STEAK & SHAKE CO
Form 10-K
December 08, 2008

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

FORM 10-K

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

For the fiscal year ended September 24, 2008

OR

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

For the transition period from __________ to _________

Commission file number 0-8445

THE STEAK N SHAKE COMPANY
(Exact name of registrant as specified in its charter)

| INDIANA<br>(State or other jurisdiction<br>of incorporation or organization) | 37-0684070<br>(I.R.S. Employer<br>Identification No.) |
|---|---|
| 36 S. Pennsylvania Street, Suite 500<br>Indianapolis, IN<br>(Address of principal executive offices) | 46204<br>(Zip code) |

(317) 633-4100
(Registrant's telephone number, including area code)

Securities registered pursuant to Sec. 12(b) of the Act:

| Title of each class | Name of each exchange on which registered |
|---|---|
| Common Stock, stated value $.50 per share | New York Stock Exchange |

Securities registered pursuant to section 12(g) of the Act:
Title of class
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No X

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No X

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer,”and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

| | | |
|---|---|---|
| Large accelerated filer | | Accelerated filer X |
| Non-accelerated filer | (Do not check if smaller reporting company) | Smaller reporting company |

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

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant as of the last day of the second fiscal quarter ended April 9, 2008 was approximately $184,670,513 based on the closing stock price of $7.39 per share on that day.

The number of shares of Common Stock outstanding at December 3, 2008 was 28,663,619.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant’s definitive Proxy Statement to be filed for its 2009 Annual Meeting of Shareholders are incorporated by reference into Part III of this Form 10-K.

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Form 10-K
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PART I.

ITEM 1. BUSINESS.

General

The Steak n Shake Company ("we", "us" or "Steak n Shake") is engaged primarily in the ownership, operation, and franchising of Steak n Shake restaurants. As of December 3, 2008, we had 415 Company-owned restaurants and 75 franchised restaurants located in 21 states. Most Steak n Shake restaurants are open 24 hours a day, seven days a week. Lunch and dinner sales account for approximately 38% and 45% of sales, respectively, while breakfast and late night sales account for 6% and 11% of sales, respectively.

Our fiscal year ends on the last Wednesday in September. Accordingly, every five or six years, our fiscal year contains 53 weeks. Fiscal years 2008, 2007, and 2006 each contained 52 weeks. Our first, third, and fourth quarters contain 12 weeks and the second quarter contains 16 weeks (except in fiscal years when there are 53 weeks, in which case the fourth quarter contains 13 weeks).

Information related to our reportable segments may be found in Part II, Item 8 of this Form 10-K.

The Steak n Shake Concept

Steak n Shake is a classic American brand serving premium burgers and milk shakes. Founded in 1934 in Normal, Illinois, the Company occupies a distinct niche in the restaurant industry by offering full-service dining with counter and dining room seating, as well as drive-thru and carry-out service. Counter and dining room sales represent approximately 60% of the sales mix, while sales for off-premises dining represent approximately 40% of the sales mix. Our menu features core items such as STEAKBURGER™ sandwiches, thin and crispy fries and hand-dipped milk shakes. Our prices are generally less than those in most casual dining and family-style concepts, with an average check of approximately $7.37 per person. During the peak lunch and dinner hours the average check, respectively, is approximately $7.28 and $7.67.

Fiscal Year 2008 Developments

New Leadership

There were several changes to our management team throughout the fiscal year. During the fourth fiscal quarter, the Board of Directors appointed a new Chief Executive Officer. Concurrent with this change in leadership, we began to implement a change in strategic direction, under which we are operating in a manner focused on generating cash. As a result of this shift, we decided to forego certain planned initiatives, including software projects and a new restaurant opening. In addition, several personnel changes resulted in severance expense.

Turnaround Plan

Under the direction of the new leadership the following goals were set:

To form a strong management team,
To achieve a low cost structure,
To maintain a sound balance sheet,
To establish a focused strategy, and
To execute the plan decisively.

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Maximizing Intrinsic Value Per Share

Our long-term objective is to maximize intrinsic business value per share of the Company. (Intrinsic value is computed by taking all future cash flows into and out of the business and then discounting the resultant number at an appropriate interest rate.) Thus, our financial goal is to maximize free cash flow and return on invested capital. We regard capital allocation as immensely important to creating shareholder value.

Strategy

Steak n Shake is a classic American brand, and we intend to lead and dominate the premium burger and milk shake segment of the restaurant industry. We have chosen a focused strategy, namely, emphasizing our core — burgers, fries, milk shakes, and chili — which make up nearly 80% of our sales. We aspire to be best-in-class in cleanliness, product, service, value, promotion, and menu. It is critical that our food be distinctive, savory, and priced to attract higher frequency of return. We are working on a new menu — to reduce it to clear and appealing choices and thus simplify. We currently are working through several test markets to determine the most appetizing menu selections by simultaneously improving variety while discarding slow moving items. We will add items to span the prices in the menu; a three-tiered pricing strategy bridging low, medium, and higher priced items is intended to boost customer traffic and profit.

Steak n Shake will celebrate its 75th anniversary in 2009, an ideal opportunity to capitalize on the heritage of the brand and reconnect with our fans. Our marketing plan for calendar 2009 will stress our celebration of this memorable occasion. As we reconnect generations of customers to our brand, we aspire for our restaurant décor to be clean, up-to-date, casual, and exciting, suitable for everyday enjoyment. We will incorporate music into the stores, update color schemes, improve lighting, and stylize uniforms — all to spur excitement in our associates and customers.

Low Cost Structure

During fiscal year 2008, we reduced General and administrative expense by a net $7.1 million and believe that we can achieve additional savings in fiscal year 2009. Moreover, we plan to reduce restaurant operating costs; because cost arrangements on outside services along with outmoded insurance programs have burdened the stores with noncompetitive overhead.

Balance Sheet

We recently amended our debt facilities. The amendments include an extension of our Revolving Credit Facility to January 30, 2010, revised financial covenants, and obtained an extension on the requirement to provide collateral under our Senior Note Agreement.

We own the land and buildings of 164 properties and 20 parcels of land. Included in the 164 owned properties are 146 Company-owned and operating restaurants, 14 improved properties, two restaurants that have been leased to franchisees, a division office, and a warehouse facility. At the end of fiscal year 2008, we have $25.4 million in assets held for sale which includes the 14 improved properties and 20 parcels of land which were previously purchased for development.

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Geographic Concentration and Restaurant Locations

During fiscal year 2008, approximately 43.1% of our net sales were derived from five defined market areas: St. Louis, Missouri (11.9%); Indianapolis, Indiana (11.6%); Orlando, Florida (7.1%); Chicago, Illinois (6.5%); and Atlanta, Georgia (6.0%).

The following table lists the locations of the 490 Steak n Shake restaurants, including 75 franchised units, as of December 3, 2008:

| | Company-Owned | Franchised | Total |
|---|---|---|---|
| Alabama | 2 | 3 | 5 |
| Arkansas | – | 2 | 2 |
| Florida | 81 | 1 | 82 |
| Georgia | 23 | 7 | 30 |
| Illinois | 63 | 6 | 69 |
| Indiana | 68 | 2 | 70 |
| Iowa | 3 | – | 3 |
| Kansas | – | 4 | 4 |
| Kentucky | 14 | 1 | 15 |
| Michigan | 19 | – | 19 |
| Mississippi | – | 1 | 1 |
| Missouri | 39 | 21 | 60 |
| North Carolina | 6 | 6 | 12 |
| Ohio | 63 | – | 63 |
| Oklahoma | – | 4 | 4 |
| Pennsylvania | 6 | 2 | 8 |
| South Carolina | 1 | 2 | 3 |
| Tennessee | 9 | 9 | 18 |
| Texas | 18 | 1 | 19 |
| West Virginia | – | 1 | 1 |
| Wisconsin | – | 2 | 2 |
| Total | 415 | 75 | 490 |

Restaurant Operations

To provide an enjoyable dine-in, carry-out, or drive-thru experience, we must have competent and skilled restaurant management at each location. A typical Steak n Shake restaurant's management team consists of a general manager, a restaurant manager and from one to two managers. The number of managers varies depending upon the sales volume of the unit. Each restaurant's General Manager has primary responsibility for the day-to-day operations of the restaurant and is responsible for maintaining our operating standards and procedures. The General Manager holds the responsibility for the unit's profitability and their bonus is partially based on meeting or exceeding the financial plan's expected store sales and profitability. In addition to day-to-day operations, the General Manager is involved in the planning and budgeting process for their restaurant. An experienced, well-trained General Manager promotes compliance with our high standards for food quality, cleanliness, and guest service, ensures that all health and safety requirements are met and ensures compliance with applicable state labor laws. We seek to employ managers who focus on delivering superior guest service.

As part of our commitment to improving our standards of execution, we emphasize strengthening each manager's skills and capabilities through development, evaluation, and reward systems. Associates are encouraged to learn new skills

to aid in their professional growth and to create greater opportunities for advancement. The management development process is designed to not only meet our current management needs, but to provide for our future growth needs as well.

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Guest Satisfaction and Quality Control

We monitor guest satisfaction at Company-owned units primarily through formal inspections by management and training personnel. Franchised restaurants are monitored through periodic inspections by franchise field operations personnel, guest satisfaction surveys, and a mystery shopper program, in addition to internal management oversight procedures. These guest satisfaction measurement tools provide data for both continuing and improving our excellence in customer service.

Purchasing and Distribution Center Operations

We operate one distribution center in Bloomington, Illinois from which food products (except for items purchased by the restaurants locally such as bakery goods, produce, and dairy products) and restaurant supplies are delivered to 109 Company-owned and 11 franchised restaurants. The restaurants served by the distribution center are located in the Midwest (primarily in Illinois, Missouri, Iowa, and Wisconsin). Our semi-trailers handle refrigerated products, frozen products, and dry goods in the same delivery trip. The restaurants that are not serviced by the distribution center obtain Company-approved food products and supplies from two separate independent distributors: one with locations in Orlando, Florida and Pryor, Oklahoma, and the other with a location in Zanesville, Ohio.

