

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

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED DECEMBER 27, 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: 1-11593

THE SCOTT'S MIRACLE-GRO COMPANY

(Exact Name of Registrant as Specified in Its Charter)

OHIO
(State or other jurisdiction of
incorporation or organization)

31-1414921
(I.R.S. Employer
Identification No.)

14111 SCOTTSLAWN ROAD,
MARYSVILLE, OHIO
(Address of principal executive offices)

43041
(Zip Code)

(937) 644-0011
(Registrant's telephone number, including area code)

NO CHANGE
(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the registrant is a large accelerated filer, 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 Non-accelerated filer Smaller reporting company
(Do not check if a 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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class	Outstanding at February 3, 2009
Common Shares, \$0.01 stated value, no par value	65,548,951 common shares

THE SCOTTS MIRACLE-GRO COMPANY
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PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

THE SCOTTS MIRACLE-GRO COMPANY
CONDENSED, CONSOLIDATED STATEMENTS OF OPERATIONS
(IN MILLIONS EXCEPT PER SHARE DATA)
(UNAUDITED)

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
Net sales	\$ 318.0	\$ 308.7
Cost of sales	232.5	237.4
Cost of sales — product registration and recall matters	1.3	—
Gross profit	84.2	71.3
Operating expenses:		
Selling, general and administrative	153.2	144.3
Product registration and recall matters	6.2	—
Other income, net	(2.4)	(3.2)
Loss from operations	(72.8)	(69.8)
Interest expense	16.3	19.0
Loss before income taxes	(89.1)	(88.8)
Income tax benefit	(32.1)	(32.0)
Net loss	\$ (57.0)	\$ (56.8)
BASIC LOSS PER COMMON SHARE:		
Weighted-average common shares outstanding during the period	64.7	64.2
Basic loss per common share	\$ (0.88)	\$ (0.89)
DILUTED LOSS PER COMMON SHARE:		
Weighted-average common shares outstanding during the period	64.7	64.2
Diluted loss per common share	\$ (0.88)	\$ (0.89)
Dividends declared per common share	\$ 0.125	\$ 0.125

See notes to condensed, consolidated financial statements

THE SCOTTS MIRACLE-GRO COMPANY
CONDENSED, CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN MILLIONS)
(UNAUDITED)

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
OPERATING ACTIVITIES		
Net loss	\$ (57.0)	\$ (56.8)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	3.7	3.4
Depreciation	11.3	13.1
Amortization	3.5	4.1
Changes in assets and liabilities, net of acquired businesses:		
Accounts receivable	77.0	119.7
Inventories	(233.2)	(257.0)
Prepaid and other current assets	(9.2)	1.2
Accounts payable	68.3	29.1
Accrued liabilities	(24.8)	(38.6)
Restructuring reserves	(0.2)	(0.3)
Other non-current items	(1.0)	2.3
Other, net	(10.7)	(0.2)
Net cash used in operating activities	<u>(172.3)</u>	<u>(180.0)</u>
INVESTING ACTIVITIES		
Proceeds from the sale of property, plant and equipment	—	0.6
Investments in property, plant and equipment	(7.9)	(15.1)
Investments in intellectual property	(1.0)	—
Investments in acquired businesses, net of cash acquired	(8.7)	—
Net cash used in investing activities	<u>(17.6)</u>	<u>(14.5)</u>
FINANCING ACTIVITIES		
Borrowings under revolving and bank lines of credit	315.4	298.4
Repayments under revolving and bank lines of credit	(154.6)	(102.6)
Dividends paid	(8.9)	(8.3)
Payments on seller notes	(0.1)	(0.8)
Excess tax benefits from share-based payment arrangements	0.4	0.7
Cash received from the exercise of stock options	2.1	1.6
Net cash provided by financing activities	154.3	189.0
Effect of exchange rate changes on cash	(0.7)	2.1
Net decrease in cash	(36.3)	(3.4)
Cash and cash equivalents at beginning of period	84.7	67.9
Cash and cash equivalents at end of period	<u>\$ 48.4</u>	<u>\$ 64.5</u>
Supplemental cash flow information		
Interest paid, net of interest capitalized	(8.4)	(9.6)
Income taxes refunded	11.8	10.8

See notes to condensed, consolidated financial statements

THE SCOTTS MIRACLE-GRO COMPANY
CONDENSED, CONSOLIDATED BALANCE SHEETS
(IN MILLIONS, EXCEPT PER SHARE DATA)

	DECEMBER 27, 2008	DECEMBER 29, 2007	SEPTEMBER 30, 2008
	UNAUDITED		(SEE NOTE 1)
ASSETS			
Current assets:			
Cash and cash equivalents	\$ 48.4	\$ 64.5	\$ 84.7
Accounts receivable, less allowances of \$10.5, \$10.9 and \$10.6, respectively	279.2	269.2	259.8
Accounts receivable pledged	45.9	10.7	146.6
Inventories, net	643.4	663.9	415.9
Prepaid and other assets	149.3	126.1	137.9
Total current assets	1,166.2	1,134.4	1,044.9
Property, plant and equipment, net of accumulated depreciation of \$461.9, \$432.1 and \$460.6, respectively	338.4	366.1	344.1
Goodwill	370.5	463.0	377.7
Intangible assets, net	367.1	416.9	367.2
Other assets	20.7	28.6	22.4
Total assets	<u>\$ 2,262.9</u>	<u>\$ 2,409.0</u>	<u>\$ 2,156.3</u>
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current liabilities:			
Current portion of debt	\$ 98.1	\$ 28.1	\$ 150.0
Accounts payable	272.7	232.4	207.6
Accrued liabilities	288.9	259.2	320.5
Total current liabilities	659.7	519.7	678.1
Long-term debt	1,039.3	1,286.6	849.5
Other liabilities	195.2	184.8	192.0
Total liabilities	1,894.2	1,991.1	1,719.6
Commitments and contingencies (notes 2, 4 and 10)			
Shareholders' equity:			
Common shares and capital in excess of \$.01 stated value per share, 65.5, 64.2 and 65.2 shares issued and outstanding, respectively	460.7	478.8	472.4
Retained earnings	150.8	195.6	216.7
Treasury stock, at cost; 3.2, 3.9 and 3.4 shares, respectively	(172.9)	(212.1)	(185.3)
Accumulated other comprehensive loss	(69.9)	(44.4)	(67.1)
Total shareholders' equity	368.7	417.9	436.7
Total liabilities and shareholders' equity	<u>\$ 2,262.9</u>	<u>\$ 2,409.0</u>	<u>\$ 2,156.3</u>

See notes to condensed, consolidated financial statements

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NOTES TO CONDENSED, CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

NATURE OF OPERATIONS

The Scotts Miracle-Gro Company (“Scotts Miracle-Gro”) and its subsidiaries (collectively, the “Company”) are engaged in the manufacturing, marketing and sale of lawn and garden care products. The Company’s major customers include home centers, mass merchandisers, warehouse clubs, large hardware chains, independent hardware stores, nurseries, garden centers, food and drug stores, commercial nurseries and greenhouses and specialty crop growers. The Company’s products are sold primarily in North America and the European Union. The Company also operates the Scotts LawnService® business, which provides lawn, tree and shrub fertilization, insect control and other related services in the United States, and Smith & Hawken®, a leading brand in the outdoor living and gardening lifestyle category, with sales primarily through its own retail stores, Internet and catalog channels.

Due to the nature of the lawn and garden business, the majority of sales to customers occur in the Company’s second and third fiscal quarters. On a combined basis, net sales for the second and third fiscal quarters generally represent 70% to 75% of annual net sales.

ORGANIZATION AND BASIS OF PRESENTATION

The Company’s condensed, consolidated financial statements are unaudited; however, in the opinion of management, these financial statements are presented in accordance with accounting principles generally accepted in the United States of America (“GAAP”). The condensed, consolidated financial statements include the accounts of Scotts Miracle-Gro and all wholly-owned and majority-owned subsidiaries. All intercompany transactions and accounts have been eliminated in consolidation. The Company’s consolidation criteria are based on majority ownership (as evidenced by a majority voting interest in the entity) and an objective evaluation and determination of effective management control. Interim results reflect all normal and recurring adjustments and are not necessarily indicative of results for a full year. The interim financial statements and notes are presented as specified by Regulation S-X of the Securities and Exchange Commission, and should be read in conjunction with the consolidated financial statements and accompanying notes in Scotts Miracle-Gro’s Annual Report on Form 10-K, as amended by Form 10-K/A (Amendment No. 1), for the fiscal year ended September 30, 2008.

The Condensed, Consolidated Balance Sheet at September 30, 2008 has been derived from the audited Consolidated Balance Sheet at that date, but does not include all of the information and footnotes required by GAAP for complete financial statements.

USE OF ESTIMATES

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed, consolidated financial statements and accompanying notes. Although these estimates are based on management’s best knowledge of current events and actions the Company may undertake in the future, actual results ultimately may differ from the estimates.

REVENUE RECOGNITION

Revenue is recognized when title and risk of loss transfer, which generally occurs when products or services are received by the customer. Provisions for estimated returns and allowances are recorded at the time revenue is recognized based on historical rates and are periodically adjusted for known changes in return levels. Shipping and handling costs are included in cost of sales.

Under the terms of the Amended and Restated Exclusive Agency and Marketing Agreement (the “Marketing Agreement”) between the Company and Monsanto Company (“Monsanto”), the Company, in its role as exclusive agent performs certain functions, primarily manufacturing conversion, distribution and logistics, and selling and manufacturing support, on behalf of Monsanto in the conduct of the consumer Roundup® business. The actual costs incurred by the Company on behalf of Roundup® are recovered from Monsanto through the terms of the Marketing Agreement. The reimbursement of costs for which the Company is considered the primary obligor is included in net sales.

PROMOTIONAL ALLOWANCES

The Company promotes its branded products through cooperative advertising programs with retailers. Retailers may also be offered in-store promotional allowances and rebates based on sales volumes. Certain products are promoted with direct consumer rebate programs and special purchasing incentives. Promotion costs (including allowances and rebates) incurred during the year are expensed to interim periods in relation to revenues and are recorded as a reduction of net sales. Accruals for expected payouts under these programs are included in the “Accrued liabilities” line in the Condensed, Consolidated Balance Sheets.

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ADVERTISING

Advertising costs incurred during the year by our Global Consumer segment are expensed to interim periods in relation to revenues. All advertising costs, except for external production costs, are expensed within the fiscal year in which such costs are incurred. External production costs for advertising programs are deferred until the period in which the advertising is first aired.

Scotts LawnService® promotes its service offerings primarily through direct mail campaigns. External costs associated with these campaigns that qualify as direct response advertising costs are deferred and recognized as advertising expense in proportion to revenues over a period not beyond the end of the subsequent calendar year. Costs that do not qualify as direct response advertising costs are expensed within the fiscal year incurred on a monthly basis in proportion to net sales. The costs deferred at December 27, 2008, December 29, 2007 and September 30, 2008 were \$3.9 million, \$3.6 million and \$4.5 million, respectively.

Smith & Hawken® promotes its products primarily through catalogs. Costs related to the production, printing and distribution of catalogs are expensed over the expected sales life of the related catalog: four weeks for consumer catalogs and 52 weeks for trade catalogs. Other advertising costs, such as Internet, radio and print, are expensed as incurred. The costs deferred at December 27, 2008, December 29, 2007 and September 30, 2008 were \$0.2 million, \$0.2 million and \$0.6 million, respectively.

STOCK-BASED COMPENSATION AWARDS

The fair value of awards is expensed ratably over the vesting period, generally three years. The Company uses a binomial model to determine the fair value of its option grants.

