TYSON FOODS INC
Form 10-Q
May 02, 2008

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

## FORM 10-Q

**(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended March 29, 2008**

**OR**

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

**For the transition period from _________to________**

**001-14704**

**(Commission File Number)**

______________

# TYSON FOODS, INC.

(Exact name of registrant as specified in its charter)

______________

| | |
|---|---|
| **Delaware**<br>(State or other jurisdiction<br>of incorporation or organization) | **71-0225165**<br>(I.R.S. Employer Identification No.) |
| **2210 West Oaklawn Drive, Springdale, Arkansas**<br>(Address of principal executive offices) | **72762-6999**<br>(Zip Code) |

**(479) 290-4000**
(Registrant’s telephone number, including area code)

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 o

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

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of March 29, 2008.

| Class | Outstanding Shares |
|---|---|
| Class A Common Stock, $0.10 Par Value (Class A stock) | 285,074,786 |
| Class B Common Stock, $0.10 Par Value (Class B stock) | 70,021,155 |

**TYSON FOODS, INC.**

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**TYSON FOODS, INC.**

**CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS**

(In millions, except per share data)

(Unaudited)

| | Three Months Ended | | Six Months Ended | |
|---|---|---|---|---|
| | March 29, 2008 | March 31, 2007 | March 29, 2008 | March 31, 2007 |
| Sales | $ 6,612 | $ 6,501 | $ 13,378 | $ 13,059 |
| Cost of Sales | 6,306 | 6,138 | 12,767 | 12,359 |
| | 306 | 363 | 611 | 700 |
| Selling, General and Administrative | 232 | 205 | 447 | 395 |
| Other Charges | 30 | - | 36 | 2 |
| Operating Income | 44 | 158 | 128 | 303 |
| Other (Income) Expense: | | | | |
| Interest income | (2) | (2) | (4) | (4) |
| Interest expense | 55 | 58 | 108 | 119 |
| Other, net | (1) | (5) | (20) | (5) |
| | 52 | 51 | 84 | 110 |
| Income (Loss) before Income Taxes | (8) | 107 | 44 | 193 |
| Income Tax Expense (Benefit) | (3) | 39 | 15 | 68 |
| Net Income (Loss) | $ (5) | $ 68 | $ 29 | $ 125 |
| Weighted Average Shares Outstanding: | | | | |
| Class A Basic | 280 | 271 | 280 | 268 |
| Class B Basic | 70 | 77 | 70 | 80 |
| Diluted | 350 | 354 | 355 | 354 |
| Earnings (Loss) Per Share: | | | | |
| Class A Basic | $ (0.02) | $ 0.20 | $ 0.08 | $ 0.37 |
| Class B Basic | $ (0.01) | $ 0.18 | $ 0.08 | $ 0.33 |
| Diluted | $ (0.02) | $ 0.19 | $ 0.08 | $ 0.35 |
| Cash Dividends Per Share: | | | | |
| Class A | $ 0.040 | $ 0.040 | $ 0.080 | $ 0.080 |

| | | | | |
|---|---|---|---|---|
| Class B | $ 0.036 | $ 0.036 | $ 0.072 | $ 0.072 |

See accompanying Notes to Consolidated Condensed Financial Statements.

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**TYSON FOODS, INC.**

**CONSOLIDATED CONDENSED BALANCE SHEETS**

(In millions, except share and per share data)

| | (Unaudited) March 29, 2008 | September 29, 2007 |
|---|---|---|
| **Assets** | | |
| Current Assets: | | |
| Cash and cash equivalents | $ 53 | $ 42 |
| Accounts receivable, net | 1,074 | 1,246 |
| Inventories | 2,439 | 2,238 |
| Other current assets | 213 | 70 |
| Total Current Assets | 3,779 | 3,596 |
| Net Property, Plant and Equipment | 3,615 | 3,693 |
| Goodwill | 2,487 | 2,485 |
| Intangible Assets | 125 | 126 |
| Other Assets | 361 | 327 |
| Total Assets | $ 10,367 | $ 10,227 |
| **Liabilities and Shareholders' Equity** | | |
| Current Liabilities: | | |
| Current debt | $ 265 | $ 137 |
| Trade accounts payable | 1,014 | 1,050 |
| Other current liabilities | 830 | 928 |
| Total Current Liabilities | 2,109 | 2,115 |
| Long-Term Debt | 2,689 | 2,642 |
| Deferred Income Taxes | 361 | 367 |
| Other Liabilities | 454 | 372 |
| Shareholders' Equity: | | |
| Common stock ($0.10 par value): | | |
| Class A-authorized 900 million shares: issued 300 million shares at March 29, 2008, and September 29, 2007 | 30 | 30 |
| Class B-authorized 900 million shares: issued 70 million shares at March 29, 2008, and September 29, 2007 | 7 | 7 |
| Capital in excess of par value | 1,891 | 1,877 |
| Retained earnings | 2,977 | 2,993 |
| Accumulated other comprehensive income | 81 | 50 |
| | 4,986 | 4,957 |
| Less treasury stock, at cost- 15 million shares at March 29, 2008, and 14 million shares at September 29, 2007 | 232 | 226 |
| Total Shareholders' Equity | 4,754 | 4,731 |
| Total Liabilities and Shareholders' Equity | $ 10,367 | $ 10,227 |

See accompanying Notes to Consolidated Condensed Financial Statements.

