified therein as Committed Purchasers, and their respective Funding Agents, JPMorgan Chase Bank, a New York state banking corporation, as administrative agent for the benefit of the CP Conduit Purchasers, the Committed Purchasers and the Funding Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 11, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.2 Receivables Purchase Agreement, executed in connection with the Receivables Transfer Agreement described in Exhibit 10.1 above, among the Company and certain subsidiaries of the Company, as Sellers and Tyson Receivables Corporation, as Purchaser (previously filed as Exhibit 10.7 to the Company's Annual Report on Form 10-K for the period ended September 28, 2002, Commission File No. 001-14704, and incorporated herein by reference).
- 10.3 Amendment No. 1 to Receivables Purchase Agreement, dated August 13, 2004, among the Company and certain subsidiaries of the Company, as Sellers and Tyson Receivables Corporation, as Purchaser (previously filed as Exhibit 10.46 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.4 Amendment No. 2 to Receivables Purchase Agreement, dated as of August 6, 2008, by and among Tyson Receivables Corporation, a Delaware corporation, Tyson Foods, Inc., a Delaware corporation, certain subsidiaries of Tyson, the several commercial paper conduits identified therein as CP Conduit Purchasers and the several financial institutions identified therein as Committed Purchasers, and their respective Funding Agents, JPMorgan Chase Bank, a New York state banking corporation, as administrative agent for the benefit of the CP Conduit Purchasers, the Committed Purchasers and the Funding Agents (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed August 11, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.5 Five-Year Revolving Credit Agreement, dated as of September 28, 2005, by and among the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. Rabobank International, New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents, J.P. Morgan Securities Inc., as Lead Arranger and Sole Bookrunner, and certain other lenders party thereto (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed October 3, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.6 Amendment No. 1, dated as of March 2, 2006, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. Rabobank International, New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed March 7, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 10.7 Amendment No. 2, dated as of April 28, 2006, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. Rabobank International, New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed May 2, 2006, Commission File No. 001-14704, and incorporated herein by reference).

## TYSON FOODS, INC.

- 10.8 Amendment No. 3, dated as of July 27, 2006, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, as amended, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. Rabobank International, New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 31, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 10.9 Amendment No. 4, dated as of March 7, 2008, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, as amended, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank International", New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 29, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.10 Amendment No. 5, dated as of September 10, 2008, to the Company's Five-Year Revolving Credit Agreement, dated as of September 28, 2005, as amended, with the Company, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch Bank USA, as Syndication Agent, SunTrust Bank, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A. Rabobank International, New York Branch and BNP Paribas, as Documentation Agents, and CoBank, ACB and U.S. AgBank, FCB, as Co-Documentation Agents (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 12, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.11 Convertible note hedge transaction confirmation, dated as of September 9, 2008, by and between JPMorgan Chase Bank, National Association and the Company (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.12 Warrant transaction confirmation, dated as of September 9, 2008, by and between JPMorgan Chase Bank, National Association and the Company (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.13 Letter Agreement, dated as of September 9, 2008, by and between JPMorgan Chase Bank, National Association and the Company (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.14 Convertible note hedge transaction confirmation, dated as of September 9, 2008, by and between Merrill Lynch Financial Markets, Inc. and the Company (previously filed as Exhibit 10.4 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.15 Warrant transaction confirmation, dated as of September 9, 2008, by and between Merrill Lynch Financial Markets, Inc. and the Company (previously filed as Exhibit 10.5 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.16 Letter Agreement, dated as of September 9, 2008, by and between Merrill Lynch Financial Markets, Inc. and the Company (previously filed as Exhibit 10.6 to the Company's Current Report on Form 8-K filed September 15, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.17 Second Amended and Restated Employment Agreement, dated as of December 19, 2006, by and between Richard L. Bond and the Company (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 22, 2006, Commission File No. 001-14704, and incorporated herein by reference).
- 10.18 Nonqualified Stock Option Award pursuant to the Tyson Foods, Inc. 2000 Stock Incentive Plan, dated November 17, 2006, between the Company and Richard L. Bond (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 22, 2006, Commission File No. 001-14704, and incorporated herein by reference).