GOODWILL AND INDEFINITE-LIVED INTANGIBLE ASSETS

In accordance with Statement of Financial Accounting Standards (“SFAS”) No. 142, “Goodwill and Other Intangible Assets” (“SFAS 142”), goodwill and intangible assets determined to have indefinite lives are not subject to amortization. Goodwill and indefinite-lived intangible assets are reviewed for impairment by applying a fair-value based test on an annual basis, scheduled for the first day of the fourth fiscal quarter, or more frequently if circumstances indicate a potential impairment. If it is determined that an impairment has occurred, an impairment loss is recognized for the amount by which the carrying amount of the asset exceeds its estimated fair value and classified as “Impairment, restructuring and other charges” in the Condensed, Consolidated Statements of Operations.

INCOME TAXES

Income tax expense was calculated assuming an effective tax rate of 36.0% for both the three months ended December 27, 2008 and December 29, 2007. The effective tax rate used for interim reporting purposes is based on management’s best estimate of factors impacting the effective tax rate for the fiscal year. Factors affecting the estimated effective tax rate include assumptions as to income by jurisdiction (domestic and foreign), the availability and utilization of tax credits and the existence of elements of income and expense that may not be taxable or deductible, as well as other items. The estimated effective tax rate is subject to revision in later interim periods and at fiscal year end as facts and circumstances change during the course of the fiscal year. There can be no assurance that the effective tax rate estimated for interim financial reporting purposes will approximate the effective tax rate determined at fiscal year end.

LOSS PER COMMON SHARE

Basic loss per common share is computed based on the weighted-average number of common shares outstanding each period. Diluted loss per common share is computed based on the weighted-average number of common shares and dilutive potential common shares (stock options, restricted stock, restricted stock units, performance shares and stock appreciation rights) outstanding each period. Because of the first quarter net losses, common stock equivalents were not included in the calculation of diluted loss per common share because to do so would have been anti-dilutive. These common stock equivalents equated to 0.7 million common shares and 1.6 million common shares for the three months ended December 27, 2008 and December 29, 2007, respectively.

RECENT ACCOUNTING PRONOUNCEMENTS

Statement of Financial Accounting Standards No. 157 — Fair Value Measurements

On October 1, 2008, the Company adopted SFAS No. 157, “Fair Value Measurements” (“SFAS 157”). SFAS 157 defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. The effect of the adoption of SFAS 157 was not material and required no adjustment to the Company’s financial position or results of operations. Refer to “NOTE 11. FAIR VALUE MEASUREMENTS” for further information regarding the effect of the adoption of SFAS 157 with respect to financial assets and liabilities. In February 2008, the Financial Accounting Standards Board (the “FASB”) issued FASB Staff Position 157-1,

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“Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13,” which removes leasing transactions accounted for under SFAS No. 13, “Accounting for Leases” and related guidance from the scope of SFAS 157. In February 2008, the FASB also issued FASB Staff Position 157-2, “Effective Date of FASB Statement No. 157” (“FSP SFAS 157-2”), which delays the effective date of SFAS 157 for all nonrecurring fair value measurements of nonfinancial assets and nonfinancial liabilities until fiscal years beginning after November 15, 2008. FSP SFAS 157-2 states that a measurement is recurring if it happens at least annually and defines nonfinancial assets and nonfinancial liabilities as all assets and liabilities other than those meeting the definition of a financial asset or financial liability in SFAS 159. The Company is completing its evaluation of the effect of SFAS 157 on nonfinancial assets and liabilities and does not expect its adoption in the first quarter of fiscal 2010 to have a material impact on the Company’s financial condition or results of operations.

Statement of Financial Accounting Standards No. 159 — The Fair Value Option for Financial Assets and Financial Liabilities

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities-including an amendment of FASB Statement No. 115” (“SFAS 159”), which allows an entity the irrevocable option to elect fair value for the initial and subsequent measurement for certain financial assets and liabilities on a contract-by-contract basis. Subsequent changes in fair value of these financial assets and liabilities would be recognized in earnings when they occur. SFAS 159 further establishes certain additional disclosure requirements. The Company adopted SFAS 159 as of October 1, 2008. The Company has not elected to measure any financial assets or liabilities at fair value which were not previously required to be measured at fair value.

Statement of Financial Accounting Standards No. 141(R) — Business Combinations

In December 2007, the FASB issued SFAS No. 141(R), “Business Combinations” (“SFAS 141(R)”), which replaces SFAS 141. The objective of SFAS 141(R) is to improve the relevance, representational faithfulness and comparability of the information that a reporting entity provides in its financial reports about a business combination and its effects. SFAS 141(R) establishes principles and requirements for how the acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141(R) applies to all transactions or other events in which an entity (the acquirer) obtains control of one or more businesses (the acquiree), including those sometimes referred to as “true mergers” or “mergers of equals” and combinations achieved without the transfer of consideration. SFAS 141(R) will be effective for the Company’s financial statements for the fiscal year beginning October 1, 2009.

Statement of Financial Accounting Standards No. 160 — Noncontrolling Interests in Consolidated 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”). The objective of SFAS 160 is to improve the relevance, comparability and transparency of the financial information that a reporting entity provides in its consolidated financial statements. SFAS 160 amends ARB No. 51 to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS 160 also changes the way the consolidated financial statements are presented, establishes a single method of accounting for changes in a parent’s ownership interest in a subsidiary that do not result in deconsolidation, requires that a parent recognize a gain or loss in net income when a subsidiary is deconsolidated and expands disclosures in the consolidated financial statements that clearly identify and distinguish between the parent’s ownership interest and the interest of the noncontrolling owners of a subsidiary. The provisions of SFAS 160 are to be applied prospectively as of the beginning of the fiscal year in which SFAS 160 is adopted, except for the presentation and disclosure requirements, which are to be applied retrospectively for all periods presented. SFAS 160 will be effective for the Company’s financial statements for the fiscal year beginning October 1, 2009. The Company is in the process of evaluating the impact that the adoption of SFAS 160 may have on its financial statements.

Statement of Financial Accounting Standards No. 161 — Disclosures about Derivative Instruments and Hedging Activities

In March 2008, the FASB issued SFAS No. 161, “Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133” (“SFAS 161”). The objective of SFAS 161 is to enhance the current disclosure framework in SFAS 133 and improve the transparency of financial reporting for derivative instruments and hedging activities. SFAS 161 requires entities to provide enhanced disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity’s financial position, financial performance and cash flows. SFAS 161 is effective for the Company’s financial statements for the fiscal quarter ending March 28, 2009. The Company is in the process of evaluating the impact that the adoption of SFAS 161 may have on its financial statement disclosures.

FASB Staff Position 142-3 — Determination of the Useful Life of Intangible Assets

In April 2008, the FASB issued FASB Staff Position 142-3, “Determination of the Useful Life of Intangible Assets” (“FSP FAS 142-3”), which amends the list of factors an entity should consider in developing renewal or extension assumptions used in determining the useful life of recognized intangible assets under SFAS 142. The new guidance applies to (1) intangible assets that are acquired individually or with a group of other assets and (2) intangible assets acquired in both business combinations and asset acquisitions. Under FSP FAS 142-3, entities estimating the useful life of a recognized intangible asset must consider their historical experience in renewing or extending similar arrangements or, in the absence of historical experience, must consider assumptions that market participants would use about renewal or extension. FSP FAS 142-3 will require certain additional disclosures beginning October 1, 2009 and prospective application to useful life estimates for intangible assets acquired after September 30, 2009. The Company is in the process of evaluating the impact that the adoption of FSP FAS 142-3 may have on its financial statements and related disclosures.

FASB Staff Position 132(R)-1 — Employers’ Disclosures About Postretirement Benefit Plan Assets

In December 2008, the FASB issued FASB Staff Position 132(R)-1, “Employers’ Disclosures About Postretirement Benefit Plan Assets” (“FSP FAS 132(R)-1”), to provide guidance on employers’ disclosures about assets of a defined benefit pension or other postretirement plan. FSP FAS 132(R)-1 requires employers to disclose information about fair value measurements of plan assets similar to SFAS 157. The objectives of the disclosures are to provide an understanding of (a) how investment allocation decisions are made, including the factors that are pertinent to an understanding of investment policies and strategies, (b) the major categories of plan assets, (c) the inputs and valuation techniques used to measure the fair value of plan assets, (d) the effect of fair value measurements using significant unobservable inputs on changes in plan assets for the period, and (e) significant concentrations of risk within plan assets. The disclosures required by FSP FAS 132(R)-1 will be effective for the Company’s financial statements for the fiscal year ending September 30, 2010. The Company is in the process of evaluating the impact that the adoption of FSP FAS 132(R)-1 may have on its financial statement disclosures.

NOTE 2. PRODUCT REGISTRATION AND RECALL MATTERS

In April 2008, the Company learned that a former associate apparently deliberately circumvented the Company’s policies and U.S. Environmental Protection Agency (“U.S. EPA”) regulations under the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended (“FIFRA”), by failing to obtain valid registrations for products and/or causing invalid product registration forms to be submitted to regulators. Since that time, the Company has been cooperating with the U.S. EPA in its civil investigation into pesticide product registration issues involving the Company and with the U.S. EPA and the U.S. Department of Justice (the “U.S. DOJ”) in a related criminal investigation. In late April of 2008, in connection with the U.S. EPA’s investigation, the Company was required to conduct a consumer-level recall of certain consumer lawn and garden products and a Scotts LawnService® product. Subsequently, the Company and the U.S. EPA agreed upon a Compliance Review Plan for conducting a comprehensive, independent review of the Company’s product registration records. Pursuant to the Compliance Review Plan, an independent third party firm, Quality Associates Incorporated (“QAI”), has been reviewing all of the Company’s U.S. pesticide product registration records, some of which are historical in nature and no longer support sales of the Company’s products. The U.S. EPA investigation and QAI review process identified several issues affecting registrations which resulted in the temporary suspension of sales and shipments of the products affected. In addition, as the QAI review process or the Company’s internal review has identified FIFRA registration issues or potential FIFRA registration issues (some of which appear unrelated to the former associate), the Company has endeavored to stop selling or distributing the affected products until the issues could be resolved with the U.S. EPA.

While QAI has completed its review of substantially all of the Company’s registrations, the registration review process has not concluded and the Company continues to provide the U.S. EPA with additional follow-up information. At the same time, the second phase of the QAI review process has commenced with a focus on reviewing advertising and related promotional support of the Company’s registered pesticide products. The Company does not expect the results of either of these processes to significantly affect its fiscal year 2009 sales.

On September 26, 2008, the Company, doing business as Scotts LawnService®, was named as a defendant in a purported class action filed in the U.S. District Court for the Eastern District of Michigan relating to certain pesticide products. In the suit, Mark Baumkel, on behalf of himself and the purported classes, seeks an unspecified amount of damages, plus costs and attorneys’ fees, for alleged claims involving breach of contract, unjust enrichment and violation of the Michigan consumer protection act. Given the preliminary stages of the proceedings, no reserves have been booked at this time, and the Company intends to vigorously contest the plaintiff’s assertions.

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In addition, in fiscal 2008, the Company conducted a voluntary recall of most of its wild bird food products due to a formulation issue. The wild bird food products had been treated with pest control additives to avoid insect infestation, especially at retail stores. While the pest control additives had been labeled for use on certain stored grains that can be processed for human and/or animal consumption, they were not labeled for use on wild bird food products. This voluntary recall was completed prior to the end of fiscal 2008.

As a result of these registration and recall matters, the Company has reversed sales associated with estimated returns of affected products, recorded an impairment estimate for affected inventory and recorded other registration and recall-related costs. The impact of these adjustments was a charge of \$7.6 million for the three months ended December 27, 2008. The Company currently expects total fiscal year 2009 costs related to the recalls and known registration issues to be approximately \$20 million, exclusive of potential fines, penalties and/or judgments. While the Company believes it has made substantial progress toward completing the FIFRA compliance review process, the process continues and may result in future state, federal or private rights of action with respect to additional product registration issues. Until the U.S. EPA investigation and compliance review process are complete, the Company cannot fully quantify the extent of additional issues. Furthermore, the Company may be subject to civil or criminal fines and/or penalties or private rights of action at the state and/or federal level as a result of the product registration issues. At this time, management cannot reasonably determine the scope or magnitude of possible liabilities that could result from known or potential additional product registration issues, and no reserves for these claims have been established as of December 27, 2008. However, it is possible that such fines, penalties and/or judgments could be material and have an adverse effect on the Company's financial condition, results of operations or cash flows.