Purchases are negotiated centrally for most food and beverage products and supplies to ensure uniform quality, adequate quantities and competitive prices. Short-term forward buying contracts are utilized to facilitate the availability of products that meet our specifications and to lessen our exposure to fluctuating prices. Food and supply items undergo ongoing research, development and testing in an effort to maintain the highest quality products and to be responsive to changing consumer tastes.

Branding

Our marketing strategy for 2008 was driven by a focus on our core menu items, including STEAKBURGER™ sandwiches, fries and milk shakes. Our goal is to build brand loyalty and increase purchase frequency. We principally advertise through television, radio, outdoor billboards, and coupon inserts.

Franchising

Our franchising program extends our brand name recognition to areas in which we have no current development plans and generates additional revenues without substantial investment. Our expansion plans include seeking qualified new franchisees and expanding our relationships with current franchisees. We also take advantage of opportunities to refranchise certain Company-owned restaurants that are typically located in tertiary markets. During fiscal year 2008, we refranchised a total of eight Company-owned restaurants to three new franchisees, and subsequent to year-end we refranchised an additional seven restaurants to one existing franchisee.

Franchisees undergo a selection process supervised by the Vice President, Development, and require final approval by senior management. We typically seek franchisees with both the financial resources necessary to fund successful development and significant experience in the restaurant/retail business. We assist franchisees with the development and ongoing operation of their restaurants. Our management personnel assist franchisees with site selection, approve all restaurant sites, and provide prototype plans and construction support and specifications. Our staff provides both on-site and off-site instruction to franchised restaurant management and associates.

All franchised restaurants are required to serve only Steak n Shake approved menu items. Access to services such as our distribution center and POS system enables franchisees to benefit from our purchasing power and assists us in monitoring compliance with our quality standards and specifications.

The standard Steak n Shake unit franchise agreement has an initial term of 20 years. Among other obligations, the standard agreement requires franchisees to pay an initial franchise fee of $40,000 for the first restaurant in a market, $35,000 for the second unit, and $30,000 for each subsequent unit, as well as continuing royalty fees and service fee based on adjusted gross receipts. The standard franchise agreement also requires the franchisee to pay 5% of gross sales for advertising. For more information on franchising opportunities, visit our web site at www.steaknshake.com/franchise.

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## Competition

The restaurant business is one of the most intensely competitive industries in the United States, with price, menu offerings, location, and service all being significant competitive factors. Our competitors include countless national, regional and local establishments. In all of our market areas, there are established competitors with financial and other resources which are greater than ours. We face competition for sites on which to locate new restaurants, as well as for restaurant associates and guests. The restaurant business is often affected by changes in consumer tastes and by national, regional and local economic conditions and demographic trends. The performance of individual restaurants may be affected by factors such as traffic patterns, demographic factors, harsh weather conditions, and the type, number, and location of competing restaurants. Additional factors that may adversely affect the restaurant industry in general, and our restaurants in particular, are increases in food, labor and associate benefit costs, negative publicity surrounding food quality or safety issues, and difficulty in attracting qualified management personnel and hourly associates.

## Seasonal Aspects

We have substantial fixed costs which do not decline as a result of a decline in sales. Our first and second quarters, which include the winter months, usually reflect lower average weekly unit volumes as compared to the third and fourth fiscal quarters. Additionally, sales in the first two fiscal quarters can be adversely affected by severe winter weather. We also may be negatively affected by adverse weather during the first and fourth quarters as hurricanes and tropical storms may impact the Southeastern portion of the United States, where we have a significant number of restaurants.

## Employees

Currently, we employ approximately 20,000 associates, of which approximately two-thirds are part-time hourly associates. We consider our employee relations to be good and believe that we are providing working conditions and wages that compare favorably with the industry.

## Trademarks

“Steak n Shake®”, “Steak ’n Shake Famous For Steakburgers®”, “Famous For Steakburgers®”, “Takhomasak®”, “Faxasak®” “Original Steakburgers®”, “In Sight It Must Be Right®”, “Steak n Shake It’s a Meal®”, “The Original Steakburger®”, “The “Wing and Circle”® logo”, “Steak n Shake In Sight it Must be Right®”, “Takhomacup®”, “Takhomacard®”, “Banawberry®” “Banocolate®”, “Strawnilla®”, “Vanocha®”, “Sippable Sundaes®”, “Side-by-Side®”, “Bits ‘n Pieces®”, “Exactly The Way Want It®”, and the Company’s “storefront design”® are among the federally registered trademarks and service marks we own. “Original Double Steakburger®”, “Takhomameal™”, and “Takhomaparty™” are among the trademarks and service mar we own or for which federal registration applications are currently pending. We protect our trademark rights by appropriate legal action whenever necessary.

## Information Available on our Web Site

We make available through a link on our web site, free of charge, our filings with the Securities and Exchange Commission (“SEC”) as soon as reasonably practicable after we file them electronically with, or furnish them to, the SEC. The reports we make available include annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements, registration statements, and any amendments to those documents. In addition, corporate governance documents such as our Corporate Governance Guidelines, Code of Business Conduct and Ethics, Whistleblower Policy, Nominating and Corporate Governance Committee Charter, Compensation Committee Charter, and Audit Committee Charter are posted on our web site and are available without charge upon written request. Our web site link is www.steaknshake.com and the link to SEC filings and corporate governance documents

is www.steaknshake.com/investing.html. Our web site and the information contained therein or connected thereto are not intended to be incorporated into this report on Form 10-K.

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Executive Officers of the Registrant

The following table sets forth information regarding our executive officers:

| Name | Age | Position with Company | Since |
|---|---|---|---|
| Sardar Biglari(1) | 31 | Chief Executive Officer- | |
| | | The Steak n Shake Company | 2008 |
| | | Steak n Shake Enterprises, Inc. | 2008 |
| | | Executive Chairman - | |
| | | The Steak n Shake Company | 2008 |
| | | Steak n Shake Operations, Inc. | 2008 |
| | | Steak n Shake Enterprises, Inc | 2008 |
| Duane E. Geiger | 46 | Interim Chief Financial Officer- | |
| | | The Steak n Shake Company | 2008 |
| | | Steak n Shake Enterprises, Inc. | 2008 |
| | | Controller - | |
| | | The Steak n Shake Company | 2004 |
| | | Steak n Shake Enterprises, Inc. | 2006 |
| | | Vice President - | |
| | | The Steak n Shake Company | 1995 |
| | | Steak n Shake Enterprises, Inc. | 2006 |
| Omar Janjua | 50 | Executive Vice President, Operations - | |
| | | The Steak n Shake Company | 2007 |
| | | Steak n Shake Operations, Inc. | 2007 |
| David C. Milne | 41 | Vice President - | |
| | | The Steak n Shake Company | 2007 |
| | | Steak n Shake Enterprises, Inc. | 2007 |
| | | General Counsel - | |
| | | The Steak n Shake Company | 2003 |
| | | Steak n Shake Enterprises, Inc. | 2006 |
| | | Corporate Secretary - | |
| | | The Steak n Shake Company | 2004 |
| | | Steak n Shake Enterprises, Inc. | 2006 |
| Dennis Roberts | 59 | Senior Vice President, Operations Excellence - | |
| | | The Steak n Shake Company | 2008 |
| | | Steak n Shake Operations, Inc. | 2008 |
| Michael Williams | 46 | Senior Vice President, Chief Marketing Officer - | |
| | | The Steak n Shake Company | 2008 |
| | | Steak n Shake Enterprises, Inc. | 2008 |

(1) Member of the Board of Directors of the Company

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Mr. Biglari was elected Executive Chairman of the Board in June 2008 and appointed Chief Executive Officer in August 2008 following his election to the Board of Directors at the 2008 Annual Meeting of Shareholders. In addition, Mr. Biglari serves as the Chairman and Chief Executive Officer of Biglari Capital, the general partner of the Lion Fund L.P., a private investment fund, since its inception in 2000. He has also serves as the Chairman of the Board of Western Sizzlin Corp., since 2006 and as its Chief Executive Officer since 2007.

Mr. Geiger was named Interim Chief Financial Officer in July 2008. He has also served as Vice President, Controller since 2004. Prior thereto, Mr. Geiger was Vice President, Information Systems, Financial Planning and Treasurer, and he served in other various capacities within the Company since 1993.

Mr. Janjua joined us as Executive Vice President, Operations in 2007. Prior to joining Steak n Shake, he served in various executive positions with Yum Brands, Inc. in its Pizza Hut operations since joining Yum in 1989.

Mr. Milne was promoted to General Counsel in 2003, to Secretary in 2004 and to Vice President in 2007 after joining us in 2000. Prior to joining Steak n Shake, Mr. Milne was in the private practice of law with two large Indianapolis law firms.

Mr. Roberts joined us as Senior Vice President, Operations Excellence in September 2008. Prior to joining Steak n Shake, Mr. Roberts served as a Senior Business Advisor at Results Oriented Individuals from 2006 to 2008, as President of DJR Health & Fitness Solutions, Inc. from 2004 to 2006, and as Executive Vice President, Chief Operating Officer of Dollar Financial Group, Inc.from 2001 to 2004. Mr. Roberts also has over 20 years of experience in the restaurant industry, serving in executive roles at Unos Restaurant Corporation and Friendly Ice Cream Corporation.

Mr. Williams joined us as Senior Vice President, Chief Marketing Officer in October 2008. Prior to joining Steak n Shake, Mr. Williams served as Senior Vice President, Marketing for Direct General Corporation, Inc., from 2007 to 2008, and as Vice President of Marketing for The Krystal Company from 2000 to 2007.

Our executive officers are appointed annually by the Board of Directors.