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**TYSON FOODS, INC.**

**CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS**

(In millions)

(Unaudited)

| | Six Months Ended March 29, 2008 | March 31, 2007 |
|---|---|---|
| Cash Flows From Operating Activities: | | |
| Net income | $ 29 | $ 125 |
| Depreciation and amortization | 251 | 256 |
| Deferred income taxes and other, net | 33 | 52 |
| Net changes in working capital | (169) | (90) |
| Cash Provided by Operating Activities | 144 | 343 |
| Cash Flows From Investing Activities: | | |
| Additions to property, plant and equipment | (210) | (94) |
| Proceeds from sale of property, plant and equipment | 19 | 8 |
| Proceeds from sale of investment | 21 | - |
| Proceeds from sale of marketable securities | 63 | 79 |
| Purchases of marketable securities | (83) | (79) |
| Proceeds from sale of short-term investment | - | 770 |
| Other, net | - | 6 |
| Cash Provided by (Used for) Investing Activities | (190) | 690 |
| Cash Flows From Financing Activities: | | |
| Net borrowings (payments) on revolving credit facilities | 195 | (94) |
| Payments on debt | (31) | (949) |
| Proceeds from borrowings of debt | 3 | - |
| Purchases of treasury shares | (16) | (38) |
| Dividends | (28) | (28) |
| Increase (decrease) in negative book cash balances | (73) | 46 |
| Stock options exercised and other, net | 4 | 33 |
| Cash Provided by (Used for) Financing Activities | 54 | (1,030) |
| Effect of Exchange Rate Change on Cash | 3 | 3 |
| Increase in Cash and Cash Equivalents | 11 | 6 |
| Cash and Cash Equivalents at Beginning of Year | 42 | 28 |
| Cash and Cash Equivalents at End of Period | $ 53 | $ 34 |

See accompanying Notes to Consolidated Condensed Financial Statements.

**TYSON FOODS, INC.**

**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

(Unaudited)

**NOTE 1:  ACCOUNTING POLICIES**

BASIS OF PRESENTATION

The consolidated condensed financial statements have been prepared by Tyson Foods, Inc. (collectively, "the Company," "we," "us" or "our"). Certain information and accounting policies and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to such rules and regulations. Although we believe the disclosures contained herein are adequate to make the information presented not misleading, these consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in our annual report on Form 10-K for the fiscal year ended September 29, 2007. Preparation of consolidated condensed financial statements requires us to make estimates and assumptions. These estimates and assumptions affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated condensed financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

We believe the accompanying consolidated condensed financial statements contain all adjustments, including normal recurring accruals, necessary to present fairly our financial position as of March 29, 2008, the results of operations for the three and six months ended and cash flows for the six months ended March 29, 2008, and March 31, 2007. Results of operations and cash flows are not necessarily indicative of results to be expected for the full year.

RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

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

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, “Fair Value Measurements” (SFAS No. 157). SFAS No. 157 provides guidance for using fair value to measure assets and liabilities. This standard also responds to investors’ requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value and the effect of fair value measurements on earnings. SFAS No. 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value. In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115” (SFAS No. 159). This statement provides companies with an option to report selected financial assets and financial liabilities at fair value. SFAS No. 157 and SFAS No. 159 are effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years; therefore, we expect to adopt SFAS No. 157 and SFAS No. 159 at the beginning of fiscal 2009 for financial assets and financial liabilities. In accordance with FASB Staff Position 157-2, we will begin measuring the fair value of nonfinancial assets and nonfinancial liabilities at the beginning of fiscal 2010. We are in process of evaluating the potential impacts of SFAS No. 157 and SFAS No. 159.

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

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

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, “Disclosures about Derivative Instruments and Hedging Activities - an amendment of FASB Statement No. 133” (SFAS No. 161). SFAS No. 161 establishes enhanced disclosure requirements about: 1) how and why an entity uses derivative instruments; 2) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations; and 3) how derivative instruments and related hedged items affect an entity’s financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008; therefore, we expect to adopt SFAS No. 161 in the first quarter of fiscal 2010.

**NOTE 2:  DISPOSITIONS AND OTHER CHARGES**

On February 29, 2008, we announced discontinuation of an existing product line and closing of one of our three poultry plants in Wilkesboro, North Carolina. The Wilkesboro Cooked Products plant ceased operations in April 2008. The closure resulted in elimination of approximately 400 jobs. In the second quarter of fiscal 2008, we recorded charges of $13 million for estimated impairment charges. This amount is reflected in the Chicken segment’s Operating Income (Loss) and included in the Consolidated Condensed Statements of Operations in Other Charges. No material adjustments to the accrual are anticipated.

On January 25, 2008, we announced the decision to restructure operations at our Emporia, Kansas, beef plant. Beef slaughter operations ceased during the second quarter of fiscal 2008. However, the facility will still be used to process certain commodity, specialty cuts and ground beef, as well as a cold storage and distribution warehouse. This restructuring resulted in elimination of approximately 1,700 jobs at the Emporia plant. In the second quarter of fiscal 2008, we recorded charges of $10 million for estimated impairment charges and $7 million of other closing costs, consisting of $6 million for employee termination benefits and $1 million in other plant-closing related liabilities. These amounts were reflected in the Beef segment’s Operating Income (Loss) and included in the Consolidated Condensed Statements of Operations in Other Charges. As of March 29, 2008, $6 million of other closing costs had been paid. No material adjustments to the accrual are anticipated.

In the first quarter of fiscal 2008, we recorded an $18 million non-operating gain as the result of a private equity firm’s purchase of a technology company in which we held a minority interest. This gain was recorded in Other Income in the Consolidated Condensed Statements of Operations.