The following tables summarize the impact of the product registration and recall matters on the results of operations and accrued liabilities and inventory reserves during the three months ended December 27, 2008:

	Three Months Ended December 27, 2008
	(IN MILLIONS)
Net sales — product recalls	\$ (0.3)
Cost of sales — product recalls	(0.2)
Cost of sales — inventory impairment and other	1.3
Gross Profit	(1.4)
Selling, general and administrative	6.2
Loss from operations	(7.6)
Income tax benefit	2.7
Net loss	<u>\$ (4.9)</u>

	Reserves at September 30, 2008	Additional Costs and Changes in Estimate	Reserves Used	Reserves at December 27, 2008
	(IN MILLIONS)			
Sales returns — product recalls	\$ 0.2	\$ 0.3	\$ (0.5)	\$ —
Cost of sales returns — product recalls	(0.1)	(0.2)	0.3	—
Inventory impairment	5.9	(0.3)	(0.5)	5.1
Other incremental costs of sales	3.2	1.6	(2.1)	2.7
Other general and administrative costs	4.3	6.2	(4.6)	5.9
Accrued liabilities and inventory reserves	<u>\$ 13.5</u>	<u>\$ 7.6</u>	<u>\$ (7.4)</u>	<u>\$ 13.7</u>

NOTE 3. DETAIL OF INVENTORIES, NET

Inventories, net of provisions for slow moving and obsolete inventory of \$26.5 million, \$15.9 million and \$26.2 million as of December 27, 2008, December 29, 2007 and September 30, 2008, respectively, consisted of:

	DECEMBER 27, 2008	DECEMBER 29, 2007	SEPTEMBER 30, 2008
	(IN MILLIONS)		
Finished goods	\$ 427.3	\$ 489.9	\$ 277.3
Work-in-process	51.6	38.1	29.9
Raw materials	164.5	135.9	108.7
	<u>\$ 643.4</u>	<u>\$ 663.9</u>	<u>\$ 415.9</u>

NOTE 4. MARKETING AGREEMENT

The Company is Monsanto's exclusive agent for the domestic and international marketing and distribution of consumer Roundup® herbicide products. Under the terms of the Marketing Agreement with Monsanto, the Company is entitled to receive an annual commission from Monsanto in consideration for the performance of the Company's duties as agent. The annual gross commission

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under the Marketing Agreement is calculated as a percentage of the actual earnings before interest and income taxes (EBIT) of the consumer Roundup® business, as defined in the Marketing Agreement. Each year's percentage varies in accordance with the terms of the Marketing Agreement based on the achievement of two earnings thresholds and on commission rates that vary by threshold and program year. In general, the Company begins to record a gross commission from the Marketing Agreement in its second fiscal quarter. The Marketing Agreement also requires the Company to make annual payments to Monsanto as a contribution against the overall expenses of the consumer Roundup® business. The annual contribution payment is defined in the Marketing Agreement as \$20 million.

In consideration for the rights granted to the Company under the Marketing Agreement for North America, the Company was required to pay a marketing fee of \$32 million to Monsanto. The Company has deferred this amount on the basis that the payment will provide a future benefit through commissions that will be earned under the Marketing Agreement. Based on management's current assessment of the likely term of the Marketing Agreement, the useful life over which the marketing fee is being amortized is 20 years.

Under the terms of the Marketing Agreement, the Company performs certain functions, primarily manufacturing conversion, distribution and logistics, and selling and marketing support, on behalf of Monsanto in the conduct of the consumer Roundup® business. The actual costs incurred for these activities are charged to and reimbursed by Monsanto. The Company records costs incurred under the Marketing Agreement for which the Company is the primary obligor on a gross basis, recognizing such costs in "Cost of sales" and the reimbursement of these costs in "Net sales," with no effect on gross profit or net income. The related net sales and cost of sales were \$15.6 million and \$12.5 million for the three months ended December 27, 2008 and December 29, 2007, respectively.

The elements of the net commission earned under the Marketing Agreement and included in "Net sales" are as follows:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
	(IN MILLIONS)	
Gross commission	\$ —	\$ —
Contribution expenses	(5.0)	(5.0)
Amortization of marketing fee	(0.2)	(0.2)
Net commission expense	(5.2)	(5.2)
Reimbursements associated with Marketing Agreement	15.6	12.5
Total net sales associated with Marketing Agreement	\$ 10.4	\$ 7.3

The Marketing Agreement has no definite term except as it relates to the European Union countries (the "EU term"). The EU term had previously been extended through September 30, 2008 and, on March 28, 2008, the parties agreed to further extend the EU term through September 30, 2011, with up to two additional automatic renewal periods of two years each, subject to non-renewal only upon the occurrence of certain performance defaults.

The Marketing Agreement provides Monsanto with the right to terminate the Marketing Agreement upon an event of default (as defined in the Marketing Agreement) by the Company, a change in control of Monsanto or the sale of the consumer Roundup® business. The Marketing Agreement provides the Company with the right to terminate the Marketing Agreement in certain circumstances, including an event of default by Monsanto or the sale of the consumer Roundup® business. Unless Monsanto terminates the Marketing Agreement due to an event of default by the Company, Monsanto is required to pay a termination fee to the Company that varies by program year. The termination fee is calculated as a percentage of the value of the Roundup® business exceeding a certain threshold, but in no event will the termination fee be less than \$16 million. If Monsanto were to terminate the Marketing Agreement due to an event of default by the Company, however, the Company would not be entitled to any termination fee, and the Company would lose all, or a substantial portion, of the significant source of earnings and overhead expense absorption the Marketing Agreement provides. Monsanto may also be able to terminate the Marketing Agreement within a given region, including North America, without paying a termination fee if unit volume sales to consumers in that region decline: (1) over a cumulative three-fiscal-year period; or (2) by more than 5% for each of two consecutive years.

NOTE 5. DEBT

The components of long-term debt as of December 27, 2008, December 29, 2007 and September 30, 2008 were as follows:

	<u>DECEMBER 27, 2008</u>	<u>DECEMBER 29, 2007</u> (IN MILLIONS)	<u>SEPTEMBER 30, 2008</u>
Credit Facilities:			
Revolving loans	\$ 565.7	\$ 726.6	\$ 375.8
Term loans	540.4	558.6	540.4
Master Accounts Receivable Purchase Agreement	10.0	2.3	62.1
Notes due to sellers	12.7	14.3	12.8
Foreign bank borrowings and term loans	1.0	3.5	0.7
Other	7.6	9.4	7.7
	<u>1,137.4</u>	<u>1,314.7</u>	<u>999.5</u>
Less current portions	98.1	28.1	150.0
	<u>\$ 1,039.3</u>	<u>\$ 1,286.6</u>	<u>\$ 849.5</u>

Scotts Miracle-Gro and certain of its subsidiaries have entered into the following loan facilities totaling up to \$2.15 billion in the aggregate: (a) a senior secured five-year term loan in the principal amount of \$560 million and (b) a senior secured five-year revolving loan facility in the aggregate principal amount of up to \$1.59 billion. Under the terms of the loan facilities, the Company may request an additional \$200 million in revolving credit and/or term credit commitments, subject to approval from the lenders. Borrowings may be made in various currencies including U.S. dollars, Euros, British pounds sterling, Australian dollars and Canadian dollars. The \$2.15 billion senior secured credit facilities replaced the Company's former \$1.05 billion senior credit facility. Amortization payments on the term loan portion of the credit facilities began on September 30, 2007 and will continue quarterly through 2012. As of December 27, 2008, the cumulative total amortization payments on the term loan were \$19.6 million, reducing the balance of our term loans and effectively reducing the size of the credit facilities.

As of December 27, 2008, there was \$993.8 million of availability under the revolving loan facility, including letters of credit. Under the revolving loan facility, the Company has the ability to issue letter of credit commitments up to \$65 million. At December 27, 2008, the Company had letters of credit in the amount of \$30.5 million outstanding.

At December 27, 2008, the Company had outstanding interest rate swaps with major financial institutions that effectively converted a portion of variable-rate debt denominated in U.S. dollars to a fixed rate. The swap agreements have a total notional amount of \$600 million. The term, expiration date and rates of these swaps are as follows:

<u>NOTIONAL AMOUNT (IN MILLIONS)</u>	<u>TERM</u>	<u>EXPIRATION DATE</u>	<u>FIXED RATE</u>
\$ 200	2 years	3/31/2009	4.90%
200	3 years	3/30/2010	4.87%
200	5 years	2/14/2012	5.20%

Master Accounts Receivable Purchase Agreement

On April 11, 2007, the Company entered into a one-year Master Accounts Receivable Purchase Agreement (the "Original MARP Agreement"). On April 9, 2008, the Company terminated the Original MARP Agreement and entered into a new Master Accounts Receivable Purchase Agreement (the "New MARP Agreement") with a termination date of April 8, 2009, or such later date as may be extended by mutual agreement of the Company and its lenders. The terms of the New MARP Agreement are substantially the same as the Original MARP Agreement. The New MARP Agreement provides for the discounted sale, on a revolving basis, of accounts receivable generated by specified account debtors, with seasonally adjusted monthly aggregate limits ranging from \$10 million to \$300 million. The New MARP Agreement also provides for specified account debtor sublimit amounts, which provide limits on the amount of receivables owed by individual account debtors that can be sold to the banks.

The caption "Accounts receivable pledged" on the accompanying Condensed, Consolidated Balance Sheets reflecting the amounts of \$45.9 million, \$10.7 million and \$146.6 million as of December 27, 2008, December 29, 2007 and September 30, 2008, respectively, represents the pool of receivables that have been designated as "sold" and serve as collateral for short-term debt in the amount of \$10 million, \$2.3 million and \$62.1 million, as of those dates, respectively.

The Company was in compliance with the terms of all borrowing agreements at December 27, 2008.

NOTE 6. COMPREHENSIVE INCOME

The components of other comprehensive income (expense) and total comprehensive loss for the three months ended December 27, 2008 and December 29, 2007 were as follows:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
	(IN MILLIONS)	
Net loss	\$ (57.0)	\$ (56.8)
Other comprehensive income (expense):		
Change in valuation of derivative instruments	(18.6)	(5.0)
Change in pension and other postretirement liabilities	6.4	—
Foreign currency translation adjustments	9.4	2.6
Comprehensive loss	<u>\$ (59.8)</u>	<u>\$ (59.2)</u>

NOTE 7. RETIREMENT AND RETIREE MEDICAL PLANS COST INFORMATION

The following summarizes the net periodic benefit cost for the various retirement and retiree medical plans sponsored by the Company:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
	(IN MILLIONS)	
Frozen defined benefit plans	\$0.9	\$0.1
International benefit plans	1.8	1.2
Retiree medical plan	0.5	0.6

NOTE 8. STOCK-BASED COMPENSATION AWARDS

The following is a recap of the share-based awards granted during the periods indicated:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
Options	686,100	873,700
Performance shares	—	40,000
Restricted stock	240,400	147,000
Restricted stock units (including deferred stock units)	190,330	—
Total share-based awards	<u>1,116,830</u>	<u>1,060,700</u>
Aggregate fair value at grant dates (in millions)	\$ 15.0	\$ 18.3

As of December 27, 2008, Scotts Miracle-Gro had approximately 1.4 million common shares not subject to outstanding awards and available to underlie the grant of new share-based awards.