## ITEM 1A. RISK FACTORS.

An investment in our common stock involves a degree of risk. These risks should be considered carefully with the uncertainties described below, and all other information included in this Annual Report on Form 10-K, as well as other filings that we make from time to time with the SEC, before deciding whether to purchase our common stock. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also become important factors that may harm our business, financial condition,results or operations,or cash flows. The occurrence of any of the following risks could harm our business, financial condition, results of operations, or cash flows. The trading price of our common stock could decline due to any of these risks and uncertainties, and you may lose part or all of your investment.

This report includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. In general, forward-looking statements include estimates of future revenues, cash flows, capital expenditures, or other financial items, and assumptions underlying any of the foregoing. Forward-looking statements reflect management’s current expectations regarding future events and use words such as “anticipate,” “believe,” “expect,” “may,” and other similar terminology. A forward-looking statement is neither a prediction nor a guarantee of future events or circumstances, and those future events or circumstances may not occur. Investors should not place undue reliance on the forward-looking statements, which speak only as of the date of this report. These forward-looking statements are all based on currently available operating, financial,and competitive information and are subject to various risks and

uncertainties. Our actual future results and trends may differ materially depending on a variety of factors, many beyond our control, including, but not limited to, the risks and uncertainties discussed below. Accordingly, such forward-looking statements do not purport to be predictions of future events or circumstances and may not be realized. We undertake no obligation to publicly update or revise them, except as may be required by law.

Our operating results may continue to decline if our plans to increase store traffic on a profitable basis are not successful.

We have experienced ongoing declines in our guest count and same store sales for several years, a decrease which negatively impacts our operating results and cash flows. The Company is addressing declines in store traffic under the direction of new leadership. If our plans are not successful, we may face continuing deterioration in our operating results.

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We face continually increasing competition in the restaurant industry for guests, staff, locations, and new products, which may prevent us from reversing our deteriorating operating performance.

Our business is subject to intense competition with respect to prices, services, locations, qualified management personnel, and quality of food. We compete with other food service operations, with locally-owned restaurants, and with other national and regional restaurant chains that offer the same or similar types of services and products. Some of our competitors may be better established in the markets where our restaurants are or may be located. Changes in consumer tastes; national, regional, or local economic conditions; demographic trends; traffic patterns and the types, numbers and locations of competing restaurants often affect the restaurant business. There is active competition for management personnel and for attractive commercial real estate sites suitable for restaurants. In addition, factors such as inflation, increased food, labor, equipment, fixture, and benefit costs, as well as difficulty in attracting qualified management and hourly employees may adversely affect the restaurant industry in general and our restaurants in particular. If our strategy does not improve same store sales, our operating results and business will be adversely affected.

The recent disruptions in the overall economy and the financial markets may adversely impact our business.

The restaurant industry has been affected by current economic factors, including the deterioration of national, regional and local economic conditions, declines in employment levels, and shifts in consumer spending patterns. The recent disruptions in the overall economy and volatility in the financial markets have reduced, and may continue to reduce, consumer confidence in the economy, negatively affecting consumer restaurant spending, which could be harmful to our financial position and results of operations. As a result, decreased cash flow generated from our business may adversely affect our financial position and our ability to fund our operations. In addition, macro economic disruptions, as well as the restructuring of various commercial and investment banking organizations, could adversely affect our ability to access the credit markets. The disruption in the credit markets may also adversely affect the availability of financing for our franchisees' expansions and operations, and could impact our vendors' ability to meet supply requirements. There can be no assurance that government responses to the disruptions in the financial markets will restore consumer confidence, stabilize the markets, or increase liquidity and the availability of credit.

Our cash flows and financial position could be negatively impacted if we are unable to comply with the restrictions and covenants to our debt agreements.

We currently maintain debt instruments which include restrictions and covenants that require quarterly compliance. If we fail to meet those restrictions and covenants our operations and business may be negatively impacted.

The continued significant decline in the market price of our common stock could adversely affect our goodwill impairment analysis.

Goodwill of the Company is tested for impairment annually, or when there are indicators for impairment, in accordance with Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"). We are still in the process of completing our analysis for fiscal 2008. However, based on our analysis performed to date, we do not believe a material impairment is probable based on the estimated fair value determined at the annual assessment date.

As a result of the significant decline in the market price of the Company's common stock subsequent to the end of fiscal year 2008, the Company's market capitalization is below the carrying value of the Company's assets, and may require us to perform additional impairment analyses. If it is determined that an impairment loss should be recognized on goodwill, the Company's reported results could be adversely affected.

We may be required to recognize additional impairment charges on our long-lived assets, which would adversely affect our results of operations and financial position.

Long-lived assets, including restaurant sites, leasehold improvements, other fixed assets and amortized intangible assets are reviewed when indicators of impairment are present. Expected cash flows associated with an asset are the key factor in determining the recoverability of the asset. Identifiable cash flows are generally measured at the restaurant level. The estimate of cash flows is based upon, among other things, certain assumptions about expected future operating performance. Management's estimates of undiscounted cash flows may differ from actual cash flows due to, among other things, changes in economic conditions, changes to our business model or changes in operating performance. If the sum of the undiscounted cash flows is less than the carrying value of the asset, we recognize an impairment loss, measured as the amount by which the carrying value exceeds the fair value of the asset.

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Judgments made by management related to the expected useful lives of long-lived assets and our ability to realize undiscounted cash flows in excess of the carrying amounts of such assets are affected by factors such as the ongoing maintenance and improvements of the assets, changes in economic conditions and changes in operating performance. As the ongoing expected cash flows and carrying amounts of long-lived assets are assessed, these factors could cause us to realize a material impairment charge.

Fluctuations in commodity and energy prices and the availability of commodities, including beef, fried products, poultry, and dairy, could affect our business.

A significant component of our costs is related to food commodities, including beef, fried products, poultry, and dairy products, which can be subject to significant price fluctuations due to seasonal shifts, climate conditions, industry demand, changes in international commodity markets, and other factors. If there is a substantial increase in prices for these food commodities, our results of operations may be negatively affected. In addition, we are dependent upon frequent deliveries of perishable food products that meet certain specifications. Shortages or interruptions in the supply of perishable food products caused by unanticipated demand, problems in production or distribution, disease or food-borne illnesses, inclement weather, or other conditions could adversely affect the availability, quality, and cost of ingredients, which would likely lower revenues, damage our reputation, or otherwise harm our business.

The inability of our franchisees to operate profitable restaurants may negatively impact our financial performance.

We operate a franchise program and collect royalties, and marketing and service fees from the franchisees. The ability of franchisees to generate profits impacts our overall profitability and brand recognition.

Growth within the existing franchise base is dependent upon many of the same factors that apply to our Company-owned restaurants, and sometimes the challenges of opening profitable restaurants prove to be more difficult for our franchisees. For example, franchisees may not have access to the financial or management resources that they need to open or continue operating the restaurants contemplated by their franchise agreements with us. In addition, our continued growth is also partially dependent upon our ability to find and retain qualified franchisees in new markets, which may include markets in which the Steak n Shake brand is less well known. Furthermore, the loss of any of our franchisees due to financial concerns and/or operational inefficiencies could impact our profitability and brand.

Our franchisees are required to operate their restaurants according to our guidelines. We provide training opportunities to our franchise operators to fully integrate them into our operating strategy. However, since we do not have control over these restaurants, we cannot give assurance that there will not be differences in product quality or that there will be adherence to all of our guidelines at these franchised restaurants. In order to mitigate these risks, we do require that our franchisees focus on the quality of their operations, and we expect full compliance with our standards.

Due to our smaller restaurant base and geographic concentration, our operating results could be materially and adversely affected by the negative performance of, or the decision to close, a small number of restaurants.

Our restaurant base is smaller and less geographically diverse than many other restaurant chains. Accordingly, poor operating results in one or more of our markets or the decision to close even a relatively small number of underperforming restaurants could materially and adversely affect our business, financial conditions, results of operations, or cash flows.

Changes in guest preferences for casual dining styles or menu items could adversely affect our financial performance.

Changing guest preferences, tastes, and dietary habits can adversely impact our business and financial performance. We offer a large variety of entrees, side dishes, and desserts, and our continued success depends, in part, on the popularity of our product offerings and casual style of dining. A change in guest preferences away from this dining style or our offerings in favor of other dining styles or offerings may have an adverse effect on our business.



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The inability to attract qualified associates, an increase in labor costs, or labor shortages could harm our business.

Our associates are essential to the operation of our restaurants and our ability to deliver an enjoyable dining experience to our guests. If we are unable to attract and retain enough qualified restaurant personnel at a reasonable cost, or if they do not deliver an enjoyable dining experience to our guests, our results may be negatively affected. Many of our associates are paid wages that relate to federal and state minimum wage rates. Any increases in the minimum wage rates may significantly increase our restaurant operating costs. In addition, since our business is labor-intensive, shortages in the labor pool or other inflationary pressure could increase labor costs, which could harm our financial performance. Additionally, competition for qualified employees could require us to pay higher wages or provide greater benefits, which could result in higher labor costs.

Adverse weather conditions or losses due to casualties could negatively impact our operating performance.

Although we maintain, and require our franchisees to maintain, property and casualty insurance to protect against property damage caused by casualties and natural disasters, instances of inclement weather, flooding, hurricanes, fire, and other acts of God can adversely impact our sales in several ways. Many of our restaurants are located in the Midwest and Southeast portions of the United States. During the first and second fiscal quarters, restaurants in the Midwest may face harsh winter weather conditions. During the first and fourth fiscal quarters, restaurants in the Southeast may experience hurricanes or tropical storms. These harsh weather conditions may make it more difficult for guests to visit our restaurants, or may necessitate the closure of our restaurants for a period of time due to physical damage or a shortage of employees resulting from unsafe road conditions or an evacuation of the general population. If guests are unable to visit our restaurants, or if our restaurants are closed as the result of inclement weather, our sales and operating results may be negatively affected.

Unfavorable publicity could harm our business.