In the first quarter of fiscal 2008, management approved plans for implementation of certain recommendations resulting from the previously announced FAST initiative, which was focused on process improvement and efficiency creation. As a result, in the first quarter of fiscal 2008, we recorded charges of $6 million related to employee termination benefits resulting from termination of approximately 200 employees. Of these charges, $2 million, $2 million, $1 million and $1 million, respectively, were recorded in the Chicken, Beef, Pork and Prepared Foods segments' Operating Income (Loss) and included in the Consolidated Condensed Statements of Operations in Other Charges. As of March 29, 2008, $3 million of employee termination benefits had been paid. No material adjustments to the accrual are anticipated.

**NOTE 3: FINANCIAL INSTRUMENTS**

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

We had derivative related balances of $56 million and $16 million recorded in other current assets at March 29, 2008, and September 29, 2007, respectively, and $1 million and $48 million in other current liabilities at March 29, 2008, and September 29, 2007, respectively.

**Cash flow hedges:** We use derivatives as a tool to help manage the financial and commodity market risks of our business operations. Derivative products, such as futures and options, are designated to be a hedge against changes in the amount of future cash flows related to commodities procurement.

The effective portion of the cumulative gain or loss on the derivative instrument is reported as a component of Accumulated Other Comprehensive Income in Shareholders’ Equity and recognized into earnings in the same period or periods during which the hedged transaction affects earnings (for grain commodity hedges, when the chickens that consumed the hedged grain are sold). The remaining cumulative gain or loss on the derivative instrument in excess of the cumulative change in the present value of the future cash flows of the hedged item, if any, is recognized in earnings during the period of change. Ineffectiveness related to our cash flow hedges was not significant during the three and six months ended March 29, 2008, and March 31, 2007.

Derivative products related to grain procurement that meet the criteria for hedge accounting and are so designated, are considered cash flow hedges, as they hedge against changes in the amount of future cash flows related to commodities procurement. We do not purchase derivative products related to grain procurement in excess of our physical grain consumption requirements. Related to grain hedges, there were $18 million of net gains recorded in accumulated other comprehensive income at March 29, 2008. These gains will be recognized within the next 12 months. Of these gains, the portion resulting from our open hedge positions was a net gain of $6 million as of March 29, 2008.

**Fair value hedges:** We designate certain futures contracts as fair value hedges of firm commitments to purchase market hogs for slaughter and natural gas for the operation of our plants. From time to time, we also enter into foreign currency forward contracts to hedge changes in the fair value of receivables and purchase commitments arising from changes in the exchange rates of foreign currencies. The fair value of the foreign exchange contracts was not significant as of March 29, 2008, and September 29, 2007. Changes in the fair value of a derivative that is designated and qualifies as a fair value hedge, along with the gain or loss on the hedged asset or liability attributable to the hedged risk (including gains or losses on firm commitments), are recorded in current period earnings. Ineffectiveness results when the change in the fair value of the hedge instrument differs from the change in fair value of the hedged item. Ineffectiveness related to fair value hedges was not significant during the three and six months ended March 29, 2008, and March 31, 2007.

**Undesignated positions:** We hold positions as part of our risk management activities, primarily futures and options for grains, livestock and natural gas, for which we do not apply hedge accounting, but instead mark these positions to fair value through earnings at each reporting date. We generally do not enter into undesignated positions beyond 18 months. Related to grain positions for which we did not apply hedge accounting, we recognized pretax net gains of approximately $41 million and $72 million in cost of sales for the three and six months ended March 29, 2008, respectively, which included an unrealized pretax gain on open mark-to-market futures positions of approximately $25 million as of March 29, 2008. We recognized pretax net gains of $26 million and $67 million for the three and six months ended March 31, 2007, respectively.

We enter into certain forward sales of boxed beef and boxed pork and forward purchases of cattle at fixed prices. The fixed price sales contracts lock in the proceeds from a sale in the future and the fixed cattle purchases lock in the cost. However, the cost of the livestock and the related boxed beef and pork market prices at the time of the sale or purchase could vary from this fixed price. As we enter into fixed forward sales of boxed beef and pork and forward purchases of cattle, we also enter into the appropriate number of livestock futures positions to mitigate a portion of this risk. Changes in market value of the open livestock futures positions are marked to market and reported in earnings at each reporting date, even though the economic impact of our fixed prices being above or below the market price is only realized at the time of sale or purchase. In connection with these livestock futures, we recorded realized and unrealized net gains of $42 million and $67 million for the three and six months ended March 29, 2008, respectively, which included an unrealized pretax gain on open mark-to-market futures positions of approximately $16 million as of March 29, 2008. We recorded realized and unrealized net losses of $14 million and $10 million for the three and six months ended March 31, 2007, respectively.

**NOTE 4: INVENTORIES**

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

| | March 29, 2008 | September 29, 2007 |
|---|---|---|
| Processed products: | | |
| Weighted-average method - chicken and prepared foods | $ 866 | $ 773 |
| First-in, first-out method - beef and pork | 518 | 514 |
| Livestock - first-in, first-out method | 699 | 637 |
| Supplies and other - weighted-average method | 356 | 314 |
| Total inventory | $ 2,439 | $ 2,238 |

**NOTE 5: PROPERTY, PLANT AND EQUIPMENT**

The major categories of property, plant and equipment and accumulated depreciation, at cost, are as follows (in millions):

| | March 29, 2008 | September 29, 2007 |
|---|---|---|
| Land | $ 107 | $ 108 |
| Buildings and leasehold improvements | 2,479 | 2,465 |
| Machinery and equipment | 4,386 | 4,337 |
| Land improvements and other | 209 | 203 |
| Buildings and equipment under construction | 304 | 253 |
| | 7,485 | 7,366 |

| | | |
|---|---|---|
| Less accumulated depreciation | 3,870 | 3,673 |
| Net property, plant and equipment | $ 3,615 | $ 3,693 |