Total share-based compensation and the tax benefit recognized in compensation expense were as follows for the periods indicated (in millions):

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
Share-based compensation	\$3.7	\$3.4
Tax benefit recognized	1.3	1.2

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[Stock Options/Stock Appreciation Rights](#)

Aggregate stock option and stock appreciation right (“SAR”) award activity consisted of the following (options/SARs in millions):

	THREE MONTHS ENDED			
	DECEMBER 27, 2008		DECEMBER 29, 2007	
	No. of Options/SARs	WTD. Avg. Exercise Price	No. of Options/SARs	WTD. Avg. Exercise Price
Balance beginning of fiscal year	5.8	\$29.01	5.8	\$26.63
Granted	0.7	\$21.65	0.9	\$38.67
Exercised	(0.1)	\$16.31	(0.1)	\$16.35
Forfeited	(0.2)	\$36.53	(0.1)	\$36.27
Ending balance	<u>6.2</u>	<u>\$25.91</u>	<u>6.5</u>	<u>\$28.31</u>
Exercisable	3.9	\$25.21	5.1	\$27.79

The intrinsic value of the stock option and SAR awards outstanding and exercisable were as follows for the dates indicated (in millions):

	DECEMBER 27, 2008	DECEMBER 29, 2007
Outstanding	\$37.9	\$60.8
Exercisable	30.0	50.3

The grant date fair value of each award has been estimated using a binomial model and the assumptions in the following table. Expected market price volatility is based on implied volatilities from traded options on Scotts Miracle-Gro’s common shares and historical volatility specific to the common shares. Historical data, including demographic factors impacting historical exercise behavior, is used to estimate stock option exercise and employee termination within the valuation model. The risk-free interest rate for periods within the contractual life (normally ten years) of the stock option is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life of stock options is based on historical experience and expectations for grants outstanding.

The weighted average assumptions for those awards granted during the three months ended December 27, 2008, were as follows:

Expected market price volatility	45.3%
Risk-free interest rate	3.0%
Expected dividend yield	2.3%
Expected life of stock options in years	5.93
Estimated weighted-average fair value per share of stock option	\$ 7.85

[Restricted Stock](#)

Aggregate restricted stock award activity for the period was as follows:

	No. of Shares	WTD. Avg. Grant Date Fair Value per Share
Awards outstanding at September 30, 2008	381,565	\$ 42.65
Granted	240,400	21.85
Vested	(90,038)	23.33
Forfeited	(12,462)	43.31
Awards outstanding at December 27, 2008	<u>519,465</u>	<u>\$ 36.36</u>

[Restricted Stock Units \(including Deferred Stock Units\)](#)

Aggregate restricted stock unit award activity for the period was as follows:

	No. of Shares	WTD. Avg. Grant Date Fair Value per Share
Awards outstanding at September 30, 2008	30,271	\$ 38.78
Granted	190,330	22.77
Vested	—	—
Forfeited	—	—
Awards outstanding at December 27, 2008	<u>220,601</u>	<u>\$ 24.97</u>

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As of December 27, 2008, total unrecognized compensation cost related to non-vested share-based awards amounted to \$25.5 million. This cost is expected to be recognized over a weighted-average period of 2.2 years. Unrecognized compensation cost is amortized by grant using a straight-line method over the vesting period, with the amortization expense classified as a component of "Selling, general and administrative" expense within the Condensed, Consolidated Statements of Operations.

During the three months ended December 27, 2008, the total intrinsic value of stock options exercised was \$3.8 million and the total fair value of restricted stock vested was \$2.1 million. Cash received from the exercise of stock options during the three months ended December 27, 2008 was \$2.1 million.

NOTE 9. INCOME TAXES

Effective October 1, 2007, the beginning of its 2008 fiscal year, the Company adopted FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an interpretation of FASB Statement No. 109" ("FIN 48"), resulting in a decrease to retained earnings of \$0.4 million. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in the financial statements in accordance with SFAS No. 109, "Accounting for Income Taxes." This interpretation provides that a tax benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits. The amount recognized is measured as the largest amount of tax benefit that is greater than 50% likely of being realized upon settlement. FIN 48 also provides guidance on measurement, derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

The balance of unrecognized tax benefits and the amount of related interest and penalties were as follows as of December 27, 2008 and September 30, 2008:

	DECEMBER 27, 2008	SEPTEMBER 30, 2008
	(IN MILLIONS)	
Unrecognized tax benefits	\$8.0	\$7.2
Portion that, if recognized, would impact the effective tax rate	7.4	6.5
Accrued penalties on unrecognized tax benefits	0.6	0.6
Accrued interest on unrecognized tax benefits	1.3	1.2

Scotts Miracle-Gro or one of its subsidiaries files income tax returns in the U.S. federal jurisdiction, and various state, local and foreign jurisdictions. With few exceptions, the Company is no longer subject to examinations by these tax authorities for fiscal years 2004 and prior. The Company is currently under examination by certain foreign and U.S. state and local tax authorities. With regard to the foreign audits, the tax periods under investigation are limited to fiscal years 2004 through 2007. With regard to the U.S. state and local audits, the tax periods under investigation are limited to fiscal years 2002 through 2006. In addition to the aforementioned audits, certain other tax deficiency issues and refund claims for previous years remain unresolved.

The Company currently anticipates that few of its open and active audits will be resolved in the next 12 months. The Company is unable to make a reasonable estimate as to when or if cash settlements with taxing authorities may occur. Although audit outcomes and the timing of audit payments are subject to significant uncertainty, the Company does not anticipate that the resolution of these tax matters or any events related thereto will result in a material change to its consolidated financial position or results of operations.

NOTE 10. CONTINGENCIES

Management regularly evaluates the Company's contingencies, including various lawsuits and claims which arise in the normal course of business, product and general liabilities, workers' compensation, property losses and other fiduciary liabilities for which the Company is self-insured or retains a high exposure limit. Self-insurance reserves are established based on actuarial loss estimates for specific individual claims plus actuarially estimated amounts for incurred but not reported claims and adverse development factors for existing claims. Legal costs incurred in connection with the resolution of claims, lawsuits and other contingencies generally are expensed as incurred. In the opinion of management, its assessment of contingencies is reasonable and related reserves, in the aggregate, are adequate; however, there can be no assurance that future quarterly or annual operating results will not be materially affected by final resolution of these matters. The following are the more significant of the Company's identified contingencies.

FIFRA Compliance and the Corresponding Governmental Investigation

The Company's products that contain pesticides are subject to FIFRA. In April 2008, the Company became aware that a former associate apparently deliberately circumvented the Company's policies and U.S. EPA regulations under FIFRA by failing to obtain valid registrations for products and/or causing invalid product registration forms to be submitted to regulators. Since that time, the Company has been cooperating with the U.S. EPA in its civil investigation into product registration issues involving the Company and with the U.S. EPA and the U.S. DOJ in a related criminal investigation. In late April of 2008, in connection with the U.S. EPA's investigation, the Company was required to conduct a consumer-level recall of certain consumer lawn and garden products and a Scotts LawnService® product. Subsequently, the Company and the U.S. EPA agreed upon a Compliance Review Plan for conducting a comprehensive, independent review of the Company's product registration records. Pursuant to the Compliance Review Plan, an independent third-party firm, QAI, has been reviewing all of the Company's U.S. pesticide product registration records, some of which are historical in nature and no longer support sales of the Company's products. The U.S. EPA investigation and QAI review process identified several issues affecting registrations which resulted in the temporary suspension of sales and shipments of the products affected. In addition, as the QAI review process or the Company's internal review has identified FIFRA registration issues or potential FIFRA registration issues (some of which appear unrelated to the former associate), the Company has endeavored to stop selling or distributing the affected products until the issues could be resolved with the U.S. EPA.

While QAI has completed its review of substantially all of the Company's registrations, the registration review process has not concluded and the Company continues to provide the U.S. EPA with additional follow-up information. At the same time, the second phase of the QAI review process has commenced with a focus on reviewing advertising and related promotional support of the Company's registered pesticide products. The Company does not expect the results of either of these processes to significantly affect its fiscal year 2009 sales.

On September 26, 2008, the Company, doing business as Scotts LawnService®, was named as a defendant in a purported class action filed in the U.S. District Court for the Eastern District of Michigan relating to certain pesticide products. In the suit, Mark Baumkel, on behalf of himself and the purported classes, seeks an unspecified amount of damages, plus costs and attorneys' fees, for alleged claims involving breach of contract, unjust enrichment and violation of the Michigan consumer protection act. Given the preliminary stages of the proceedings, no reserves have been booked at this time, and the Company intends to vigorously contest the plaintiff's assertions.

The U.S. EPA investigation or the compliance review process may result in future state or federal action or private rights of action with respect to additional product registration issues. Until the U.S. EPA investigation and compliance review process are complete, the Company cannot fully quantify the extent of additional issues. The Company currently expects total fiscal year 2009 costs related to the recalls and known registration issues to be approximately \$20 million, exclusive of potential fines, penalties and/or judgments. No reserves have been established with respect to any potential fines, penalties and/or judgments at the state and/or federal level related to the product registration issues, as the scope and magnitude of such amounts are not currently estimable. However, it is possible that such fines, penalties and/or judgments could be material and have an adverse effect on the Company's financial condition, results of operations or cash flows.

Other Regulatory Matters

In 1997, the Ohio Environmental Protection Agency initiated an enforcement action against the Company with respect to alleged surface water violations and inadequate treatment capabilities at its Marysville, Ohio facility, seeking corrective action under the federal Resource Conservation and Recovery Act. The action related to discharges from on-site waste water treatment and several discontinued on-site disposal areas. Pursuant to a Consent Order entered by the Union County Common Pleas Court in 2002, the Company is actively engaged in restoring the site to eliminate exposure to waste materials from the discontinued on-site disposal areas.

At December 27, 2008, \$3.4 million was accrued for non-FIFRA compliance-related environmental matters in the "Other liabilities" line in the Condensed, Consolidated Balance Sheets. The amounts accrued are believed to be adequate to cover such known environmental exposures based on current facts and estimates of likely outcomes. However, if facts and circumstances change significantly, they could result in a material adverse effect on the Company's results of operations, financial condition or cash flows.

U.S. Horticultural Supply, Inc. (F/K/A E.C. Geiger, Inc.)

On November 5, 2004, U.S. Horticultural Supply, Inc. ("Geiger") filed suit against the Company in the U.S. District Court for the Eastern District of Pennsylvania. The complaint alleged that the Company conspired with another distributor, Griffin Greenhouse Supplies, Inc., to restrain trade in the horticultural products market, in violation of Section 1 of the Sherman Antitrust Act. Geiger's damages expert quantified Geiger's alleged damages at approximately \$3.3 million, which could have been trebled under antitrust laws. Geiger also sought recovery of attorneys' fees and costs. On January 13, 2009, the U.S. District Court granted the Company's motion for summary judgment and entered judgment for the Company. Geiger has appealed the ruling to the U.S. Court of Appeals for the Third Circuit.

The Company continues to pursue the collection of funds owed to the Company by Geiger as confirmed by the Company's April 25, 2005 judgment against Geiger.

Other

The Company has been named as a defendant in a number of cases alleging injuries that the lawsuits claim resulted from exposure to asbestos-containing products, apparently based on the Company's historic use of vermiculite in certain of its products. The complaints in these cases are not specific about the plaintiffs' contacts with the Company or its products. The Company in each case is one of numerous defendants and none of the claims seek damages from the Company alone. The Company believes that the claims against it are without merit and is vigorously defending against them. It is not currently possible to reasonably estimate a probable loss, if any, associated with these cases. The Company is reviewing agreements and policies that may provide insurance coverage or indemnity as to these claims and is pursuing coverage under some of these agreements and policies, although there can be no assurance of the results of these efforts. There can be no assurance that these cases, whether as a result of adverse outcomes or as a result of significant defense costs, will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

On April 27, 2007, the Company received a proposed Order On Consent from the New York State Department of Environmental Conservation (the "Proposed Order") alleging that, during the calendar year 2003, the Company and James Hagedorn, individually and as Chairman of the Board and Chief Executive Officer of the Company, unlawfully donated to a Port Washington, New York youth sports organization forty bags of Scotts® LawnPro Annual Program Step 3 Insect Control Plus Fertilizer which, while federally registered, was allegedly not registered in the state of New York. The Proposed Order requests penalties totaling \$695,000. The Company has made its position clear to the New York State Department of Environmental Conservation and is awaiting a response.