Restaurant chains such as ours can be adversely affected by publicity resulting from complaints or litigation alleging poor food quality, food-borne illness, personal injury caused by food tampering, adverse health effects (including obesity), or other concerns stemming from one or a limited number of restaurants. Regardless of whether the allegations or complaints are valid, given our geographic concentration, unfavorable publicity relating to just one of our restaurants could adversely affect public perception of the entire brand, which could immediately and severely damage sales, and accordingly, profits. If guests become ill from food-borne illnesses, we could also be forced to temporarily close some restaurants. In addition, instances of food-borne illnesses or food tampering, even those occurring solely at the restaurants of competitors, could, due to negative publicity about the restaurant industry, adversely affect sales.

Ownership and leasing of significant amounts of real estate exposes us to possible liabilities.

We own the land and building or lease the land and/or the building for our restaurants. Accordingly, we are subject to all of the risks associated with owning and leasing real estate. In particular, the value of our assets could decrease, and our costs could increase because of changes in the investment climate for real estate, demographic trends, supply or demand for the use of restaurants in an area, or liabilities for environmental conditions. We generally cannot cancel our leases. If we decide to close an underperforming existing store, or if we decide not to open a planned future store, we may, nonetheless, be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the remainder of the lease term. In addition, as our leases expire, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to close stores in desirable locations.

We are subject to health, employment, environmental, and other government regulations, and failure to comply with existing or future government regulations could expose us to litigation, damage our reputation, and lower profits.

We are subject to various federal, state, and local laws and regulations affecting our business. Restaurant operations are also subject to licensing and regulation by state and local departments setting standards for health, food preparation, sanitation, and safety; federal and state labor laws (including applicable minimum wage requirements, overtime, working and safety conditions, child labor, tip credits, and citizenship requirements); federal and state laws prohibiting discrimination; and other laws regulating the design and operation of facilities, such as the Americans with Disabilities Act of 1990. If we fail to comply with any of these laws, we may be subject to governmental action or litigation, and our reputation could be accordingly harmed. Injury to our reputation would, in turn, likely reduce revenues and profits.



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The development and construction of restaurants is subject to compliance with applicable zoning, land use, and environmental regulations. Difficulties in obtaining, or failure to obtain, the required licenses or approvals could delay or prevent the development of a new restaurant in a particular area.

In recent years, there has been an increased legislative, regulatory, and consumer focus on nutrition and advertising practices in the food industry. As a result, we may become subject to regulatory initiatives in the area of nutrition disclosure or advertising, such as requirements to provide information about the nutritional content of our food products, which could increase expenses. The operation of our franchise system is also subject to franchise laws and regulations enacted by a number of states, and to rules promulgated by the U.S. Federal Trade Commission. Any future legislation regulating franchise relationships may negatively affect our operations, particularly our relationship with franchisees. Failure to comply with new or existing franchise laws and regulations in any jurisdiction or to obtain required government approvals could result in a ban or temporary suspension on future franchise sales.

We may not be able to adequately protect our intellectual property, which could decrease the value of our brand and products.

The success of our business depends on the continued ability to use the existing trademarks, service marks, and other components of our brand to increase brand awareness and further develop branded products. While we take steps to protect our intellectual property, our rights to our trademarks could be challenged by third parties or our use of these trademarks may result in liability for trademark infringement, trademark dilution, or unfair competition, adversely affecting our profitability.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

None.

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ITEM 2. PROPERTIES.

Office, Warehouse, and Distribution Facilities:

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| Use | Location | Own/Lease |
|---|---|---|
| Division Office | Orlando, FL | Lease |
| Division Office | Atlanta, GA | Lease |
| Division Office | Chicago, IL | Lease |
| Distribution Center / Division Office | Bloomington, IL | Lease |
| Warehouse | Bloomington, IL | Own |
| Executive Office / Division Office | Indianapolis, IN | Lease |
| Division Office | St. Louis, MO | Own |
| Division Office | Cincinnati, OH | Lease |
| Division Office | Columbus, OH | Lease |

Restaurant Properties:

As of December 3, 2008, we operated 269 leased and 146 owned restaurants located primarily in the Midwest and Southeast portions of the United States. We assist qualified franchisees with financing by purchasing or leasing land, constructing the restaurant, and then leasing or subleasing the land and building to the franchisee. We lease the land and building for these properties as the primary lessee. As of December 3, 2008, we had the following interests in properties that are being operated by franchisees pursuant to lease or sublease agreements:

| Franchised Location | Own/Lease |
|---|---|
| Columbus, GA | Lease |
| Macon, GA | Lease |
| Macon, GA | Own |
| Warner Robins, GA | Lease |
| Lawrence, KS | Lease |
| Olathe, KS | Own |
| Overland Park, KS | Lease |
| Topeka, KS | Lease |
| Columbia, MO | Lease |
| Kansas City, MO | Lease |
| Lee's Summit, MO | Lease |
| Chattanooga, TN | Lease |
| Houston, TX | Ground Lease |

Additionally, we own a Jeffersontown, Kentucky property no longer in operation that we lease to a third party. We have land and building lease obligations on former restaurants in Rolling Meadows, Illinois and Columbus, Ohio that are subleased to third parties. We also have one ground lease for a property in Bloomington, Indiana that is subleased to a third party.

Sublease rentals cover substantially all of our obligations under the primary leases.

We believe that our properties are suitable, adequate, well-maintained, and sufficient for the operations contemplated. See “Geographic Concentration and Restaurant Locations” in Item I for additional information regarding our restaurant properties.

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## ITEM 3. LEGAL PROCEEDINGS.

We are engaged in various legal proceedings and have certain unresolved claims pending. The ultimate liability, if any, for the aggregate amounts claimed cannot be determined at this time. However, management believes, based on examination of these matters and experiences to date, that the ultimate liability, if any, in excess of amounts already provided in our consolidated financial statements is not likely to have a material adverse effect on our results of operations, financial position, or cash flows.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

No matters were submitted to a vote of shareholders during the fourth quarter of the fiscal year covered by this report.

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PART II.

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.

Market Price Range/Stock Trading

Our common stock is traded on the New York Stock Exchange ("NYSE") under the symbol SNS. The high and low closing sales prices for our common stock, as reported on the NYSE for each quarter of the past two fiscal years, are shown below:

| | 2008 | | 2007 | |
|---|---|---|---|---|
| | High | Low | High | Low |
| First Quarter | $ 15.98 | $ 10.43 | $ 19.25 | $ 16.53 |
| Second Quarter | $ 11.24 | $ 7.39 | $ 18.08 | $ 16.43 |
| Third Quarter | $ 8.12 | $ 6.05 | $ 17.13 | $ 14.78 |
| Fourth Quarter | $ 8.53 | $ 5.58 | $ 17.22 | $ 13.46 |

We did not pay cash dividends on our common stock during the last two fiscal years. Our credit agreements prohibit us from paying cash dividends, and we do not anticipate the payment of cash dividends in the near future. As of December 3, 2008, there were approximately 8,000 record holders of our common stock.

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Comparison of Five-Year Cumulative Total Return

The preceding stock price performance graph and related information shall not be deemed “soliciting material” or to be “filed” with the SEC, nor shall such information be incorporated by reference into any future filings under the Securities Exchange Act of 1934, as amended, or the Securities Act of 1933, as amended, except to the extent that we specifically incorporate it by reference into such filings.

The “Equity Compensation Plan Information” required by Item 201(d) of Regulation S-K will be contained in our definitive Proxy Statement for the 2009 Annual Meeting of Shareholders, to be filed on or before January 22, 2009, and such information is incorporated herein by reference.

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ITEM 6. SELECTED FINANCIAL DATA

SELECTED FINANCIAL AND OPERATING DATA
The Steak n Shake Company
(Amounts in 000s, except per share data)

| | September 24, 2008 | September 26, 2007 | September 27, 2006 | September 28, 2005 | September 29, 2004 |
|---|---|---|---|---|---|
| Statement of Operations Data: | | | | | |
| Total revenues | $ 610,061 | $ 654,142 | $ 638,822 | $ 606,912 | $ 553,692 |
| Net (loss) earnings | $ (22,979) | $ 11,808 | $ 28,001 | $ 30,222 | $ 27,591 |
| | | | | | |
| Per share data: | | | | | |
| Basic (loss) earnings per common and common equivalent share | $ (0.81) | $ 0.42 | $ 1.01 | $ 1.10 | $ 1.01 |
| | | | | | |
| Diluted (loss) earnings per common and common equivalent share | $ (0.81) | $ 0.42 | $ 1.00 | $ 1.08 | $ 1.00 |
| | | | | | |
| Basic weighted average shares (in thousands) | 28,254 | 28,018 | 27,723 | 27,500 | 27,385 |
| Diluted weighted average shares and share equivalents (in thousands) | 28,254 | 28,216 | 28,039 | 28,059 | 27,711 |
| | | | | | |
| Statement of Financial Position Data: | | | | | |
| Total assets | $ 520,136 | $ 565,214 | $ 542,521 | $ 474,657 | $ 435,853 |
| Long-term debt | | | | | |
| Obligations under leases | 134,809 | 139,493 | 143,996 | 147,615 | 144,647 |
| Other long-term debt | 15,783 | 16,522 | 18,802 | 6,315 | 9,429 |
| Shareholders' equity | $ 283,579 | $ 303,864 | $ 287,035 | $ 252,975 | $ 218,932 |

SELECTED FINANCIAL AND OPERATING DATA
The Steak n Shake Company

| | September 24, 2008 | September 26, 2007 | September 27, 2006 | September 28, 2005 | September 29, 2004 |
|---|---|---|---|---|---|
| Other data: | | | | | |
| Number of restaurants: | | | | | |
| Company-owned | 423 | 435 | 429 | 399 | 365 |

| | | | | | |
|---|---|---|---|---|---|
| Franchised | 68 | 57 | 48 | 49 | 60 |
| | 491 | 492 | 477 | 448 | 425 |
| | | | | | |
| Approximate number of employees | 20,000 | 22,000 | 23,000 | 21,500 | 20,000 |
| Approximate number of shareholders | 8,000 | 8,000 | 12,000 | 13,500 | 13,500 |

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ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The Steak n Shake Company
(Years ended September 24, 2008, September 26, 2007, and September 27, 2006)
(Amounts in $000s, except per share data)

In the following discussion, the term “same store sales” refers to the sales of only those units open 18 months as of the beginning of the current fiscal period being discussed and which remained open through the end of the fiscal period.