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**NOTE 6: OTHER CURRENT LIABILITIES**

Other current liabilities are as follows (in millions):

| | March 29, 2008 | September 29, 2007 |
|---|---|---|
| Self-insurance reserves | $ 235 | $ 259 |
| Accrued salaries, wages and benefits | 227 | 249 |
| Other | 368 | 420 |
| Total other current liabilities | $ 830 | $ 928 |

**NOTE 7: COMMITMENTS**

We guarantee debt of outside third parties, which involve a lease and grower loans, all of which are substantially collateralized by the underlying assets. Terms of the underlying debt cover periods up to nine years, and the maximum potential amount of future payments as of March 29, 2008, was $69 million. We also maintain operating leases for various types of equipment, some of which contain residual value guarantees for the market value of the underlying leased assets at the end of the term of the lease. The terms of the lease maturities cover periods up to seven years. The maximum potential amount of the residual value guarantees is $54 million, of which $21 million would be recoverable through various recourse provisions and an undeterminable recoverable amount based on the fair market value of the underlying leased assets. The likelihood of material payments under these guarantees is not considered probable. At March 29, 2008, and September 29, 2007, no material liabilities for guarantees were recorded.

**NOTE 8: LONG-TERM DEBT**

The major components of long-term debt are as follows (in millions):

| | Maturity | March 29, 2008 | September 29, 2007 |
|---|---|---|---|
| Revolving credit facility | 2010 | $ - | $ - |
| Senior notes (rates ranging from 6.85% to 8.25%) | 2010–2028 | 2,455 | 2,475 |
| Lakeside term loan (3.68% effective rate at 3/29/08) | 2009 | 25 | 25 |
| Accounts receivable securitization (3.76% effective rate at 3/29/08) | 2008, 2010 | 408 | 213 |
| Other | Various | 66 | 66 |
| Total debt | | 2,954 | 2,779 |
| Less current debt | | 265 | 137 |
| Total long-term debt | | $ 2,689 | $ 2,642 |

We have an unsecured revolving credit facility totaling $1.0 billion that supports short-term funding needs and letters of credit. The facility expires in September 2010. At March 29, 2008, we had outstanding letters of credit totaling $275 million, none of which were drawn upon, issued primarily in support of workers' compensation insurance programs and derivative activities. The amount available as of March 29, 2008, was $725 million.

We have a receivables purchase agreement with three co-purchasers to sell up to $750 million of trade receivables consisting of $375 million expiring in August 2008 and $375 million expiring in August 2010. The receivables purchase agreement has been accounted for as a borrowing and has an interest rate based on commercial paper issued by the co-purchasers. Under this agreement, substantially all of our accounts receivable are sold to a special purpose entity, Tyson Receivables Corporation (TRC), which is a wholly-owned consolidated subsidiary of the Company. TRC has its own creditors entitled to be satisfied out of all of the assets of TRC prior to any value becoming available to the Company as TRC's equity holder. At March 29, 2008, there was $204 million outstanding under the receivables purchase agreement expiring in August 2008 and $204 million under the agreement expiring in August 2010.

Our debt agreements contain various covenants, the most restrictive of which contain a maximum allowed leverage ratio and a minimum required interest coverage ratio. We were in compliance with all covenants at March 29, 2008.

Tyson Fresh Meats, Inc., a wholly-owned subsidiary of the Company, has fully and unconditionally guaranteed $1.0 billion of senior unsecured notes due April 1, 2016. The following condensed consolidating financial information is provided for the Company, as issuer, and for TFM, as guarantor, as an alternative to providing separate financial statements for the guarantor.

The following financial information presents condensed consolidating financial statements, which include Tyson Foods, Inc. (TFI Parent); Tyson Fresh Meats, Inc. (TFM Parent); the Non-Guarantor Subsidiaries on a combined basis; the elimination entries necessary to consolidate the TFI Parent, TFM Parent and the Non-Guarantor Subsidiaries; and Tyson Foods, Inc. on a consolidated basis.

Condensed Consolidating Statement of Operations for the three months ended March 29, 2008 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| Net Sales | $ (9) | $ 3,633 | $ 3,175 | $ (187) | $ 6,612 |
| Cost of Sales | 54 | 3,511 | 2,928 | (187) | 6,306 |
| | (63) | 122 | 247 | - | 306 |
| Operating Expenses: | | | | | |
| Selling, general and administrative | 29 | 51 | 152 | - | 232 |
| Other charges | - | 17 | 13 | - | 30 |
| Operating Income (Loss) | (92) | 54 | 82 | - | 44 |
| Other (Income) Expense: | | | | | |
| Interest expense, net | 48 | 6 | (1) | - | 53 |
| Other, net | 1 | - | (2) | - | (1) |
| Equity in net earnings of subsidiaries | (86) | (7) | - | 93 | - |
| | (37) | (1) | (3) | 93 | 52 |
| Income (Loss) before Income Taxes | (55) | 55 | 85 | (93) | (8) |
| Income Tax Expense (Benefit) | (50) | 17 | 30 | - | (3) |
| Net Income (Loss) | $ (5) | $ 38 | $ 55 | $ (93) | $ (5) |