**TYSON FOODS, INC.**

- 10.19 Restricted Stock Unit Agreement, dated as of September 28, 2007, between the Company and Richard L. Bond (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.20 Senior Executive Employment Agreement dated November 20, 1998 between the Company and Leland E. Tollett (previously filed as Exhibit 10.20 to the Company's Annual Report on Form 10K for the fiscal year ended October 3, 1998, Commission File No. 001-14704, and incorporated herein by reference).
- 10.21 Amendment to Senior Executive Employment Agreement dated February 4, 2005, by and between the Company and Leland E. Tollett (previously filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the period ended January 1, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.22 Executive Employment Agreement between the Company and J. Alberto Gonzalez Pita, dated November 15, 2004 (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 18, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.23 Separation Agreement and General Release between the Company and J. Alberto Gonzalez-Pita, dated April 29, 2008 (previously filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the period ended March 29, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.24 Officer Employment Agreement between the Company and Craig J. Hart, dated November 12, 2004 (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed November 18, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.25 Senior Advisor Agreement, dated July 30, 2004, by and between Don Tyson and the Company (previously filed as Exhibit 10.43 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.26 Officer Employment Agreement between the Company and James V. Lochner, dated October 7, 2005 (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed October 12, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.27 Executive Employment Agreement between the Company and Wade Miquelon, dated April 13, 2006 (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 18, 2006, Commission File No. 001-14704, and incorporated herein by reference).
  
- 10.28 Voluntary Separation Agreement and General Release, dated as of May 12, 2008, between the Company and Wade Miquelon (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 13, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.29 Executive Employment Agreement between the Company and Donnie D. King, dated March 6, 2007 (previously filed as Exhibit 10.36 to the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2007, Commission File No. 001-14704, and incorporated herein by reference).
  
- 10.30 Executive Employment Agreement between the Company and Bernard Leonard, dated November 16, 2006 (previously filed as Exhibit 10.37 to the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2007, Commission File No. 001-14704, and incorporated herein by reference).
  
- 10.31 Executive Employment Agreement between the Company and Donald J. Smith, dated May 24, 2007 (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended December 29, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.32 Executive Employment Agreement between the Company and David L. Van Bebber, dated May 21, 2008 (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended June 28, 2008, Commission File No. 001-14704, and incorporated herein by reference).
- 10.33 Executive Employment Agreement between the Company and Dennis Leatherby, dated June 6, 2008 (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 11, 2008, Commission File No. 001-14704, and incorporated herein by reference).



**TYSON FOODS, INC.**

- 10.34 Executive Employment Agreement between the Company and Richard A. Greubel, Jr, dated May 3, 2007 (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 31, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.35 Agreement, dated as of September 28, 2007, between the Company and John Tyson (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.36 Indemnity Agreement, dated as of September 28, 2007, between the Company and John Tyson (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed September 28, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 10.37 Form of Indemnity Agreement between Tyson Foods, Inc. and its directors and certain executive officers (previously filed as Exhibit 10(t) to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1995, Commission File No. 0-3400, and incorporated herein by reference).
- 10.38 Form of IBP's Indemnification Agreement with officers and directors (previously filed as Exhibit 10.8 to IBP's Registration Statement on Form S-1, dated August 19, 1987, File No. 1-6085 and incorporated hereby by reference).
- 10.39 Tyson Foods, Inc. Annual Incentive Compensation Plan for Senior Executives adopted February 4, 2005 (previously filed as Exhibit 10.34 to the Company's Annual Report on Form 10-K for the fiscal year ended October 1, 2005, Commission File No. 001-14704, and incorporated herein by reference).
- 10.40 Tyson Foods, Inc. Restricted Stock Bonus Plan, effective August 21, 1989, as amended and restated on April 15, 1994; and Amendment to Restricted Stock Bonus Plan effective November 18, 1994 (previously filed as Exhibit 10(l) to the Company's Annual Report on Form 10-K for the fiscal year ended October 1, 1994, Commission File No. 0-3400, and incorporated herein by reference).
- 10.41 Amended and Restated Tyson Foods, Inc. Employee Stock Purchase Plan, dated as of October 1, 2008.
- 10.42 Restated Executive Savings Plan of Tyson Foods, Inc. effective January 1, 2009.
- 10.43 Amended and Restated Tyson Foods, Inc. 2000 Stock Incentive Plan dated November 19, 2004, First Amendment to the Amended and Restated Tyson Foods, Inc. 2000 Stock Incentive Plan dated February 2, 2007, and Second Amendment to the Amended and Restated Tyson Foods, Inc. 2000 Stock Incentive Plan dated August 13, 2007.
- 10.44 IBP Directors Stock Option Plan (previously filed as Exhibit 10.5.4 to IBP's Annual Report on Form 10-K for the fiscal year ended December 25, 1993, File No. 1-6085 and incorporated herein by reference).
- 10.45 IBP 1996 Stock Option Plan (previously filed as Exhibit 10.5.7 to IBP's Annual Report on Form 10-K for the fiscal year ended December 28, 1996, File No. 1-6085 and incorporated herein by reference).
- 10.46 Amended and Restated Retirement Income Plan of IBP, inc. dated August 1, 2000, and Amendment to Freeze the Retirement Income Plan of IBP, inc. dated December 31, 2002.
- 10.47 Amended and Restated Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan dated March 1, 2007, First Amendment to the Amended and Restated Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan dated September 24, 2007, and Second Amendment to the Amended and Restated Tyson Foods, Inc. Supplemental Executive Retirement and Life Insurance Premium Plan dated February 29, 2008.