We have a 52/53 week fiscal year ending on the last Wednesday in September. Fiscal years 2008, 2007, and 2006, which ended on September 24, 2008, September 26, 2007, and September 27, 2006, respectively, each contained 52 weeks.

For an understanding of the significant factors that influenced our performance during the past three fiscal years, the following discussion should be read in conjunction with the consolidated financial statements and related notes found elsewhere in this Annual Report.

Fiscal Year 2008

In fiscal year 2008, total revenues decreased 6.7% to $610,061 as compared to $654,142 in fiscal year 2007. The decrease in revenues resulted from a same-store sales decline of 7.1% during fiscal year 2008. The net loss for fiscal year 2008 was $22,979, or $0.81 per diluted share, compared to net earnings of $11,808, or $0.42 per diluted share in the prior fiscal year. The fiscal year 2008 results included $14,858 ($9,212, or $0.33 per diluted share, net of tax) of non-cash impairment charges and store closing costs, including charges related to a group of stores that we closed in the fourth quarter of fiscal year 2008 and restaurants that were impaired because the carrying values of their underlying assets exceeded their expected future undiscounted cash flows. Also included is a store closure charge of $514 arising from early termination of a lease on a property. In comparison, fiscal year 2007 included an impairment charge of $5,369 ($3,329, or $0.12 per diluted share, net of tax), which was offset by a $193 gain on the sale of two restaurants closed during a prior year.

During fiscal year 2008, we opened nine new Company-owned restaurants, closed 13 underperforming restaurants, and refranchised eight restaurants to franchisees, which brought the total Company-owned units to 423 as of September 24, 2008. Also during fiscal year 2008, our franchisees opened five new restaurants and closed two restaurants, bringing the total number of franchised units to 68 on September 24, 2008. Subsequent to year-end, we closed one Company-owned restaurant and refranchised seven Company-owned restaurants to franchisees.

In fiscal year 2008, we analyzed the impact of modifying the operating hours of certain restaurants that were not profitable during the overnight hours. Our analysis led us to reduce the number of restaurants that operate on a 24-hour, seven-day-a-week platform. Currently, approximately 75% of our restaurants continue to operate 24 hours a day, seven days a week. The remaining 25% of restaurants have varying hours that best suit the demographics and customer demands in the areas in which they operate.

New management, during the fourth quarter of fiscal year 2008, enacted a change in strategic direction under which we began to operate in a manner designed to generate cash. As a result of this shift, we decided to forego certain planned initiatives, including software projects and construction of a new restaurant. In addition to the foregoing, several personnel changes resulted in severance expense. The non-cash write-offs, severance expense, and other expenditures resulting from these strategic changes during fiscal year 2008 was $4,074, net of tax. Refer to Part I, Item I of this Form 10-K for information regarding new management’s strategy and turnaround plan.

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Critical Accounting Estimates

Management's discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of our financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, expenses and related disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate these estimates and our assumptions based on historical experience and other factors that are believed to be relevant under the circumstances. Actual results may differ from these estimates under different assumptions or circumstances.

We believe the following critical accounting estimates represent our more significant judgments and estimates used in preparation of our consolidated financial statements.

Long-lived Assets - Impairment and Classification as Held for Sale

We review our restaurants for impairment on a restaurant-by-restaurant basis when events or circumstances indicate a possible impairment. We test for impairment by comparing the carrying value of the asset to the undiscounted future cash flows expected to be generated by the asset. If the total estimated future cash flows are less than the carrying amount of the asset, the carrying value is written down to the estimated fair value, and a loss is recognized in earnings.

We sell restaurants that have been closed due to underperformance and land parcels that we do not intend to develop in the future. We classify an asset as held for sale in the period during which each of the following conditions is met: (a) management has committed to a plan to sell the asset; (b) the asset is available for immediate sale in its present condition; (c) an active search for a buyer has been initiated; (d) completion of the sale of the asset within one year is probable; (e) the asset is being marketed at a reasonable price; and (f) no significant changes to the plan of sale are expected.

Because depreciation and amortization expense is based upon useful lives of assets and the net salvage value at the end of their lives, significant judgment is required in estimating this expense. Additionally, the future cash flows expected to be generated by an asset requires significant judgment regarding future performance of the asset, fair market value if the asset were to be sold, and other financial and economic assumptions. There is also judgment involved in estimating timing of completing the sale of an asset. Accordingly, we believe that accounting estimates related to long-lived assets are critical.

Insurance Reserves

We self-insure a significant portion of expected losses under our workers' compensation, general liability, and auto liability insurance programs. In 2006, we began to self-insure our group health insurance risk. We purchase reinsurance for individual and aggregate claims that exceed predetermined limits. We record a liability for all unresolved claims and our estimates of incurred but not reported ("IBNR") claims at the anticipated cost to us. The liability estimate is based on information received from insurance companies, combined with management's judgments regarding frequency and severity of claims, claims development history, and settlement practices. Significant judgment is required to estimate IBNR claims as parties have yet to assert a claim, and therefore the degree to which injuries have been incurred and the related costs have not yet been determined. Additionally, estimates about future costs involve significant judgment regarding legislation, case jurisdictions, and other matters. Accordingly, management believes that estimates related to self-insurance reserves are critical. Our reserve for self-insured liabilities at September 24, 2008 and September 26, 2007 were $6,374 and $7,037, respectively. The decrease reflects a reduction in the size and number of open workers' compensation claims.

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Income Taxes

We record deferred tax assets or liabilities based on differences between financial reporting and tax basis of assets and liabilities using currently enacted rates and laws that will be in effect when the differences are expected to reverse. We record deferred tax assets to the extent we believe there will be sufficient future taxable income to utilize those assets prior to their expiration. To the extent deferred tax assets would be unable to be utilized, we would record a valuation allowance against the unrealizable amount and record that amount as a charge against earnings. Due to changing tax laws and state income tax rates, significant judgment is required to estimate the effective tax rate expected to apply to tax differences that are expected to reverse in the future. We must also make estimates about the sufficiency of taxable income in future periods to offset any deductions related to deferred tax assets currently recorded. Accordingly, we believe estimates related to income taxes are critical. Based on 2008 results, a change of 1% in the annual effective tax rate would have an impact of $348 on net loss.

We adopted the provisions of Financial Accounting Standards Board (“FASB”) Interpretation No. 48, “Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109” (“FIN 48”), on September 27, 2007, the beginning of fiscal year 2008. FIN 48 addresses the determination of how tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under FIN 48, we must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. As a result of the implementation of FIN 48, we recognized an increase of $614 in the liability for unrecognized tax benefits, which was accounted for as a reduction of $312 to retained earnings and $302 to deferred taxes as of the adoption date. Our estimates of the tax benefit from uncertain tax positions may change in the future due to new developments in each matter.

For additional information regarding the adoption of FIN 48, see Note 10 of Notes to Consolidated Financial Statements in Part II, Item 8 of this Form 10-K.

Goodwill and Other Intangible Assets

Under SFAS No. 142, “Goodwill and Other Intangible Assets,” we are required to assess goodwill and any indefinite-lived intangible assets for impairment annually, or more frequently if circumstances indicate impairment may have occurred. The analysis of potential impairment of goodwill requires a two-step approach. The first step is the estimation of fair value of each reporting unit. If step one indicates that impairment potentially exists, the second step is performed to measure the amount of impairment, if any. Goodwill impairment exists when the estimated fair value of goodwill is less than its carrying value. We use both market and income approaches to derive fair value. The valuation methodology and underlying financial information included in our determination of fair value require significant judgments to be made by management. The judgments in these two approaches include, but are not limited to, comparable market multiples, long-term projections of future financial performance, and the selection of appropriate discount rates used to determine the present value of future cash flows. Changes in such estimates or the application of alternative assumptions could produce significantly different results. Accordingly, we believe that accounting estimates related to goodwill and other intangible assets are critical.

Our calculation of the fair value of the reporting units considers current market conditions existing at the assessment date. Due to the significant decline in the market price of our common stock subsequent to the end of our fiscal year 2008, it is probable that we will need to update our impairment analysis during our first quarter of fiscal year 2009. We can provide no assurance that a material impairment charge will not occur in future periods as a result of these analyses.

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Leases

We lease certain properties under operating leases. We also have many lease agreements that contain rent holidays, rent escalation clauses and/or contingent rent provisions. We recognize rent expense on a straight-line basis over the expected lease term, including cancelable option periods when failure to exercise such options would result in an economic penalty. We use a time period for our straight-line rent expense calculation that equals or exceeds the time period used for depreciation. In addition, the rent commencement date of the lease term is the earlier of the date when we become legally obligated for the rent payments or the date when we take access to the grounds for build out. As the assumptions inherent in determining lease commencement and expiration dates and other related complexities of accounting for leases involve significant judgment, management has determined that lease accounting is critical.