Condensed Consolidating Statement of Operations for the three months ended March 31, 2007 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| Net Sales | $ 12 | $ 3,622 | $ 3,044 | $ (177) | $ 6,501 |
| Cost of Sales | (33) | 3,535 | 2,813 | (177) | 6,138 |
| | 45 | 87 | 231 | - | 363 |
| Operating Expenses: | | | | | |
| Selling, general and administrative | 31 | 50 | 124 | - | 205 |
| Other charges | - | - | - | - | - |
| Operating Income | 14 | 37 | 107 | - | 158 |
| Other (Income) Expense: | | | | | |
| Interest expense, net | 46 | 8 | 2 | - | 56 |
| Other, net | (1) | (1) | (3) | - | (5) |
| Equity in net earnings of subsidiaries | (88) | (10) | - | 98 | - |
| | (43) | (3) | (1) | 98 | 51 |
| Income before Income Taxes | 57 | 40 | 108 | (98) | 107 |
| Income Tax Expense (Benefit) | (11) | 11 | 39 | - | 39 |
| Net Income | $ 68 | $ 29 | $ 69 | $ (98) | $ 68 |

Condensed Consolidating Statement of Operations for the six months ended March 29, 2008 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| Net Sales | $ 3 | $ 7,430 | $ 6,341 | $ (396) | $ 13,378 |
| Cost of Sales | 49 | 7,262 | 5,852 | (396) | 12,767 |
| | (46) | 168 | 489 | - | 611 |
| Operating Expenses: | | | | | |
| Selling, general and administrative | 54 | 96 | 297 | - | 447 |
| Other charges | 1 | 18 | 17 | - | 36 |
| Operating Income (Loss) | (101) | 54 | 175 | - | 128 |
| Other (Income) Expense: | | | | | |
| Interest expense, net | 96 | 11 | (3) | - | 104 |
| Other, net | (12) | (5) | (3) | - | (20) |
| Equity in net earnings of subsidiaries | (149) | (26) | - | 175 | - |
| | (65) | (20) | (6) | 175 | 84 |
| Income (Loss) before Income Taxes | (36) | 74 | 181 | (175) | 44 |
| Income Tax Expense (Benefit) | (65) | 17 | 63 | - | 15 |
| Net Income | $ 29 | $ 57 | $ 118 | $ (175) | $ 29 |

Condensed Consolidating Statement of Operations for the six months ended March 31, 2007 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| Net Sales | $ 23 | $ 7,360 | $ 6,055 | $ (379) | $ 13,059 |
| Cost of Sales | (64) | 7,218 | 5,584 | (379) | 12,359 |
| | 87 | 142 | 471 | - | 700 |
| Operating Expenses: | | | | | |
| Selling, general and administrative | 54 | 89 | 252 | - | 395 |
| Other charges | 1 | 1 | - | - | 2 |
| Operating Income | 32 | 52 | 219 | - | 303 |
| Other (Income) Expense: | | | | | |
| Interest expense, net | 93 | 16 | 6 | - | 115 |
| Other, net | (1) | (20) | 16 | - | (5) |
| Equity in net earnings of subsidiaries | (164) | (17) | - | 181 | - |
| | (72) | (21) | 22 | 181 | 110 |
| Income before Income Taxes | 104 | 73 | 197 | (181) | 193 |
| Income Tax Expense (Benefit) | (21) | 20 | 69 | - | 68 |
| Net Income | $ 125 | $ 53 | $ 128 | $ (181) | $ 125 |

Condensed Consolidating Balance Sheet as of March 29, 2008 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| **Assets** | | | | | |
| Current Assets: | | | | | |
| Cash and cash equivalents | $ 3 | $ - | $ 50 | $ - | $ 53 |
| Accounts receivable, net | 1 | 419 | 1,393 | (739) | 1,074 |
| Inventories | 1 | 669 | 1,769 | - | 2,439 |
| Other current assets | 189 | 30 | 58 | (64) | 213 |
| Total Current Assets | 194 | 1,118 | 3,270 | (803) | 3,779 |
| Net Property, Plant and Equipment | 43 | 983 | 2,589 | - | 3,615 |
| Goodwill | - | 1,501 | 986 | - | 2,487 |
| Intangible Assets | - | 56 | 69 | - | 125 |
| Other Assets | 113 | 101 | 184 | (37) | 361 |
| Investment in subsidiaries | 8,374 | 1,024 | - | (9,398) | - |
| Total Assets | $ 8,724 | $ 4,783 | $ 7,098 | $ (10,238) | $ 10,367 |
| **Liabilities and Shareholders' Equity** | | | | | |
| Current Liabilities: | | | | | |
| Current debt | $ 219 | $ - | $ 46 | $ - | $ 265 |
| Trade accounts payable | 18 | 426 | 570 | - | 1,014 |
| Other current liabilities | 1,008 | 118 | 507 | (803) | 830 |
| Total Current Liabilities | 1,245 | 544 | 1,123 | (803) | 2,109 |
| Long-Term Debt | 2,436 | 249 | 4 | - | 2,689 |
| Deferred Income Taxes | - | 77 | 321 | (37) | 361 |
| Other Liabilities | 289 | 105 | 60 | - | 454 |
| Shareholders' Equity | 4,754 | 3,808 | 5,590 | (9,398) | 4,754 |
| Total Liabilities and Shareholders' Equity | $ 8,724 | $ 4,783 | $ 7,098 | $ (10,238) | $ 10,367 |