The Company is involved in other lawsuits and claims which arise in the normal course of business. These claims individually and in the aggregate are not expected to result in a material adverse effect on the Company's results of operations, financial condition or cash flows.

NOTE 11. FAIR VALUE MEASUREMENTS

As disclosed in "NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES," the Company adopted SFAS 157, effective October 1, 2008, with respect to the fair value measurement and disclosure of financial assets and liabilities. SFAS 157 defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. SFAS 157 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or the most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. SFAS 157 establishes a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. The hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

Level 1 — Quoted prices in active markets for identical assets or liabilities.

Level 2 — Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

The following describes the valuation methodologies used for financial assets and liabilities measured at fair value, as well as the general classification within the valuation hierarchy.

Derivatives

Derivatives consist of foreign currency, interest rate and commodity derivative instruments. The Company uses foreign currency swap contracts to manage the exchange rate risk associated with intercompany loans with foreign subsidiaries that are denominated in U.S. dollars. These contracts are valued using observable forward rates in commonly quoted intervals for the full term of the contracts.

Interest rate derivatives consist of interest rate swaps. The Company enters into interest rate swap agreements as a means to hedge its variable interest rate exposure on debt instruments. These interest rate derivatives are valued using observable benchmark rates at commonly quoted intervals for the full term of the swaps.

The Company has hedging arrangements designed to fix the price of a portion of its urea needs. The objective of the hedges is to mitigate the earnings and cash flow volatility attributable to the risk of changing prices. These contracts are measured using observable commodity exchange prices in active markets.

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These derivative instruments are classified within Level 2 of the valuation hierarchy and are included within other noncurrent assets and other noncurrent liabilities in our Condensed, Consolidated Balance Sheets.

Other

Other financial assets and liabilities consist of investment securities in non-qualified retirement plan assets. These securities are valued using observable market prices in active markets. These investment securities, and the related liabilities, are classified within Level 1 of the valuation hierarchy and are included within other noncurrent assets and other noncurrent liabilities in our Condensed, Consolidated Balance Sheets.

The following table presents the Company's financial assets and liabilities measured at fair value on a recurring basis at December 27, 2008 (in millions):

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)	Total
Assets				
Derivatives				
Foreign currency swap agreements	\$ —	\$ 1.0	\$ —	\$ 1.0
Other	5.2	—	—	5.2
Total	<u>\$ 5.2</u>	<u>\$ 1.0</u>	<u>\$ —</u>	<u>\$ 6.2</u>
Liabilities				
Derivatives				
Interest rate swap agreements	\$ —	\$ (33.1)	\$ —	\$ (33.1)
Foreign currency swap agreements	—	(6.6)	—	(6.6)
Commodity hedging instruments	—	(14.8)	—	(14.8)
Other	(5.2)	—	—	(5.2)
Total	<u>\$ (5.2)</u>	<u>\$ (54.5)</u>	<u>\$ —</u>	<u>\$ (59.7)</u>

NOTE 12. ACQUISITIONS

On October 1, 2008, the Company completed its acquisition of Humax Horticulture Limited ("Humax"), a privately-owned growing media company in the United Kingdom. Humax services both consumer and professional customers.

Preliminary purchase accounting allocations have been recorded for Humax, including the allocation of the purchase price to assets acquired and liabilities assumed, based on estimated fair values at the date of acquisition. The Company expects to finalize accounting for the acquisition prior to the end of fiscal year 2009.

Pro forma net sales, net loss, and net loss per common share for the three months ended December 29, 2007 would not have been significantly different had the acquisition of Humax occurred as of October 1, 2007.

NOTE 13. SEGMENT INFORMATION

The Company's operations are divided into the following reportable segments — Global Consumer, Global Professional, Scotts LawnService® and Corporate & Other. This division of reportable segments is consistent with how the segments report to and are managed by senior management of the Company.

The Global Consumer segment consists of the North American Consumer and International Consumer business groups. The business groups comprising this segment manufacture, market and sell dry, granular slow-release lawn fertilizers, combination lawn fertilizer and control products, grass seed, spreaders, water-soluble, liquid and continuous release garden and indoor plant foods, plant care products, potting, garden and lawn soils, mulches and other growing media products and pesticide products. Products are marketed to mass merchandisers, home centers, large hardware chains, warehouse clubs, distributors, garden centers and grocers in the United States, Canada and Europe.

The Global Professional segment is focused on a full line of horticultural products including controlled-release and water-soluble fertilizers and plant protection products, grass seed products, spreaders and customer application services. Products are sold to commercial nurseries and greenhouses and specialty crop growers, primarily in North America and Europe. Our consumer businesses in Australia and Latin America are also part of the Global Professional segment.

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The Scotts LawnService® segment provides lawn fertilization, disease and insect control and other related services such as core aeration and tree and shrub fertilization primarily to residential consumers through company-owned branches and franchises in the United States. In our larger branches, an exterior barrier pest control service is also offered.

The Corporate & Other segment consists of the Smith & Hawken® business and corporate general and administrative expenses.

The following table presents segment financial information in accordance with SFAS No. 131, “Disclosures about Segments of an Enterprise and Related Information” (“SFAS 131”). Pursuant to SFAS 131, the presentation of the segment financial information is consistent with the basis used by management (i.e., certain costs not allocated to business segments for internal management reporting purposes are not allocated for purposes of this presentation).

	THREE MONTHS ENDED		
	DECEMBER 27, 2008	DECEMBER 29, 2007	
	(IN MILLIONS)		
Net sales:			
Global Consumer	\$ 182.3	\$ 166.9	
Global Professional	65.5	62.4	
Scotts LawnService®	38.8	38.3	
Corporate & Other	31.9	41.3	
Segment total	318.5	308.9	
Roundup® amortization	(0.2)	(0.2)	
Product registration and recall matters-returns	(0.3)	—	
Consolidated	<u>\$ 318.0</u>	<u>\$ 308.7</u>	
Operating income (loss):			
Global Consumer	\$ (35.6)	\$ (38.0)	
Global Professional	13.9	6.4	
Scotts LawnService®	(7.8)	(11.5)	
Corporate & Other	(32.2)	(22.6)	
Segment total	(61.7)	(65.7)	
Roundup® amortization	(0.2)	(0.2)	
Other amortization	(3.3)	(3.9)	
Product registration and recall matters	(7.6)	—	
Consolidated	<u>\$ (72.8)</u>	<u>\$ (69.8)</u>	
	<u>DECEMBER 27, 2008</u>	<u>DECEMBER 29, 2007</u>	<u>SEPTEMBER 30, 2008</u>
	(IN MILLIONS)		
Total assets:			
Global Consumer	\$ 1,595.0	\$ 1,694.0	\$ 1,483.8
Global Professional	302.8	327.8	289.9
Scotts LawnService®	163.3	167.6	186.5
Corporate & Other	201.8	219.6	196.1
Consolidated	<u>\$ 2,262.9</u>	<u>\$ 2,409.0</u>	<u>\$ 2,156.3</u>

Segment operating income (loss) represents earnings before amortization of intangible assets, interest and taxes, since this is the measure of profitability used by management. Accordingly, the Corporate & Other operating loss for the three months ended December 27, 2008 and December 29, 2007 includes unallocated corporate general and administrative expenses and certain other income/expense items not allocated to the business segments.

Total assets reported for the Company’s operating segments include the intangible assets associated with the acquired businesses within those segments. Corporate & Other assets primarily include deferred financing and debt issuance costs, corporate intangible assets, deferred tax assets and Smith & Hawken® assets.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

Management's Discussion and Analysis ("MD&A") is divided into the following sections:

- Executive summary
- Results of operations
- Segment results
- Liquidity and capital resources
- Regulatory matters
- Critical accounting policies and estimates

EXECUTIVE SUMMARY

We are dedicated to delivering strong, consistent financial results and outstanding shareholder returns by providing products of superior quality and value in order to enhance consumers' outdoor living environments. We are a leading manufacturer and marketer of consumer branded products for lawn and garden care and professional horticulture in North America and Europe. We are Monsanto's exclusive agent for the marketing and distribution of consumer Roundup® non-selective herbicide products within the United States and other contractually specified countries. We have a presence in similar consumer branded and professional horticulture products in Australia, the Far East, Latin America and South America. In the United States, we operate Scotts LawnService®, the second largest residential lawn care service business, and Smith & Hawken®, a leading brand in the outdoor living and garden lifestyle category. Our operations are divided into the following reportable segments: Global Consumer, Global Professional, Scotts LawnService® and Corporate & Other. The Corporate & Other segment consists of the Smith & Hawken® business and corporate general and administrative expenses.

As a leading consumer branded lawn and garden company, our marketing efforts are largely focused on building brand and product level awareness to inspire consumers and create retail demand. We have successfully applied this consumer marketing focus for a number of years, consistently investing approximately 5% of our annual net sales in advertising to support and promote our products and brands. We continually explore new and innovative ways to communicate with consumers. We believe that we receive a significant return on these marketing expenditures and anticipate a similar level of advertising and marketing investments in the future, with the continuing objective of driving category growth and increasing market share.

Our sales are susceptible to global weather conditions. For instance, periods of wet weather can adversely impact sales of certain products, while increasing demand for other products. We believe that our diversified product line provides some mitigation to this risk. We also believe that our broad geographic diversification further reduces this risk.

	Percent of Net Sales by Quarter		
	2008	2007	2006
First Quarter	10.4%	9.5%	9.3%
Second Quarter	32.1%	34.6%	33.6%
Third Quarter	39.3%	38.2%	38.9%
Fourth Quarter	18.2%	17.7%	18.2%

Due to the nature of our lawn and garden business, significant portions of our products ship to our retail customers during the second and third fiscal quarters. Our annual sales are further concentrated in the second and third fiscal quarters by retailers who increasingly rely on our ability to deliver products "in season" when consumers buy our products, thereby reducing their inventories.

Management focuses on a variety of key indicators and operating metrics to monitor the health and performance of our business. These metrics include consumer purchases (point-of-sale data), market share, net sales (including unit volume, pricing, product mix and foreign exchange movements), organic sales growth (net sales growth excluding the impact of acquisitions, divestitures and foreign exchange movements), gross profit margins, income from operations, net income and earnings per share. To the extent applicable, these measures are evaluated with and without impairment, restructuring and other charges, which management believes are not indicative of the ongoing earnings capabilities of our businesses. We also focus on measures to optimize cash flow and return on invested capital, including the management of working capital and capital expenditures.

Product Registration and Recall Matters

In April 2008, we learned that a former associate apparently deliberately circumvented our policies and U.S. Environmental Protection Agency (“U.S. EPA”) regulations under the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended (“FIFRA”), by failing to obtain valid registrations for products and/or causing invalid product registration forms to be submitted to regulators. Since that time, we have been cooperating with the U.S. EPA in its civil investigation into pesticide product registration issues involving the Company and with the U.S. EPA and the U.S. Department of Justice (the “U.S. DOJ”) in a related criminal investigation. In late April of 2008, in connection with the U.S. EPA’s investigation, we were required to conduct a consumer-level recall of certain consumer lawn and garden products and a Scotts LawnService® product. Subsequently, we agreed with the U.S. EPA on a Compliance Review Plan for conducting a comprehensive, independent review of our product registration records. Pursuant to the Compliance Review Plan, an independent third-party firm, Quality Associates Incorporated (“QAI”), has been reviewing all of our U.S. pesticide product registration records, some of which are historical in nature and no longer support sales of our products. The U.S. EPA investigation and QAI review process identified several issues affecting registrations which resulted in the temporary suspension of sales and shipments of the products affected. In addition, as the QAI review process or our internal review has identified FIFRA registration issues or potential FIFRA registration issues (some of which appear unrelated to the former associate), we have endeavored to stop selling or distributing the affected products until the issues could be resolved with the U.S. EPA.