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Results of Operations

In the following table is set forth the percentage relationship to total revenues, unless otherwise noted, of items included in Consolidated Statements of Operations for the periods indicated:

| | 2008 | 2007 | 2006 |
|---|---|---|---|
| Revenues: | | | |
| Net sales | 99.3% | 99.4% | 99.4% |
| Franchise fees | 0.7 | 0.6 | 0.6 |
| Total revenues | 100 | 100 | 100 |
| | | | |
| Costs and expenses: | | | |
| Cost of sales (1) | 24.9 | 23.1 | 22.6 |
| Restaurant operating costs (1) | 55.7 | 51.8 | 50.3 |
| General and administrative | 8.3 | 8.8 | 8.3 |
| Depreciation and amortization | 5.5 | 4.9 | 4.5 |
| Marketing | 4.7 | 4.4 | 4.3 |
| Interest | 2.3 | 2.1 | 1.8 |
| Rent | 2.4 | 2.1 | 1.9 |
| Pre-opening costs | 0.2 | 0.4 | 0.6 |
| Asset impairments and provision for restaurant closings | 2.4 | 0.8 | – |
| Other income, net | (0.3) | (0.3) | (0.4) |
| | | | |
| (Loss) earnings before income taxes | (5.7) | 2.3 | 6.6 |
| | | | |
| Income taxes | (1.9) | 0.5 | 2.2 |
| | | | |
| Net (loss) earnings | (3.8)% | 1.8% | 4.4% |

(1) Cost of sales and restaurant operating costs are expressed as a percentage of net sales.

(Amounts in $000s)

Fiscal Year 2008 compared with Fiscal Year 2007

Net (Loss) Earnings

We recorded a net loss of ($22,979), or ($0.81) per diluted share for the current fiscal year, as compared with net earnings of $11,808, or $0.42 per diluted share in fiscal year 2007. The decrease was primarily driven by the decline in same store sales, increases in cost of sales and restaurant operating costs, and $14,858 ($9,212, net of tax) of non-cash impairment and store closing costs, which had an impact of $0.33 per diluted share. Comparatively, fiscal year 2007 earnings included $5,176 ($3,209, net of tax) of net non-cash impairment, which had an impact of $0.11 per diluted share.

Net Sales

In fiscal year 2008, net sales decreased 6.8% from $650,416 to $606,076 primarily due to the decline in same store sales. Same store sales decreased 7.1% due to a decline in guest traffic of 10.0%, which was partially offset by a 2.9% increase in average guest expenditure. The increase in average guest expenditure results primarily from menu price

increases of 3.3%, which are made up of the annualization of fiscal year 2007 price increases in addition to a 2.1% increase in the first quarter of fiscal year 2008. These price increases were implemented to offset minimum wage and commodity cost pressures.

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Franchise fees increased 7.0% during fiscal year 2008. The increase is primarily the result of growth in the number of franchised units from 57 at the end of fiscal year 2007 to 68 at the end of fiscal year 2008. The increase in franchise fees was offset by a decrease in franchisee same store sales of 7.3%, which resulted in lower royalty fees accrued.

Cost and Expenses

Cost of sales was $151,188 or 24.9% of net sales, compared with $150,286 or 23.1% of net sales in fiscal year 2007. The increase as a percentage of net sales reflected higher commodity costs (primarily dairy, beef, and fried products), new menu items with higher percentage food cost (including improved entrée salads, chicken sandwiches, and the introduction of fruit sides), and operational inefficiencies from implementing the new product mix.

Restaurant operating costs were $337,786 or 55.7% of net sales compared to $336,955 or 51.8% of net sales in fiscal year 2007. Higher utility costs and repairs and maintenance caused an increase of $2,510 over the prior fiscal year, which included $355 of incremental repairs and maintenance related to strategic changes executed in the fourth fiscal quarter. Outside services increased $1,060 in fiscal year 2008 due to the addition of a new contractor and more frequent snow removal services attributable to unfavorable weather conditions during the second fiscal quarter. These increases were offset by a decline in labor and fringes of $2,640 during fiscal year 2008.

General and administrative expenses decreased $7,100 (12.3%) to $50,425 for fiscal 2008. Specifically, $5,360 of the decrease resulted from lower salaries, wages, and fringes due to reductions in staffing that occurred during the fourth quarter of fiscal year 2007 and during fiscal year 2008. Planned cutbacks in outside consulting services and bonuses and stock compensation contributed an additional $3,450 of cost savings, and travel and relocation expenses declined $1,270. These reductions were partially offset by a $2,540 increase in the loss on disposal and abandonment of assets and a $1,780 increase in legal and professional services. In fiscal year 2008, General and administrative expense included severance costs of approximately $2,400, $500 in proxy-related fees, and $435 in consulting fees for a fixed asset tax study. Fiscal year 2007 General and administrative expense included $1,900 of restructuring and severance expenses.

Depreciation and amortization expense was $33,659 or 5.5% of total revenues, versus $32,185 or 4.9% of total revenues in fiscal year 2007. The increase was primarily due to the addition of nine new restaurants, the new POS system put in service during fiscal year 2008, restaurant equipment, and the impact of negative same store sales on fixed costs.

Rent expense increased slightly as a percentage of total revenues primarily as a result of the decline in same store sales, as well as increases in rental rates for new unit leases.

Pre-opening expense decreased 52.7% to $1,272 due to opening fewer new restaurants in fiscal year 2008 compared to fiscal year 2007. We opened nine new restaurants during fiscal year 2008 compared to 16 in fiscal year 2007. The decrease is also due to variances in the timing of when pre-opening costs are incurred in relation to when the stores are opened. All the Company-owned restaurant openings for fiscal year 2008 were completed in the first and second quarters, and there are no planned Company-owned restaurant openings for fiscal year 2009.

Asset impairments and provision for restaurant closings for fiscal year 2008 was $14,858 or 2.4% of total revenues, versus $5,176 or 0.8% of total revenues in fiscal year 2007. The fiscal year 2008 charge includes $8,858 related to restaurants for which current operating performance is significantly below our expectations, and the carrying values of these properties exceed the expected future undiscounted cash flows to be generated by the underlying assets; $5,009 related to stores we closed during the fourth fiscal quarter; $514 related to a fee for early termination of a lease for a store that was closed subsequent to year-end; and $477 related to stores involved in a sale-leaseback transaction whose net book values exceeded their fair values. The fiscal year 2007 asset impairment and provision for restaurant closings of $5,176 related to the planned closure or sale of 14 restaurant properties and was offset by the impact of net

gains on properties sold in excess of previously recorded impairments.

Our fiscal year 2008 effective income tax rate increased to 33.9% from 20.6% in the prior fiscal year. The prior fiscal year's effective tax rate was lower primarily due to the proportionate effect of increased federal income tax credits when compared to annual pre-tax (loss) earnings. For the current fiscal year, we elected to forego claiming any federal income tax credits in order to maximize the cash refund generated from the net operating loss carryback of the fiscal 2008 taxable loss. This resulted in recording substantially less income tax benefit in fiscal 2008 versus fiscal year 2007. The current fiscal year decrease in income tax benefit for electing to forego claiming any federal income tax credits is approximately $3,000 when compared to the prior year.

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Fiscal 2007 compared with Fiscal 2006

Net Earnings

Net earnings decreased in fiscal year 2007 by 57.8% to $11,808, or $0.42 per diluted share, compared with $28,001, or $1.00 per diluted share, for fiscal year 2006. The decrease was primarily driven by the decline in same store sales noted below, $5,176 ($3,209, net of tax) of net non-cash impairment, which had an impact of $0.11 per diluted share, and $1,900 ($1,178, net of tax) of restructuring and severance expenses which had an impact of $0.04 per diluted share.

Net Sales

For fiscal year 2007, net sales increased 2.4% from $634,941 to $650,416. The net sales gains were due to the opening of 16 new Company-owned stores, partially offset by a 3.8% same store sales decline. That decrease in same store sales was due to a declining guest count of 5.6% partially offset by a 1.8% increase in average guest expenditure. Fiscal year 2007 net sales also benefited from a full year of sales relating to the acquisition of eight franchised restaurants from Creative Restaurants, Inc. (“CRI”) in the fourth quarter of fiscal year 2006. CRI sales during fiscal years 2007 and 2006 were $15,842 and $3,990, respectively.

Franchise fees decreased slightly during fiscal year 2007 primarily due to a decrease in franchisee same store sales of 3.0%, which resulted in lower royalty fees accrued.

Cost and Expenses

In fiscal year 2007, cost of sales was $150,286 or 23.1% of net sales, compared with $143,360 or 22.6% of net sales in fiscal year 2006. The increase as a percentage of net sales was primarily due to new menu items with higher percentage food cost, including improved entrée salads, chicken sandwiches, and Fruit n Frozen yogurt shakes, and to operational inefficiencies from implementing the new product mix.

Restaurant operating costs were $336,955 or 51.8% of net sales in fiscal year 2007, compared to $319,070 or 50.3% of net sales in fiscal year 2006. The largest portion of the increase related to labor and fringes, which increased $10,144 or 0.7% as a percent of net sales over fiscal year 2006. The increase in labor costs was primarily due to federal and state mandated minimum wage rate increases in states where we operate numerous stores, including Florida, Georgia, Illinois, Indiana, Missouri, and Ohio. Other restaurant operating costs,including utilities and repairs and maintenance, increased as a percentage of net sales due to the impact of negative same store sales on fixed costs.

General and administrative expenses for fiscal year 2007 were $57,525 or 8.8% of total revenues, compared to $52,949 or 8.3% of total revenues in fiscal year 2006. The increase as a percentage of revenues was attributable to $1,900 of restructuring and severance expenses not incurred in fiscal year 2006 and to approximately $1,600 of compensation and $1,400 of incremental consulting expenses, including “Guest Winning Promise” research.

Depreciation and amortization expense for fiscal year 2007 was $32,185 or 4.9% of total revenues, versus $28,967 or 4.5% of total revenues in the prior fiscal year. The increase was primarily due to the addition of units, including the eight restaurants acquired from CRI in the fourth quarter of fiscal year 2006, to software placed in service during fiscal year 2007, and to the impact of negative same store sales on fixed costs.

Rent expense increased slightly as a percentage of total revenues primarily as a result of the decline in same store sales, as well as increases in rental rates for new unit leases.

Interest expense in fiscal year 2007 was $14,015 or 2.1% of total revenues, versus $11,373 or 1.8% of total revenues in the prior fiscal year. The increase in interest expense was due to increased borrowings under the Senior Note Agreement and Private Shelf Facility ("Senior Note Agreement") and to lower capitalized interest from decreased land acquisition and unit construction, partially offset by lower average borrowings under leases.