**TYSON FOODS, INC.**

- 10.48 Retirement Savings Plan of Tyson Foods, Inc. dated November 3, 2008.
- 10.49 Form of Restricted Stock Agreement pursuant to which restricted stock awards are granted under the Tyson Foods, Inc. 2000 Stock Incentive Plan (previously filed as Exhibit 10.48 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.50 Form of Stock Option Grant Agreement pursuant to which stock option awards are granted under the Tyson Foods, Inc. 2000 Stock Incentive Plan (previously filed as Exhibit 10.49 to the Company's Annual Report on Form 10-K for the fiscal year ended October 2, 2004, Commission File No. 001-14704, and incorporated herein by reference).
- 10.51 Form of Tyson Foods, Inc. Performance Stock Award Grant Document pursuant to which performance stock awards are granted under the Tyson Foods, Inc. 2000 Stock Incentive Plan (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed October 4, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 12.1 Calculation of Ratio of Earnings to Fixed Charges
- 14.1 Code of Conduct of the Company (previously filed as Exhibit 14.1 to the Company's Current Report on Form 8-K filed January 18, 2007, Commission File No. 001-14704, and incorporated herein by reference).
- 21 Subsidiaries of the Company
- 23 Consent of Ernst & Young, LLP
- 31.1 Certification of Chief Executive Officer pursuant to SEC Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to SEC Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

**TYSON FOODS, INC.**

**SIGNATURES**

Pursuant to requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**TYSON FOODS, INC.**

By: /s/ Dennis Leatherby  
Dennis Leatherby  
Executive Vice President and Chief  
Financial Officer

November 20, 2008

**TYSON FOODS, INC.**

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

<u>/s/ Richard L. Bond</u> Richard L. Bond	President and Chief Executive Officer	November 20, 2008
<u>/s/ Lloyd V. Hackley</u> Lloyd V. Hackley	Director	November 20, 2008
<u>/s/ Craig J. Hart</u> Craig J. Hart	Senior Vice President, Controller and Chief Accounting Officer	November 20, 2008
<u>/s/ Jim Kever</u> Jim Kever	Director	November 20, 2008
<u>/s/ Kevin M. McNamara</u> Kevin M. McNamara	Director	November 20, 2008
<u>/s/ Dennis Leatherby</u> Dennis Leatherby	Executive Vice President and Chief Financial Officer	November 20, 2008
<u>/s/ Brad T. Sauer</u> Brad T. Sauer	Director	November 20, 2008
<u>/s/ Jo Ann R. Smith</u> Jo Ann R. Smith	Director	November 20, 2008
<u>/s/ Barbara A. Tyson</u> Barbara A. Tyson	Director	November 20, 2008
<u>/s/ Don Tyson</u> Don Tyson	Director	November 20, 2008
<u>/s/ John Tyson</u> John Tyson	Chairman of the Board of Directors	November 20, 2008
<u>/s/ Albert C. Zapanta</u> Albert C. Zapanta	Director	November 20, 2008



TYSON FOODS, INC.

FINANCIAL STATEMENT SCHEDULE

TYSON FOODS, INC.

SCHEDULE II

VALUATION AND QUALIFYING ACCOUNTS

Three Years Ended September 27, 2008

in millions

	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts	Additions (Deductions)	Balance at End of Period
Allowance for Doubtful Accounts					
2008	\$ 8	\$ 5	\$ -	\$ (1)	\$ 12
2007	8	1	-	(1)	8
2006	9	(5)	(1)	-	4
					(2) 8

- (1) We reduced a portion of the allowance for doubtful accounts as the respective accounts receivable balances were either collected or determined to be collectible.
- (2) We received payments on accounts that had previously been written off.