While QAI has completed its review of substantially all of our registrations, the registration review process has not concluded and we continue to provide the U.S. EPA with additional follow-up information. At the same time, the second phase of the QAI review process has commenced with a focus on reviewing advertising and related promotional support of our registered pesticide products. We do not expect the results of either of these processes to significantly affect our fiscal year 2009 sales.

While we believe we have made substantial progress toward completing the FIFRA compliance review process, the process continues and may result in future state, federal or private rights of action with respect to additional product registration issues. Until the U.S. EPA investigation and compliance review process are complete, we cannot fully quantify the extent of additional issues. Furthermore, we may be subject to civil or criminal fines and/or penalties or private rights of action at the state and/or federal level as a result of the product registration issues. At this time, we cannot reasonably determine the scope or magnitude of possible liabilities that could result from known or potential additional product registration issues, and no reserves for these claims have been established as of December 27, 2008. However, it is possible that such fines, penalties and/or judgments could be material and have an adverse effect on our financial condition, results of operations or cash flows.

On September 26, 2008, the Company, doing business as Scotts LawnService®, was named as a defendant in a purported class action filed in the U.S. District Court for the Eastern District of Michigan relating to certain pesticide products. In the suit, Mark Baumkel, on behalf of himself and the purported classes, seeks an unspecified amount of damages, plus costs and attorneys’ fees, for alleged claims involving breach of contract, unjust enrichment and violation of the Michigan consumer protection act. Given the preliminary stages of the proceedings, no reserves have been booked at this time, and we intend to vigorously contest the plaintiff’s assertions.

In addition, in fiscal 2008 we conducted a voluntary recall of most of our wild bird food products due to a formulation issue. The wild bird food products had been treated with pest control additives to avoid insect infestation, especially at retail stores. While the pest control additives had been labeled for use on certain stored grains that can be processed for human and/or animal consumption, they were not labeled for use on wild bird food products. This voluntary recall was completed prior to the end of fiscal 2008.

As a result of these registration and recall matters, we have reversed sales associated with estimated returns of affected products, recorded an impairment estimate for affected inventory and recorded other registration and recall-related costs. The impact of these adjustments was a charge of \$7.6 million for the three months ended December 27, 2008. We currently expect total fiscal year 2009 costs related to the recalls and known registration issues to be approximately \$20 million, exclusive of potential fines, penalties and/or judgments.

We are committed to providing our customers and consumers with products of superior quality and value to enhance their lawns, gardens and overall outdoor living environments. We believe consumers have come to trust our brands based on the superior quality and value they deliver, and that trust is highly valued. We are also committed to conducting business with the highest degree of ethical standards and in adherence to the law. While we are disappointed in these events, we believe we have made significant progress in addressing the issues and restoring customer and consumer confidence in our products.

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RESULTS OF OPERATIONS

The following table sets forth the components of income and expense as a percentage of net sales for the three months ended December 27, 2008 and December 29, 2007:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
	(UNAUDITED)	
Net sales	100.0%	100.0%
Cost of sales	73.1	76.9
Cost of sales — product registration and recall matters	0.4	—
Gross profit	26.5	23.1
Operating expenses:		
Selling, general and administrative	48.2	46.7
Selling, general and administrative — product registration and recall matters	2.0	—
Other income, net	(0.8)	(1.0)
Loss from operations	(22.9)	(22.6)
Interest expense	5.1	6.2
Loss before income taxes	(28.0)	(28.8)
Income tax benefit	(10.1)	(10.4)
Net loss	(17.9)%	(18.4)%

Net sales for the three months ended December 27, 2008 were \$318 million, an increase of 3.0% from net sales of \$308.7 million for the three months ended December 29, 2007. Higher selling prices and the acquisition of Humax Horticulture Limited (“Humax”) in the United Kingdom favorably impacted sales growth for the quarter by 8.3% and 0.5%, respectively. The impact of foreign exchange rates and returns related to product recall matters decreased sales growth for the quarter by 5.4% and 0.1%, respectively. Organic net sales growth for the quarter, which excludes the impact of acquisitions and foreign exchange movements, was 7.8%. In the Global Consumer, Global Professional and Scotts LawnService® segments, organic net sales growth for the quarter was 13.3%, 17.8% and 0.5%, respectively. Smith & Hawken® organic net sales declined 22.8% for the first quarter of fiscal 2009. Net sales for our first fiscal quarter typically comprise between 9% to 11% of our total year net sales. Therefore, first quarter net sales trends are generally not indicative of the full fiscal year. We anticipate fiscal 2009 organic net sales, which excludes the impact of foreign exchange movements and acquisitions, to increase by 5% to 7% compared to fiscal 2008.

As a percentage of net sales, gross profit was 26.5% of net sales in the first quarter of fiscal 2009 compared to 23.1% in the first quarter of fiscal 2008. The gross profit improvement for the quarter was primarily attributable to increased selling prices and cost productivity improvements net of increased commodity costs in our Global Consumer and Global Professional segments. The impact of foreign exchange rates and product registration and recall matters each unfavorably impacted gross profit rates for the quarter by 40 basis points. Excluding the impact of product registration and recall matters, for fiscal 2009 we anticipate the gross profit rate as a percentage of net sales to increase by 100 to 200 basis points compared to fiscal 2008, largely due to pricing in excess of commodity cost increases and cost productivity improvements, partially offset by lower margin private label products.

Selling, General and Administrative Expenses:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
	(IN MILLIONS) (UNAUDITED)	
Advertising	\$ 14.2	\$ 14.8
Other selling, general and administrative	135.7	125.6
Amortization of intangibles	3.3	3.9
	<u>\$ 153.2</u>	<u>\$ 144.3</u>

Selling, general and administrative expenses (“SG&A”) were \$153.2 million in the first quarter of fiscal 2009, an increase of 6.2%, or 10.4% excluding the impact of foreign exchange rates, compared to the first quarter of fiscal 2008. Global Consumer, Global Professional and Corporate spending increased in the quarter, partially offset by a reduction in SG&A expenses in Scotts LawnService® and Smith & Hawken®. The increase in SG&A for the quarter was driven by higher information technology costs, higher compensation-related costs and increased spending for selling, marketing and research and development. We anticipate full-year growth of SG&A to be in the mid-single digits, driven by trends consistent with our first fiscal quarter.

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We recorded \$6.2 million of SG&A-related product registration and recall costs during the first quarter of fiscal 2009, which primarily related to third-party compliance review, legal and consulting fees.

Interest expense for the first quarter of fiscal 2009 was \$16.3 million, compared to \$19 million for the first quarter of fiscal 2008. The decrease in interest expense was attributable to a decrease in average borrowings and the favorable impact of foreign exchange rates, offset partially by an increase in weighted average interest rates. Excluding the impact of foreign exchange rates, average borrowings decreased \$136.1 million during the first quarter of fiscal 2009 as compared to the prior year period. Weighted average interest rates increased by 13 basis points. We anticipate the favorable trend of decreased interest expense in the first quarter of fiscal 2009 to continue for the balance of the year, driven primarily by a reduction in weighted average interest rates and lower average borrowings for the remaining three fiscal quarters.

The income tax benefit was calculated assuming an effective tax rate of 36.0% for both the three months ended December 27, 2008 and December 29, 2007. The effective tax rate used for interim reporting purposes is based on management's best estimate of factors impacting the effective tax rate for the full fiscal year. Factors affecting the estimated effective tax rate include assumptions as to income by jurisdiction (domestic and foreign), the availability and utilization of tax credits and the existence of elements of income and expense that may not be taxable or deductible, as well as other items. The estimated effective tax rate is subject to revision in later interim periods and at fiscal year end as facts and circumstances change during the course of the fiscal year. There can be no assurance that the effective tax rate estimated for interim financial reporting purposes will approximate the effective tax rate determined at fiscal year end.

We reported a net loss of \$57 million for the first quarter of fiscal 2009, compared to a net loss of \$56.8 million for the first quarter of fiscal 2008. The first quarter of fiscal 2009 was unfavorably impacted by product registration and recall costs of \$7.6 million, \$4.9 million after tax. This first quarter loss was anticipated due to the seasonal nature of our business, in which our sales are heavily weighted in the spring and summer selling season. Average common shares outstanding increased to 64.7 million for the three months ended December 27, 2008 from 64.2 million for the three months ended December 29, 2007, primarily due to common shares issued for stock option exercises. Furthermore, 0.7 million potential common shares were excluded from the diluted loss per share calculation for the first quarter of fiscal 2009 because their effect was anti-dilutive.

SEGMENT RESULTS

Our operations are divided into the following segments: Global Consumer, Global Professional, Scotts LawnService® and Corporate & Other. The Corporate & Other segment consists of Smith & Hawken® and corporate general and administrative expenses. Segment performance is evaluated based on several factors, including income from operations before amortization, product registration and recall costs, and impairment, restructuring and other charges, which are not GAAP measures. Management uses this measure of operating profit to gauge segment performance because we believe this measure is the most indicative of performance trends and the overall earnings potential of each segment.

The following table sets forth net sales by segment:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
	(IN MILLIONS) (UNAUDITED)	
Global Consumer	\$ 182.3	\$ 166.9
Global Professional	65.5	62.4
Scotts LawnService®	38.8	38.3
Corporate & Other	31.9	41.3
Segment total	318.5	308.9
Roundup® amortization	(0.2)	(0.2)
Product registrations and recall matters — returns	(0.3)	—
Consolidated	<u>\$ 318.0</u>	<u>\$ 308.7</u>

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The following table sets forth operating income (loss) by segment:

	THREE MONTHS ENDED	
	DECEMBER 27, 2008	DECEMBER 29, 2007
	(IN MILLIONS) (UNAUDITED)	
Global Consumer	\$ (35.6)	\$ (38.0)
Global Professional	13.9	6.4
Scotts LawnService®	(7.8)	(11.5)
Corporate & Other	(32.2)	(22.6)
Segment total	(61.7)	(65.7)
Roundup® amortization	(0.2)	(0.2)
Other amortization	(3.3)	(3.9)
Product registrations and recall matters	(7.6)	—
Consolidated	<u>\$ (72.8)</u>	<u>\$ (69.8)</u>

Global Consumer

Global Consumer segment net sales were \$182.3 million in the first quarter of fiscal 2009, an increase of 9.2% from net sales of \$166.9 million for the first quarter of fiscal 2008. Organic net sales growth for the quarter was 13.3%, which includes the impact of price increases of 6.2%. The acquisition of Humax contributed 1.0% to the first quarter sales increase, while foreign exchange movements decreased sales by 5.1%.

Organic net sales in North America increased 17.5%, including a 7.9% increase resulting from higher average selling prices. Sales of lawn fertilizer products were the primary driver of the first quarter organic sales increase for North America, as certain customers took advantage of graduated price increases which were fully effective January 1, 2009. Sales of our products to consumers at the retail shelf (point-of-sales) for our largest U.S. customers decreased 1.6% for the quarter, largely due to a reduction in sales of grass seed, reflecting a soft finish to the calendar 2008 lawn and garden season. Organic net sales in Europe increased by 3.4%, as pricing actions and growth in the lawn and weed control categories were largely offset by declines in the plant food and growing media categories. From a geographical perspective, net sales increased in France and Germany, offset by decreases in net sales in Benelux and Austria. U.K. sales were flat in the quarter. While we are encouraged by the consumer activity in this quarter, it is important to note that our first quarter typically represents 7% to 8% of annual net sales for this segment and falls at the end of the growing season in North America and Europe.

As discussed in “NOTE 12. ACQUISITIONS” to the accompanying condensed, consolidated financial statements, we acquired Humax, a U.K. company, during the first quarter of fiscal 2009. With the acquisition, we gained exclusive rights to harvest and distribute growing media from an existing peat bog for a 17-year period. Humax net sales were \$1.6 million in the first quarter of fiscal 2009.

Global Consumer segment operating loss decreased by \$2.4 million in the first quarter of fiscal 2009 as compared to the first quarter of fiscal 2008. Excluding the impact of product registration and recall matters and foreign exchange movements, operating loss decreased by \$0.3 million as compared to the first quarter of fiscal 2008. Higher sales and gross profit in the quarter were offset by increased spending on media, selling, marketing and research and development activities.