Pre-opening expense was $2,689 or 0.4% of total revenues in fiscal year 2007, versus $3,579 or 0.6% of total revenues in fiscal year 2006. The reduction was driven by a decrease in new units from 26 in fiscal year 2006 to 16 in fiscal year 2007. Pre-opening costs per restaurant increased slightly due to differences in the timing of when pre-opening costs are incurred compared to when the stores are opened.

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In fiscal year 2007, provision for restaurant closings was $5,176, which represented a charge of $5,369 for impairment of assets and store closure reserve related to 14 underperforming units, offset by the gain on the sale of two units that had been closed during a prior year. Fiscal year 2006 provision was a credit of $103 as a result of the gain on the sale of one unit that had been closed during a prior year.

Income tax expense was recorded at an effective tax rate of 20.6%in fiscal 2007, versus 33.8% in fiscal year 2006. The decrease in the tax rate in fiscal year 2007 was due primarily to the proportionate effect of federal income tax credits when compared to annual pre-tax earnings and the impact of the extension of the Work Opportunity and Welfare to Work tax credits retroactive to January 1, 2006. The benefit recorded related to the tax credit extension totaled approximately $650.

Restaurant Closings

We permanently closed thirteen and eight Company-owned restaurants in fiscal years 2008 and 2007, respectively. Ten of the restaurants closed in fiscal year 2008 and six of the restaurants closed in fiscal year 2007 were located near other Company-owned stores that continue to operate, and we expect significant sales to transfer to the other existing locations. Therefore, the results of operations of these restaurants are not presented as discontinued operations and continue to be included in continuing operations in the Consolidated Statement of Operations.

The assets of three restaurants closed in fiscal year 2008 and two restaurants closed in fiscal year 2007 were not located near other Company-owned stores, and we do not expect to have significant continuing involvement in the operations after disposal. Although these restaurants meet the definition of “discontinued operations,”as defined in SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” (“SFAS 144”), we have not segregated the results of operations as the amounts are immaterial. Net loss after tax related to the combined total of five restaurants was approximately $845, $751, and $375 for fiscal years 2008, 2007, and 2006, respectively. The after-tax losses in fiscal years 2008 and 2007 include $583 and $515 of asset impairment charges, net of tax, respectively.

Seven of the thirteen restaurants that closed during fiscal year 2008 were owned properties, and the net book value of the assets of these properties was transferred to Assets held for sale in the Statement of Financial Position during the quarter ended September 24, 2008.

Effects of Governmental Regulations and Inflation

Most Steak n Shake employees are paid hourly rates related to federal and state minimum wage laws. Any increase in the legal minimum wage would directly increase our operating costs. We are also subject to various federal, state and local laws related to zoning, land use, safety standards, working conditions, and accessibility standards. Any changes in these laws that require improvements to our restaurants would increase our operating costs. In addition, we are subject to franchise registration requirements and certain related federal and state laws regarding franchise operations. Any changes in these laws could affect our ability to attract and retain franchisees.

Inflation in food, labor, fringe benefits, energy costs, transportation costs and other operating costs directly affect our operations.

Liquidity and Capital Resources

We generated $24,430, $43,431, and $69,578 in cash flows from operations during fiscal years 2008, 2007, and 2006, respectively, based upon timing of receipts and payment of disbursements related to operating activities.

Net cash used in investing activities of $16,592 during fiscal year 2008 resulted primarily from capital expenditures of $31,443. We opened nine new restaurants during fiscal year 2008 and transferred eight restaurants to franchisees. In addition, in fiscal year 2008, we received proceeds of $14,851 from the sale of one restaurant and 11 parcels of land classified as held for sale, and from the transfer of three Company-owned buildings and various equipment to franchisees. Net cash used in financing activities of $2,480 during fiscal year 2008 included payments on the Revolving Credit Facility ("Facility") of $13,005. During fiscal year 2008, we also sold 11 restaurants to a third party and simultaneously entered into a lease for each property. In conjunction with this sale-leaseback transaction, we received net proceeds of $15,993.

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Net cash used in investing activities of $60,110 during fiscal year 2007 resulted primarily from capital expenditures of $68,643. During fiscal year 2007, we opened 16 new Company-owned restaurants, rebuilt three restaurants, replaced two restaurants, and transferred two restaurants to franchisees. We received proceeds of $8,533 from the sale of eight properties during fiscal year 2007. Net cash provided by financing activities of $13,356 during fiscal year 2007 resulted primarily from $15,000 of borrowings under the Senior Note Agreement.

Net cash used in investing activities of $87,314 during fiscal year 2006 resulted primarily from capital expenditures of $80,840 and the acquisition of CRI, a franchisee, for $9,598. During fiscal year 2006, we opened 26 new Company-owned restaurants, acquired eight restaurants from CRI, and rebuilt two restaurants. We also received proceeds of $3,124 from the sale of property and equipment during fiscal year 2006. Net cash provided by financing activities of $19,493 during fiscal year 2006 resulted primarily from $25,065 of proceeds from the Facility.

We do not anticipate opening any Company-owned units during fiscal year 2009. Capital expenditures in fiscal year 2009 will be limited principally to capitalized repair and maintenance costs. We intend to meet our working capital needs by using anticipated cash flows from operations, net operating loss carryback tax refunds, existing credit facilities, the sale of excess properties, and potential sale-leaseback transactions. We continually review available financing alternatives. In addition, we may consider, on an opportunistic basis, strategic decisions to create value and improve operating performance.

Revolving Credit Facility

As of September 24, 2008, our Facility allowed us to borrow up to $30,000, bore interest based on LIBOR plus 250 basis points, and was scheduled to expire January 30, 2009. Effective with an amendment executed on November 21, 2008, the borrowing capacity under the Facility was reduced to $25,000, the interest rate was increased to LIBOR plus 350 basis points, and the maturity date was extended to January 30, 2010. At September 24, 2008, outstanding borrowings under the Facility were $14,180 at an interest rate of 5.2%. At September 26, 2007, outstanding borrowings under the Facility were $27,185 at an interest rate of 5.4%. We had $848 and $3,327 in standby letters of credit outstanding as of September 24, 2008 and September 26, 2007, respectively.

The Facility contains restrictions and covenants customary for credit agreements of these types which, among other things, require us to maintain certain financial ratios. The most recent amendment waived certain financial covenant violations as of September 24, 2008. Giving effect to this amendment, we were not in default under the Facility as of September 24, 2008. The amendment also includes revised financial covenants, and we anticipate compliance in future periods based on expected financial results and debt repayment terms.

Senior Note Agreement

As of September 24, 2008, our total borrowing capacity under the Senior Note Agreement was $75,000, and our ability to borrow additional funds expired September 29, 2008. We had outstanding borrowings under the Senior Note Agreement of $16,429 at a weighted average fixed rate of 8.4% as of September 24, 2008, and $18,143 at a weighted average fixed rate of 6.1% as of September 26, 2007. Interest rates are fixed based upon market rates at the time of borrowing. Amounts maturing in fiscal years 2009 through 2012 are as follows: $714, $5,715, $5,000, and $5,000, respectively.

Effective with an amendment executed on November 21, 2008, we must make equal prepayments under the Senior Note Agreement and the Facility once the balance of our Facility reaches $10,000. The amendment also increased the interest rates under the Senior Note Agreement effective November 21, 2008.

The Senior Note Agreement contains restrictions and covenants customary for credit agreements of these types which, among other things, require us to maintain certain financial ratios which are identical to those required under the

Facility. On November 21, 2008, the lender waived certain financial covenant violations as of September 24, 2008. Giving effect to this amendment, we were not in default under the Senior Note Agreement as of September 24, 2008. The amendment also includes revised financial covenants, and we anticipate compliance in future periods based on expected financial results and debt repayment terms.



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After giving consideration to the issues noted above and reference to the applicable accounting guidance in EITF No. 86-30, "Classification of Obligations When a Violation is Waived by the Creditor," and SFAS No. 78, "Classification of Obligations That Are Callable by the Creditor," we do not believe it is probable that we will not comply with the amended covenants at measurement dates within the next twelve months. Accordingly, we have classified the borrowings under the Senior Note Agreement which are scheduled to be paid beyond twelve months as non-current at September 24, 2008.

The Senior Note Agreement and the Facility are secured with the deposit accounts, accounts receivable, inventory, equipment, general intangibles, fixtures, and all other personal property. The Senior Note Agreement and Facility also prohibit us from making cash dividends or repurchasing our common stock. As of November 21, 2008, the Senior Note Agreement also requires us to secure the borrowings with certain real estate assets if the principal balance under the Senior Note Agreement is greater than $5,000 on March 31, 2010.

The carrying amounts for debt reported in the Consolidated Statement of Financial Position do not differ materially from their fair market values at September 24, 2008.

Contractual Obligations

Our significant contractual obligations and commitments as of September 24, 2008 are shown in the following table.

| | Payments due by period | | | | |
|---|---|---|---|---|---|
| Contractual Obligations | Less than 1 year | 1-3 years | 3-5 years | More than 5 years | Total |
| Long-term debt(1)(2) | $ 15,881 | $ 11,706 | $ 5,052 | $ – | $ 32,639 |
| Capital leases and finance obligations(1) | 16,097 | 30,958 | 29,141 | 55,592 | 131,788 |
| Operating leases(3) | 12,977 | 24,281 | 22,130 | 91,253 | 150,641 |
| Purchase commitments(4) | 4,546 | 910 | – | – | 5,456 |
| Other Long-term liabilities(5) | – | – | – | 1,809 | 1,809 |
| Total | $ 49,501 | $ 67,855 | $ 56,323 | $ 148,654 | $ 322,333 |

(1) Includes principal and interest.
(2) Includes outstanding borrowings under the Facility and the Senior Note Agreement as of September 24, 2008.
(3) Excludes amounts to be paid for contingent rents.
(4) Includes agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms. Excludes agreements that are cancelable without penalty.
(5) Includes liabilities for Non-Qualified Deferred Compensation Plan. Excludes our FIN 48 liabilities of $953 as of September 24, 2008 because we cannot make a reliable estimate of the timing of cash payments.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements other than operating leases entered into in the normal course of business.