Condensed Consolidating Balance Sheet as of September 29, 2007 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| **Assets** | | | | | |
| Current Assets: | | | | | |
| Cash and cash equivalents | $ 3 | $ - | $ 39 | $ - | $ 42 |
| Accounts receivable, net | 1 | 557 | 1,461 | (773) | 1,246 |
| Inventories | - | 674 | 1,564 | - | 2,238 |
| Other current assets | 79 | 32 | 18 | (59) | 70 |
| Total Current Assets | 83 | 1,263 | 3,082 | (832) | 3,596 |
| Net Property, Plant and Equipment | 44 | 1,015 | 2,634 | - | 3,693 |
| Goodwill | - | 1,499 | 986 | - | 2,485 |
| Intangible Assets | - | 57 | 69 | - | 126 |
| Other Assets | 137 | 113 | 139 | (62) | 327 |
| Investment in subsidiaries | 8,243 | 976 | - | (9,219) | - |
| Total Assets | $ 8,507 | $ 4,923 | $ 6,910 | $ (10,113) | $ 10,227 |
| **Liabilities and Shareholders' Equity** | | | | | |
| Current Liabilities: | | | | | |
| Current debt | $ 120 | $ - | $ 17 | $ - | $ 137 |
| Trade accounts payable | 79 | 517 | 454 | - | 1,050 |
| Other current liabilities | 1,008 | 143 | 609 | (832) | 928 |
| Total Current Liabilities | 1,207 | 660 | 1,080 | (832) | 2,115 |
| Long-Term Debt | 2,355 | 255 | 32 | - | 2,642 |
| Deferred Income Taxes | - | 168 | 261 | (62) | 367 |
| Other Liabilities | 214 | 94 | 64 | - | 372 |
| Shareholders' Equity | 4,731 | 3,746 | 5,473 | (9,219) | 4,731 |
| Total Liabilities and Shareholders' Equity | $ 8,507 | $ 4,923 | $ 6,910 | $ (10,113) | $ 10,227 |

Condensed Consolidating Statement of Cash Flows for the six months ended March 29, 2008 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| Cash Provided by (Used for) Operating Activities | $ (67) | $ (65) | $ 291 | $ (15) | $ 144 |
| Cash Flows From Investing Activities: | | | | | |
| Additions to property, plant and equipment | (1) | (61) | (148) | - | (210) |
| Proceeds from sale of investment | 14 | 7 | - | - | 21 |
| Purchase of marketable securities, net | - | - | (20) | - | (20) |
| Other, net | (18) | 26 | 11 | - | 19 |
| Cash Used for Investing Activities | (5) | (28) | (157) | - | (190) |
| Cash Flows From Financing Activities: | | | | | |
| Net change in debt | 179 | (5) | (7) | - | 167 |
| Purchase of treasury shares | (16) | - | - | - | (16) |
| Dividends | (28) | - | (15) | 15 | (28) |
| Stock options exercised and other, net | (42) | (23) | (4) | - | (69) |
| Net change in intercompany balances | (21) | 121 | (100) | - | - |
| Cash Provided by (Used for) Financing Activities | 72 | 93 | (126) | 15 | 54 |
| Effect of Exchange Rate Change on Cash | - | - | 3 | - | 3 |
| Increase in Cash and Cash Equivalents | - | - | 11 | - | 11 |
| Cash and Cash Equivalents at Beginning of Year | 3 | - | 39 | - | 42 |
| Cash and Cash Equivalents at End of Period | $ 3 | $ - | $ 50 | $ - | $ 53 |

Condensed Consolidating Statement of Cash Flows for the six months ended March 31, 2007 in millions

| | TFI Parent | TFM Parent | Non-Guarantor Subsidiaries | Eliminations | Total |
|---|---|---|---|---|---|
| Cash Provided by Operating Activities | $ - | $ 88 | $ 280 | $ (25) | $ 343 |
| Cash Flows From Investing Activities: | | | | | |
| Additions to property, plant and equipment | (13) | (13) | (68) | - | (94) |
| Proceeds from sale of short-term investment | 770 | - | - | - | 770 |
| Other, net | 58 | 27 | (71) | - | 14 |
| Cash Provided by (Used for) Investing Activities | 815 | 14 | (139) | - | 690 |
| Cash Flows From Financing Activities: | | | | | |
| Net change in debt | (883) | - | (160) | - | (1,043) |
| Purchase of treasury shares | (38) | - | - | - | (38) |
| Dividends | (28) | - | (25) | 25 | (28) |
| Stock options exercised and other, net | 91 | (11) | (1) | - | 79 |
| Net change in intercompany balances | 45 | (92) | 47 | - | - |

| | | | | | |
|---|---|---|---|---|---|
| Cash Used for Financing Activities | (813) | (103) | (139) | 25 | (1,030) |
| Effect of Exchange Rate Change on Cash | - | - | 3 | - | 3 |
| Increase (Decrease) in Cash and Cash Equivalents | 2 | (1) | 5 | - | 6 |
| Cash and Cash Equivalents at Beginning of Year | 2 | 1 | 25 | - | 28 |
| Cash and Cash Equivalents at End of Period | $ 4 | $ - | $ 30 | $ - | $ 34 |

**NOTE 9: CONTINGENCIES**

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

In 2000, the Wage and Hour Division of the U.S. Department of Labor (DOL) conducted an industry-wide investigation of poultry producers, including us, to ascertain compliance with various wage and hour issues. As part of this investigation, the DOL inspected 14 of our processing facilities. On May 9, 2002, the DOL filed a civil complaint styled Elaine L. Chao, Secretary of Labor, United States Department of Labor v. Tyson Foods, Inc. against us in the U.S. District Court for the Northern District of Alabama. The plaintiffs allege in the complaint that we violated the overtime provisions of the federal Fair Labor Standards Act at our chicken-processing facility in Blountsville, Alabama. The complaint does not contain a definite statement of what acts constituted alleged violations of the statute, although the Secretary of Labor indicated in discovery the case seeks to require us to compensate all hourly chicken processing workers for pre- and post-shift clothes changing, washing and related activities and for one of two unpaid 30-minute meal periods. The Secretary of Labor seeks unspecified back wages for all employees at the Blountsville facility for a period of two years prior to the date of the filing of the complaint, and an additional amount in unspecified liquidated damages and an injunction against future violations at that facility and all other chicken processing facilities we operate. The District Court granted the Company's motion for partial summary judgment in part, ruling that the second meal period is appropriately characterized as non-compensable, and reserving the remaining issues for trial. The trial is set for November 3, 2008.