Global Professional

Net sales for the Global Professional segment in the first quarter of fiscal 2009 were \$65.5 million, an increase of \$3.1 million, or 5.0%, versus the first quarter of fiscal 2008. Organic net sales growth for the quarter was 17.8%, which includes the impact of price increases of 22.6%. Foreign exchange movements decreased net sales by 12.8% for the quarter. Organic net sales for the European Professional business and emerging markets increased in the quarter by 26.8% and 57.8%, respectively. Increased sales in these markets were driven primarily by pricing actions, in addition to slight growth in volume. Organic net sales for the North America Professional business declined in the quarter by 30.0%, driven by a decrease in volume.

Global Professional operating income increased from \$6.4 million for the first quarter of fiscal 2008 to \$13.9 million for the first quarter of fiscal 2009. Excluding the impact of foreign exchange movements, operating income increased by \$9.5 million in the quarter, primarily resulting from higher selling prices and improved gross margins.

Scotts LawnService®

Scotts LawnService® revenues increased 1.3% from \$38.3 million in the first quarter of fiscal 2008 to \$38.8 million in the first quarter of fiscal 2009. Sales increased \$0.5 million for the quarter, though average customer count was down 7.8%, reflecting improved realization rates.

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The operating loss for Scotts LawnService® decreased by \$3.7 million in the first quarter of fiscal 2009 compared to the first quarter of fiscal 2008, driven by field level productivity improvements and lower SG&A spending.

Corporate & Other

Net sales in the first quarter of fiscal 2009 for the Corporate & Other segment, which pertain to Smith & Hawken®, decreased \$9.4 million, or 22.8%, from the first quarter of fiscal 2008. Smith & Hawken® sales decreased across all channels. We pursued divesting the Smith & Hawken® business during the first quarter of fiscal 2009 but were unable to negotiate economically reasonable terms.

The net operating loss for Corporate & Other increased by \$9.6 million in the first quarter of fiscal 2009 as compared to the first quarter of fiscal 2008, primarily driven by higher information technology costs, higher compensation-related costs and an increase in Smith & Hawken® operating loss.

LIQUIDITY AND CAPITAL RESOURCES

Operating Activities

Cash used in operating activities amounted to \$172.3 million and \$180 million for the three months ended December 27, 2008 and December 29, 2007, respectively. The use of cash in the first fiscal quarter is due to the seasonal nature of our operations. The first quarter is historically the low point for net sales, while at the same time we are building inventories in preparation for the spring selling season that begins in our second fiscal quarter. The decrease in cash used in operating activities in the first quarter of fiscal 2009 as compared to the first quarter of fiscal 2008 related primarily to an increase in net sales for the quarter and improved working capital management.

Investing Activities

Cash used in investing activities was \$17.6 million and \$14.5 million for the three months ended December 27, 2008 and December 29, 2007, respectively. We had acquisition activity in the first quarter of fiscal 2009 totaling \$8.7 million. There was no acquisition activity in the first quarter of fiscal 2008. Capital spending decreased from \$15.1 million in the first quarter of fiscal 2008 to \$8.9 million in the first quarter of fiscal 2009. Capital spending in the first quarter of fiscal 2009 included a \$1.0 million investment in intellectual property rights to an active ingredient that we intend to use to formulate a new product.

Financing Activities

Financing activities provided cash of \$154.3 million and \$189 million for the three months ended December 27, 2008 and December 29, 2007, respectively. The decrease in cash provided by financing activities reflects a reduction in net debt outstanding during the first quarter of fiscal 2009.

Credit Agreements

Our primary sources of liquidity are cash generated by operations and borrowings under our credit agreements. Scotts Miracle-Gro and certain of its subsidiaries have entered into the following loan facilities totaling up to \$2.15 billion in the aggregate: (a) a senior secured five-year term loan facility in the principal amount of \$560 million and (b) a senior secured five-year revolving loan facility in the aggregate principal amount of up to \$1.59 billion. Borrowings may be made in various currencies including U.S. dollars, Euros, British pounds, Australian dollars and Canadian dollars. Under our current structure, we may request an additional \$200 million in revolving credit and/or term credit commitments, subject to approval from our lenders. As of December 27, 2008, there was \$993.8 million of availability under the revolving loan facility, including letters of credit. Please refer to "NOTE 5. DEBT" to the accompanying condensed, consolidated financial statements for additional information pertaining to our borrowing arrangements.

At December 27, 2008, we had outstanding interest rate swaps with major financial institutions that effectively converted a portion of our variable-rate debt denominated in U.S. dollars to a fixed rate. The swap agreements have a total notional amount of \$600 million. The term, expiration date and rates of these swaps are shown in the table below.

NOTIONAL AMOUNT (IN MILLIONS)	TERM	EXPIRATION DATE	FIXED RATE
\$200	2 years	3/31/2009	4.90%
200	3 years	3/30/2010	4.87%
200	5 years	2/14/2012	5.20%

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On April 11, 2007, we entered into a one-year Master Accounts Receivable Purchase Agreement (the “Original MARP Agreement”). On April 9, 2008, we terminated the Original MARP Agreement and entered into a new Master Accounts Receivable Purchase Agreement (the “New MARP Agreement”) with a stated termination date of April 8, 2009, or such later date as may be extended by mutual agreement among us and our lenders. The terms of the New MARP Agreement are substantially the same as the Original MARP Agreement. The New MARP Agreement provides an interest rate savings of 40 basis points as compared to borrowing under our senior secured credit facilities. The New MARP Agreement provides for the sale, on a revolving basis, of accounts receivable generated by specified account debtors, with seasonally adjusted monthly aggregate limits ranging from \$10 million to \$300 million. The New MARP Agreement also provides for specified account debtor sublimit amounts, which provide limits on the amount of receivables owed by individual account debtors that can be sold to the banks. Borrowings under the New MARP Agreement at December 27, 2008 were \$10 million.

As of December 27, 2008, we were in compliance with all debt covenants. Our credit facilities contain, among other obligations, an affirmative covenant regarding our leverage ratio, calculated as indebtedness relative to our earnings before taxes, depreciation and amortization. Under the terms of the credit facilities, the permissible leverage ratio was 4.25 as of December 27, 2008, which is scheduled to decrease to 3.75 on September 30, 2009. Management continues to monitor our compliance with the leverage ratio and other covenants contained in the credit facilities and, based upon our current operating assumptions, we expect to remain in compliance with the permissible leverage ratio throughout fiscal 2009. However, an unanticipated charge to earnings, an increase in debt or other factors could materially affect our ability to remain in compliance with the financial or other covenants of our credit facilities, potentially causing us to have to seek an amendment or waiver from our lending group. While we believe we have good relationships with our banking group, given the adverse conditions currently present in the global credit markets, we can provide no assurance that such a request would be likely to result in a modified or replacement credit facility on reasonable terms, if at all.

Judicial and Administrative Proceedings

We are party to various pending judicial and administrative proceedings arising in the ordinary course of business. These include, among others, proceedings based on accidents or product liability claims and alleged violations of environmental laws. We have reviewed our pending environmental and legal proceedings, including the probable outcomes, reasonably anticipated costs and expenses, and the availability and limits of our insurance coverage and have established what we believe to be appropriate reserves. Apart from the proceedings surrounding the FIFRA compliance matters, which are discussed separately, we do not believe that any liabilities that may result from pending judicial and administrative proceedings are reasonably likely to have a material adverse effect on our liquidity, financial condition or results of operations; however, there can be no assurance that future quarterly or annual operating results will not be materially affected by final resolution of these matters.

Liquidity

In our opinion, cash flows from operations and capital resources will be sufficient to meet debt service and working capital needs during fiscal 2009, and thereafter for the foreseeable future. However, we cannot ensure that our business will generate sufficient cash flow from operations or that future borrowings will be available under our credit facilities in amounts sufficient to pay indebtedness or fund other liquidity needs. Actual results of operations will depend on numerous factors, many of which are beyond our control.

REGULATORY MATTERS

We are subject to local, state, federal and foreign environmental protection laws and regulations with respect to our business operations and believe we are operating in substantial compliance with, or taking actions aimed at ensuring compliance with, such laws and regulations. Apart from the proceedings surrounding the FIFRA compliance matters, which are discussed separately, we are involved in several legal actions with various governmental agencies related to environmental matters. While it is difficult to quantify the potential financial impact of actions involving these environmental matters, particularly remediation costs at waste disposal sites and future capital expenditures for environmental control equipment, in the opinion of management, the ultimate liability arising from such environmental matters, taking into account established reserves, should not have a material adverse effect on our financial position, results of operations or cash flows. However, there can be no assurance that the resolution of these matters will not materially affect our future quarterly or annual results of operations, financial condition or cash flows. Additional information on environmental matters affecting us is provided in Scotts Miracle-Gro’s Annual Report on Form 10-K, as amended by Form 10-K/A (Amendment No. 1), for the fiscal year ended September 30, 2008, under “ITEM 1. BUSINESS — Regulatory Considerations,” “ITEM 1. BUSINESS — FIFRA Compliance, the Corresponding Governmental Investigation and Related Matters,” “ITEM 1. BUSINESS — Other Regulatory Matters” and “ITEM 3. LEGAL PROCEEDINGS.”

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preceding discussion and analysis of our consolidated results of operations and financial condition should be read in conjunction with our condensed, consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q. Scotts Miracle-Gro’s Annual Report on Form 10-K, as amended by Form 10-K/A (Amendment No. 1), for the fiscal year ended September 30, 2008 includes additional information about us, our operations, our financial condition, our critical accounting policies and accounting estimates, and should be read in conjunction with this Quarterly Report on Form 10-Q.

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ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risks have not changed significantly from those disclosed in Scotts Miracle-Gro's Annual Report on Form 10-K, as amended by Form 10-K/A (Amendment No. 1), for the fiscal year ended September 30, 2008.

ITEM 4. CONTROLS AND PROCEDURES

With the participation of Scotts Miracle-Gro's principal executive officer and principal financial officer, Scotts Miracle-Gro's management has evaluated the effectiveness of Scotts Miracle-Gro's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the fiscal quarter covered by this Quarterly Report on Form 10-Q. Based upon that evaluation, Scotts Miracle-Gro's principal executive officer and principal financial officer have concluded that:

- (A) information required to be disclosed by Scotts Miracle-Gro in this Quarterly Report on Form 10-Q and the other reports that Scotts Miracle-Gro files or submits under the Exchange Act would be accumulated and communicated to Scotts Miracle-Gro's management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure;
- (B) information required to be disclosed by Scotts Miracle-Gro in this Quarterly Report on Form 10-Q and the other reports that Scotts Miracle-Gro files or submits under the Exchange Act would be recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms; and
- (C) Scotts Miracle-Gro's disclosure controls and procedures were effective as of the end of the fiscal quarter covered by this Quarterly Report on Form 10-Q.

In addition, there were no changes in Scotts Miracle-Gro's internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that occurred during Scotts Miracle-Gro's fiscal quarter ended December 27, 2008 that have materially affected, or are reasonably likely to materially affect, Scotts Miracle-Gro's internal control over financial reporting.

PART II — OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Other than as discussed in "NOTE 10. CONTINGENCIES" to the accompanying condensed, consolidated financial statements, pending material legal proceedings have not changed significantly since those disclosed in Scotts Miracle-Gro's Annual Report on Form 10-K, as amended by Form 10-K/A (Amendment No. 1), for the fiscal year ended September 30, 2008.

ITEM 1A. RISK FACTORS

Cautionary Statement on Forward-Looking Statements

We have made and will make "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 in this Quarterly Report on Form 10-Q and in other contexts relating to future growth and profitability targets and strategies designed to increase total shareholder value. Forward-looking statements also include, but are not limited to, information regarding our future economic and financial condition, the plans and objectives of our management and our assumptions regarding our performance and these plans and objectives.