New Accounting Standards

On September 27, 2007, we adopted the provisions of FIN 48. FIN 48 clarifies the accounting for and reporting of uncertainties in income tax law. It prescribes a comprehensive model for the financial statement recognition, measurement, presentation, and disclosure of uncertain tax positions taken or expected to be taken in income tax returns. For additional information regarding the impact of adoption of FIN 48, see Note 10 of Notes to Consolidated Financial Statements in Part II, Item 8 of this Form 10-K.

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In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, "Fair Value Measurements" ("SFAS 157"). SFAS 157 defines fair value, establishes a formal framework for measuring fair value and expands disclosures about fair value measurements. In February 2008, the FASB issued FSP 157-2, "Effective Date of FASB Statement No. 157," which permits a one-year deferral for the implementation of SFAS 157 with regard to non-financial assets and liabilities that are not recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). Thus, SFAS 157 as it relates to financial assets and liabilities is effective beginning in our fiscal year 2009 in accordance with the original Statement; however, SFAS 157's applicability to non-financial assets and liabilities will be deferred until our fiscal year 2010. We do not anticipate that the adoption of SFAS 157 with regard to financial assets and liabilities will materially impact our financial statements. We are in the process of determining the effect, if any, that the adoption of SFAS 157 with regard to non-financial assets and liabilities will have on our financial statements.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" ("SFAS 159"). SFAS 159 provides companies with an option to report selected financial assets and financial liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings at each subsequent reporting date. SFAS 159 is effective for fiscal years beginning after November 15, 2007, our fiscal year 2009. We have determined not to elect the fair value measurement option under SFAS 159.

In December 2007, the FASB issued SFAS No. 141(R), "Business Combinations" ("SFAS 141(R)"), which replaces SFAS 141. SFAS 141(R) requires that the fair value of the purchase price of an acquisition including the issuance of equity securities be determined on the acquisition date; requires that all assets, liabilities, noncontrolling interests, contingent consideration, contingencies, and in-process research and development costs of an acquired business be recorded at fair value at the acquisition date; requires that acquisition costs generally be expensed as incurred; requires that restructuring costs generally be expensed in periods subsequent to the acquisition date; and requires that changes in deferred tax asset valuation allowances and acquired income tax uncertainties after the measurement period impact income tax expense. SFAS 141(R) also broadens the definition of a business combination and expands disclosures related to business combinations. SFAS 141(R) applies prospectively to 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, our fiscal year 2010, except that business combinations consummated prior to the effective date must apply SFAS 141(R) income tax requirements immediately upon adoption. We are in the process of determining the effect, if any, that the adoption of SFAS 141(R) will have on our financial statements.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51" ("SFAS 160"). SFAS 160 clarifies the accounting for noncontrolling interests and establishes accounting and reporting standards for the noncontrolling interest in a subsidiary, including classification as a component of equity. SFAS 160 is effective for fiscal years beginning after December 15, 2008, our fiscal year 2010. We are in the process of determining the effect, if any, that the adoption of SFAS 160 will have on our financial statements.

In April 2008, the FASB issued FASB Staff Position No. 142-3, "Determination of the Useful Life of Intangible Assets" ("FSP 142-3"). FSP 142-3 amends the factors that should be considered in developing renewal or extension assumptions that are used to determine the useful life of a recognized intangible asset under SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"), and requires enhanced related disclosures. FSP 142-3 must be applied prospectively to all intangible assets acquired as of and subsequent to fiscal years beginning after December 15, 2008, our fiscal year 2010. We are in the process of determining the effect, if any, that the adoption of FSP 142-3 will have on our financial statements.



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ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Our primary market risk exposure with regard to financial instruments is to changes in interest rates. We invest excess cash primarily in cash equivalents due to their relatively low credit risk. Interest rates on these securities are based upon market rates at the time of purchase and remain fixed until maturity.

At September 24, 2008 the Revolving Credit Facility bore interest at a rate based upon LIBOR plus 250 basis points. Effective November 21, 2008, the interest rate was increased to LIBOR plus 350 basis points. Historically, we have not used derivative financial instruments to manage exposure to interest rate changes. At September 24, 2008, a hypothetical 100 basis point increase in short-term interest rates would have an impact of approximately $88 on our net loss.

We purchase certain food products which may be affected by volatility in commodity prices due to weather conditions, supply levels, and other market conditions. We utilize various purchasing and contract pricing techniques to minimize volatility, but do not enter into financial derivative contracts.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
The Steak n Shake Company
Indianapolis, Indiana

We have audited the accompanying consolidated statements of financial position of The Steak n Shake Company and subsidiaries (the "Company") as of September 24, 2008 and September 26, 2007, and the related consolidated statements of operations, shareholders' equity, and cash flows for the years ended September 24, 2008, September 26, 2007, and September 27, 2006. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements 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 that 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 that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of The Steak n Shake Company and subsidiaries as of September 24, 2008 and September 26, 2007, and the results of their operations and their cash flows for the years ended September 24, 2008, September 26, 2007, and September 27, 2006, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of September 24, 2008, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated December 8, 2008 expressed an unqualified opinion on the Company's internal control over financial reporting.

As discussed in Note 1 to the consolidated financial statements, effective September 27, 2007, the Company adopted Financial Accounting Standards Board Interpretation No. 48, Accounting for Uncertainty in Income Taxes.

/s/ Deloitte & Touche LLP
Indianapolis, Indiana
December 8, 2008

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
The Steak n Shake Company
Indianapolis, Indiana

We have audited the internal control over financial reporting of The Steak n Shake Company and subsidiaries (the "Company") as of September 24, 2008, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company'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 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 that 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 that 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 that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. 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 that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (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 the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of September 24, 2008, based on the criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements as of and for the year ended September 24, 2008 of the Company and our report dated December 8, 2008 expressed an unqualified opinion on those financial statements and included an explanatory paragraph regarding the adoption of Financial Accounting Standards Board Interpretation No. 48, Accounting for Uncertainty in Income Taxes.

/s/ Deloitte & Touche LLP
Indianapolis, Indiana
December 8, 2008



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Management's Report on Internal Control Over Financial Reporting

The management of The Steak n Shake Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934. Pursuant to the rules and regulations of the Securities and Exchange Commission, internal control over financial reporting is a process designed by, or under the supervision of, the Company's board of directors, principal executive and principal financial officers, and effected by management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America and includes those policies and procedures that:

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

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

Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material impact on the financial statements; and

Ensure that material information relating to the company, including its consolidated subsidiaries, is made known to management by others within those entities, particularly during the period which this report is being prepared.

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

Management has evaluated the effectiveness of its internal control over financial reporting as of September 24, 2008 based on the criteria set forth in a report entitled Internal Control - Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this evaluation, we have concluded that, as of September 24, 2008, our internal control over financial reporting is effective based on those criteria.

The Company's independent registered public accounting firm, Deloitte & Touche LLP, has issued an audit report on the Company's internal control over financial reporting and their report is included herein.

| | |
|---|---|
| /s/ Sardar Biglari | /s/ Duane E. Geiger |
| Sardar Biglari | Duane E. Geiger |
| Executive Chairman and | Interim Chief Financial Officer, |
| Chief Executive Officer | Vice President and Controller |

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Consolidated Statements of Operations
The Steak n Shake Company
(Years ended September 24, 2008, September 26, 2007, and September 27, 2006)
(Amounts in $000s except share and per share data)

| | 2008 (52 Weeks) | 2007 (52 Weeks) | 2006 (52 Weeks) |
|---|---|---|---|
| Revenues: | | | |
| Net sales | $ 606,076 | $ 650,416 | $ 634,941 |
| Franchise fees | 3,985 | 3,726 | 3,881 |
| Total revenues | 610,061 | 654,142 | 638,822 |
| | | | |
| Costs and expenses: | | | |
| Cost of sales | 151,188 | 150,286 | 143,360 |
| Restaurant operating costs | 337,786 | 336,955 | 319,070 |
| General and administrative | 50,425 | 57,525 | 52,949 |
| Depreciation and amortization | 33,659 | 32,185 | 28,967 |
| Marketing | 28,700 | 28,644 | 27,473 |
| Interest | 14,011 | 14,015 | 11,373 |
| Rent | 14,717 | 13,961 | 12,233 |
| Pre-opening costs | 1,272 | 2,689 | 3,579 |
| Asset impairments and provision for restaurant closings | 14,858 | 5,176 | (103) |
| Other income, net | (1,771) | (2,165) | (2,371) |
| Total costs and expenses | 644,845 | 639,271 | 596,530 |
| | | | |
| (Loss) earnings before income taxes | (34,784) | 14,871 | 42,292 |
| | | | |
| Income taxes | (11,805) | 3,063 | 14,291 |
| | | | |
| Net (loss) earnings | $ (22,979) | $ 11,808 | $ 28,001 |
| | | | |
| Basic (loss) earnings per common and common equivalent share | $ (0.81) | $ 0.42 | $ 1.01 |
| | | | |
| Diluted (loss) earnings per common and common equivalent share | $ (0.81) | $ 0.42 | $ 1.00 |
| | | | |
| Weighted average shares and equivalents: | | | |
| Basic | 28,254,129 | 28,018,014 | 27,723,282 |
| Diluted | 28,254,129 | 28,215,647 | 28,038,545 |

See accompanying notes.

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Consolidated Statements of Financial Position
The Steak n Shake Company
(Amounts in $000s except share and per share data)

| | September 24, 2008 | September 26, 2007 |
|---|---|---|
| Assets: | | |
| Current assets | | |
| Cash and cash equivalents | $ 6,855 | $ 1,497 |
| Receivables, net | 15,622 | 6,289 |
| Inventories | 6,795 | 7,226 |
| Deferred income taxes | 3,260 | |