Several private lawsuits are pending against us alleging that we failed to compensate poultry plant employees for all hours worked, including overtime compensation, in violation of the Fair Labor Standards Act. These lawsuits include M.H. Fox, et al. v. Tyson Foods, Inc. (Fox), filed on June 22, 1999, in the U.S. District Court for the Northern District of Alabama, and De Asencio v. Tyson Foods, Inc. (DeAsencio), filed on August 22, 2000, in the U.S. District Court for the Eastern District of Pennsylvania. Each of these matters involves similar allegations that employees should be paid for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing, obtaining clothing and walking to and from the changing area, work areas and break areas. The plaintiffs in these lawsuits seek or have sought to act as class representatives on behalf of all current and former employees who were allegedly not paid for time worked and seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees. In Fox, the District Court denied class certification on November 16, 2006, and ordered the cases of the 10 named plaintiffs in the matter to proceed individually in the home jurisdictions of the named plaintiffs. Two of these cases (Brothers and Hatchett) were tried in November 2007 in Alabama with jury verdicts in favor of the plaintiffs. These cases are being appealed to the Eleventh Circuit Court of Appeals. The District Court recently entered judgment in the final of these cases (Fox) after the Company made an offer of judgment to Fox, thereby avoiding trial. However, the District Court must now determine the amount of attorneys' fees and costs to be awarded to Mr. Fox. In DeAsencio, plaintiffs appealed a jury verdict and final judgment entered in our favor on June 22, 2006, in the District Court. On September 7, 2007, the U.S. Court of Appeals for the Third Circuit reversed the jury verdict and remanded the case to the District Court for further proceedings. We sought rehearing en banc, which was denied by the Court of Appeals on October 5, 2007. Our petition for writ of certiorari is currently pending before the United States Supreme Court.

In addition to Fox and DeAsencio, additional private lawsuits were filed against us since the beginning of fiscal 2007 which allege we failed to compensate poultry plant employees for all hours worked, including overtime compensation, in violation of the Fair Labor Standards Act. These lawsuits are Sheila Ackles, et al. v. Tyson Foods, Inc. (N. Dist. Alabama, October 23, 2006); McCluster, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, December 11, 2006); Dobbins, et al. v. Tyson Chicken, Inc., et al. (N. Dist. Alabama, December 21, 2006); Buchanan, et al. v. Tyson Chicken, Inc., et al. and Potter, et al. v. Tyson Chicken, Inc., et al. (N. Dist. Alabama, December 22, 2006); Jones, et al. v. Tyson Foods, Inc., et al., Walton, et al. v. Tyson Foods, Inc., et al. and Williams, et al. v. Tyson Foods, Inc., et al. (S. Dist. Mississippi, February 9, 2007); Balch, et al. v. Tyson Foods, Inc. (E. Dist. Oklahoma, March 1, 2007); Adams, et al. v. Tyson Foods, Inc. (W. Dist. Arkansas, March 2, 2007); Atkins, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, March 5, 2007); and Laney, et al. v. Tyson Foods, Inc. and Williams, et al. v. Tyson Foods, Inc. (M. Dist. Georgia, May 23, 2007). Similar to Fox and DeAsencio, each of these matters involves allegations employees should be paid for the time it takes to engage in pre- and post-shift activities such as changing into and out of protective and sanitary clothing,

obtaining clothing and walking to and from the changing area, work areas and break areas. The plaintiffs in each of these lawsuits seek or have sought to act as class representatives on behalf of all current and former employees who were allegedly not paid for time worked and seek back wages, liquidated damages, pre- and post-judgment interest, and attorneys' fees. On April 6, 2007, we filed a motion for transfer of the above named actions for coordinated pretrial proceedings before the Judicial Panel on Multidistrict Litigation. The motion for transfer was granted on August 17, 2007. The cases listed above and five other cases subsequently filed involving the same allegations, including Armstrong, et al. v. Tyson Foods, Inc. (W. Dist. Tennessee, January 30, 2008); Maldonado, et al. v. Tyson Foods, Inc. (E. Dist. Tennessee, January 31, 2008); White, et al. v. Tyson Foods, Inc. (E. Dist. Texas, February 1, 2008); Meyer, et al. v. Tyson Foods, Inc. (W. Dist. Missouri, February 2, 2008); and Leak, et al. v. Tyson Foods, Inc. (W. Dist. North Carolina, February 6, 2008), were transferred to the U.S. District Court in the Middle District of Georgia, In re: Tyson Foods, Inc., Fair Labor Standards Act Litigation ("MDL Proceedings"). On January 2, 2008, the Judge in the MDL Proceedings issued a Joint Scheduling and Case Management Order. The Order grants Conditional Class Certification and calls for notice to be given to potential putative class members via a third party administrator. The potential class members will have 60 days from the date of the notice, April 18, 2008, to "opt–in" to the class. The parties will then conduct discovery for a period of 240 days at no more than eight of our facilities. We presently intend to seek decertification of the class related to each of the eight facilities.

On November 21, 2002, 10 current and former hourly employees of a TFM case ready facility in Goodlettsville, Tennessee, filed a putative class action lawsuit styled Emily D. Jordan, et al. v. IBP, inc. and Tyson Foods, Inc. in the U.S. District Court for the Middle District of Tennessee against us claiming violations of the overtime provisions of the Fair Labor Standards Act by failing to pay employees for all hours worked. The suit further alleges employees should be paid for the time it takes to collect, assemble and put on, take off and wash their health, safety and production gear at the beginning and end of their shifts and during their meal period. Finally, the suit alleges we deduct 30 minutes per day from employees' paychecks regardless of whether employees use a full 30-minute period for their meal. The plaintiffs seek a declaration that the defendants did not comply with the Fair Labor Standards Act, and an award for an unspecified amount of back pay compensation and benefits, unpaid entitlements, liquidated damages, prejudgment and post-judgment interest, attorney fees and costs. On November 17, 2003, the District Court conditionally certified a collective action based on clothes changing and washing activities and unpaid production work during meal periods, since the plant operations began in April 2001. Approximately 573 current and former employees have opted into the class. On August 20, 2007, both parties filed motions for summary judgment. The court granted in part and denied in part the parties' motions for partial summary judgment on March 13, 2008. Issues remaining for trial include whether the de minimis defense applies to compensable pre- and post-shift clothes-changing and washing activities occurring between the donning and doffing of the frock, and whether the meal period is compensable. A jury trial is set to begin on September 16, 2008.

**NOTE 10: PENSIONS AND OTHER POSTRETIREMENT BENEFITS**

Components of net periodic benefit cost for pension and other postretirement benefit plans recognized in the Consolidated Condensed Statements of Operations were as follows (in millions):

| | Pension Benefits | | Other Postretirement Benefits | |
|---|---|---|---|---|
| | Three Months Ended | | Three Months Ended | |
| | March 29, 2008 | March 31, 2007 | March 29, 2008 | March 31, 2007 |
| Service cost | $ 1 | $ 1 | $ - | $ - |
| Interest cost | 2 | 1 | 1 | 1 |
| Expected return on plan assets | (2) | (1) | - | - |
| Recognized actuarial loss | - | 1 | 1 | - |
| Net periodic benefit cost | $ 1 | $ 2 | $ 2 | $ 1 |

| | Pension Benefits | | Other Postretirement Benefits | |
|---|---|---|---|---|
| | Six Months Ended | | Six Months Ended | |
| | March 29, 2008 | March 31, 2007 | March 29, 2008 | March 31, 2007 |
| Service cost | $ 2 | $ 3 | $ - | $ - |
| Interest cost | 4 | 3 | 2 | 2 |
| Amortization of prior service benefit | - | - | - | (1) |
| Expected return on plan assets | (4) | (3) | - | - |
| Recognized actuarial loss | - | 1 | 1 | - |
| Net periodic benefit cost | $ 2 | $ 4 | $ 3 | $ 1 |

**NOTE 11: INCOME TAXES**

The effective tax rate was 32.5% and 36.4% for the second quarter of fiscal years 2008 and 2007, respectively. The effective tax rate was 35.0% for the six months of both fiscal years 2008 and 2007. The effective rate for the second quarter and six months of fiscal 2008 was impacted by such items as state income taxes, Domestic Production Deduction, general business credits, certain nondeductible items and composition of income and loss between domestic and foreign operations. On December 20, 2006, the President signed into law the Tax Relief and Health Care Act of 2006 which provided for the retroactive extension to December 31, 2007, of certain general business credits that expired on December 31, 2005. As a result, in the first quarter of fiscal 2007, we recognized $4 million of credits relating to fiscal 2006. On October 1, 2007, Mexico’s new IETU tax law was enacted and took effect on January 1, 2008. The enactment of this new law did not have a material impact on the income tax provision for the second quarter and six months of fiscal 2008.

At the beginning of fiscal 2008, we adopted FIN 48. See Note 1, “Accounting Policies” for the impact of the adoption.

At the beginning of fiscal 2008, our unrecognized tax benefits were $210 million. During the six months of fiscal 2008, the amount of unrecognized tax benefits decreased by $20 million, which was primarily related to U.S. federal income tax settlements. The amount of unrecognized tax benefits, if recognized, that would affect our effective tax rate was $61 million.

We classify interest and penalties on unrecognized tax benefits as income tax expense. At the beginning of fiscal 2008, before tax benefits, we had $70 million of accrued interest and penalties on unrecognized tax benefits.

Within the next twelve months from the date of adoption, tax audit resolutions could potentially reduce unrecognized tax benefits by approximately $50 million, either because tax positions are sustained on audit or because we agree to their disallowance. Of this amount, a payment of tax of $13 million was made during the first quarter of fiscal 2008. There were no other material changes during the six months ended fiscal 2008. As of the beginning of fiscal 2008, we are subject to income tax examinations for U.S. federal income taxes for fiscal years 1998 through 2006, and for foreign, state and local income taxes for fiscal years 2001 through 2006.

**NOTE 12: EARNINGS (LOSS) PER SHARE**

The following table sets forth the computation of basic and diluted earnings (loss) per share (in millions, except per share data):

| | Three Months Ended | | Six Months Ended | |
|---|---|---|---|---|
| | March 29, 2008 | March 31, 2007 | March 29, 2008 | March 31, 2007 |
| Numerator: | | | | |
| Net income (loss) | $ (5 ) | $ 68 | $ 29 | |