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements to encourage companies to provide prospective information, so long as those statements are identified as forward-looking and are accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those discussed in the forward-looking statements. We desire to take advantage of the "safe harbor" provisions of that Act.

Some forward-looking statements that we make in this Quarterly Report on Form 10-Q and in other contexts represent challenging goals for the Company, and the achievement of these goals is subject to a variety of risks and assumptions and numerous factors beyond our control. Important factors that could cause actual results to differ materially from the forward-looking statements we make are included in Part I, "ITEM 1A. RISK FACTORS" in Scotts Miracle-Gro's Annual Report on Form 10-K, as amended by Form 10-K/A (Amendment No. 1), for the fiscal year ended September 30, 2008. All forward-looking statements attributable to us or persons working on our behalf are expressly qualified in their entirety by those cautionary statements.

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ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

(c) Issuer Purchases of Equity Securities

The following table shows the purchases of common shares of Scotts Miracle-Gro (“Common Shares”) made by or on behalf of Scotts Miracle-Gro or any “affiliated purchaser” (as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934, as amended) of Scotts Miracle-Gro for each fiscal month in the three months ended December 27, 2008:

<u>Period</u>	<u>Total Number of Common Shares Purchased(1)</u>	<u>Average Price Paid per Common Share</u>	<u>Total Number of Common Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Number of Common Shares That May Yet Be Purchased Under the Plans or Programs</u>
October 1 through October 25, 2008	625	\$22.27	0	Not applicable
October 26 through November 22, 2008	182,420	\$27.41	0	Not applicable
November 23 through December 27, 2008	1,907	\$30.45	0	Not applicable
Total	<u>184,952</u>	\$27.42	<u>0</u>	<u>Not applicable</u>

(1) Amounts in this column represent Common Shares purchased by the trustee of the rabbi trust established by the Company as permitted pursuant to the terms of The Scotts Company LLC Executive Retirement Plan (the “ERP”). The ERP is an unfunded, non-qualified deferred compensation plan which, among other things, provides eligible employees the opportunity to defer compensation above specified statutory limits applicable to The Scotts Company LLC Retirement Savings Plan and with respect to any Executive Management Incentive Pay (as defined in the ERP) awarded to such eligible employees. Pursuant to the terms of the ERP, each eligible employee has the right to elect an investment fund, including a fund consisting of Common Shares (the “Scotts Miracle-Gro Common Stock Fund”), against which amounts allocated to such employee’s account under the ERP will be benchmarked (all ERP accounts are bookkeeping accounts only and do not represent a claim against specific assets of the Company). Amounts allocated to employee accounts under the ERP represent deferred compensation obligations of the Company. The Company established the rabbi trust in order to assist the Company in discharging such deferred compensation obligations. When an eligible employee elects to benchmark some or all of the amounts allocated to such employee’s account against the Scotts Miracle-Gro Common Stock Fund, the trustee of the rabbi trust purchases the number of Common Shares equivalent to the amount so benchmarked. All Common Shares purchased by the trustee are purchased on the open market and are held in the rabbi trust until such time as they are distributed pursuant to the terms of the ERP. All assets of the rabbi trust, including any Common Shares purchased by the trustee, remain, at all times, assets of the Company, subject to the claims of its creditors. The terms of the ERP do not provide for a specified limit on the number of Common Shares that may be purchased by the trustee of the rabbi trust.

None of the Common Shares purchased during the three months ended December 27, 2008 were purchased pursuant to a publicly announced plan or program.

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

The 2009 Annual Meeting of Shareholders of Scotts Miracle-Gro (the “Annual Meeting”) was held in Marysville, Ohio on January 22, 2009.

The results of the vote of the shareholders in the election of three directors, each for a term to expire at the 2012 Annual Meeting of Shareholders, were as follows:

<u>NOMINEE</u>	<u>VOTES FOR</u>	<u>VOTES WITHHELD</u>	<u>BROKER NON-VOTES & ABSTENTIONS</u>
Thomas N. Kelly Jr.	60,227,261	673,300	N/A
Carl F. Kohrt, Ph.D.	60,191,694	708,867	N/A
John S. Shiely	60,208,928	691,633	N/A

Each of the nominees designated by the Scotts Miracle-Gro Board of Directors was elected. The other directors whose terms of office continue after the Annual Meeting are James Hagedorn, Mark R. Baker, Joseph P. Flannery, Katherine Hagedorn Littlefield, Nancy G. Mistretta, Patrick J. Norton, and Stephanie M. Shern. On January 21, 2009, Karen G. Mills resigned from the Board of Directors and on January 22, 2009, Arnold W. Donald retired from the Board of Directors.

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The result of the vote of the shareholders regarding the ratification of the selection by the Audit Committee of the Scotts Miracle-Gro Board of Directors (the “Audit Committee”) of Deloitte & Touche LLP as Scotts Miracle-Gro’s independent registered public accounting firm for the fiscal year ending September 30, 2009, was as follows:

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
60,709,294	175,015	16,252	N/A

The Audit Committee’s selection of Deloitte & Touche LLP as Scotts Miracle-Gro’s independent registered public accounting firm for the fiscal year ending September 30, 2009, was ratified.

ITEM 6. EXHIBITS

See Index to Exhibits at page 31 for a list of the exhibits included herewith.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE SCOTTS MIRACLE-GRO COMPANY

Date: February 5, 2009

/s/ DAVID C. EVANS

David C. Evans

Executive Vice President and Chief Financial Officer
(Principal Financial and Principal Accounting Officer) (Duly
Authorized Officer)

THE SCOTTS MIRACLE-GRO COMPANY
QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED DECEMBER 27, 2008

INDEX TO EXHIBITS

EXHIBIT NO.	DESCRIPTION	LOCATION
10.1	The Scotts Company LLC Excess Benefit Plan for Non Grandfathered Associates as of January 1, 2005 (executed as of November 20, 2008)	Incorporated herein by reference to the Annual Report on Form 10-K of The Scotts Miracle-Gro Company (the "Registrant") for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.1(b)]
10.2	Amendment to The Scotts Company LLC Amended and Restated Executive/Management Incentive Plan (effective as of November 5, 2008) [amended the name of the plan to be The Scotts Company LLC Amended and Restated Executive Incentive Plan]	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed November 12, 2008 (File No. 1-11593) [Exhibit 10.2]
10.3	The Scotts Company LLC Executive Retirement Plan, As Amended and Restated as of January 1, 2005 (executed December 30, 2008)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed January 6, 2009 (File No. 1-11593) [Exhibit 10.1]
10.4	Form of Executive Retirement Plan Retention Award Agreement between The Scotts Company LLC and each of David C. Evans, Barry W. Sanders, Denise S. Stump, Michael C. Lukemire and Vincent C. Brockman (entered into on November 4, 2008)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed October 15, 2008 (File No. 1-11593) [Exhibit 10.2]
10.5	Specimen form of Restricted Stock Unit Award Agreement for Employees (with Related Dividend Equivalents) used to evidence grants of Restricted Stock Units which may be made under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (post-October 8, 2008 version)	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(d)(i)]
10.6	Special Restricted Stock Unit Award Agreement for Employees (with Related Dividend Equivalents) evidencing grant of Restricted Stock Units made on October 8, 2008 to Mark R. Baker under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(d)(ii)]
10.7	Specimen form of Restricted Stock Unit Award Agreement for Employees (with Related Dividend Equivalents) used to evidence grants of Restricted Stock Units which may be made under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (French Specimen) [post-October 7, 2008 version]	*
10.8	Special Restricted Stock Unit Award Agreement (with Related Dividend Equivalents) evidencing grant of Restricted Stock Units made on November 4, 2008 to Claude Lopez under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(d)(iii)]

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<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>LOCATION</u>
10.9	Specimen form of Nonqualified Stock Option Award Agreement for Employees used to evidence grants of Nonqualified Stock Options which may be made under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (post-October 8, 2008 version)	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(f)(ii)]
10.10	Special Nonqualified Stock Option Award Agreement for Employees evidencing grant of Nonqualified Stock Options made on October 8, 2008 to Mark R. Baker under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(f)(iii)]
10.11	Specimen form of Nonqualified Stock Option Award Agreement for Employees used to evidence grants of Nonqualified Stock Options which may be made under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (French Specimen) [post-October 7, 2008 version]	*
10.12	Specimen form of Restricted Stock Award Agreement for Employees used to evidence grants of Restricted Stock which may be made under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (effective October 8, 2008)	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(g)(iii)]
10.13	Special Restricted Stock Award Agreement for Employees evidencing grant of Restricted Stock made on October 8, 2008 to Dr. Michael Kely under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(g)(iv)]
10.14	Special Restricted Stock Award Agreement for Employees evidencing grant of Restricted Stock made on October 1, 2008 to Mark R. Baker under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.7(g)(v)]
10.15	Amendment to The Scotts Miracle-Gro Company Discounted Stock Purchase Plan (effective as of November 6, 2008)	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (which was filed on November 25, 2008) (File No. 1-11593) [Exhibit 10.8(b)]
10.16	Amendments to Employment Agreement by and among The Scotts Miracle-Gro Company, The Scotts Company LLC and James Hagedorn, effective as of October 1, 2008 (executed by Mr. Hagedorn on December 22, 2008 and on behalf of The Scotts Miracle-Gro Company and The Scotts Company LLC by Denise Stump on December 22, 2008 and Vincent C. Brockman on December 30, 2008)	*
31.1	Rule 13a-14(a)/15d-14(a) Certification (Principal Executive Officer)	*
31.2	Rule 13a-14(a)/15d-14(a) Certification (Principal Financial Officer)	*
32	Section 1350 Certification (Principal Executive Officer and Principal Financial Officer)	*

* Filed herewith

France

**THE SCOTTS MIRACLE-GRO COMPANY
AMENDED AND RESTATED
2006 LONG-TERM INCENTIVE PLAN
RESTRICTED STOCK UNIT AWARD AGREEMENT FOR EMPLOYEES
(with related dividend equivalents)
RESTRICTED STOCK UNITS GRANTED TO
[Grantee's Name] ON [Grant Date]**

The Scotts Miracle-Gro Company (the "Company") believes that its business interests are best served by ensuring that you have an opportunity to share in the Company's business success. To this end, the Company adopted The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (the "Plan") through which key employees, like you, may acquire (or share in the appreciation of) common shares, without par value, of the Company ("Shares"). Capitalized terms that are not defined in this Award Agreement have the same meanings as in the Plan.

This Award Agreement describes the type of Award that you have been granted and the terms and conditions of your Award. To ensure you fully understand these terms and conditions, you should:

- Read the Plan, this Award Agreement and the Plan Prospectus, as supplemented, carefully; and
- Contact [Title] at [Telephone Number] if you have any questions about your Award. Or, you may send a written inquiry to the address shown below:

The Scotts Miracle-Gro Company
Attention: [Title]
14111 Scottslawn Road
Marysville, Ohio 43041

Also, no later than [Date 30 Days After Grant Date], you must return a signed copy of this Award Agreement to:

[Third Party Administrator]
Attention: [TPA Contact's Name]
[TPA Contact's Address]
[TPA Telephone Number]

1. DESCRIPTION OF YOUR RESTRICTED STOCK UNITS

You have been granted [Number] Restricted Stock Units (“RSUs”) and an equal number of related dividend equivalent rights, subject to the terms and conditions of the Plan and this Award Agreement. The “Grant Date” of your Award is [Grant Date]. Each whole RSU represents the right to receive one full Share at the time and in the manner described in this Award Agreement. Subject to Section 3(h) of this Award Agreement, each dividend equivalent represents the right to receive an amount equal to the dividends that are declared and paid during the period beginning on the Grant Date and ending on the Settlement Date (as described in Section 2(b) of this Award Agreement) with respect to the Share represented by the related RSU.

2. VESTING AND SETTLEMENT

(a) **Vesting.** Subject to Sections 3(a) and 3(b) of this Award Agreement, your RSUs will become 100% vested on [Third Anniversary of Grant Date] (“Vesting Date”).

(b) **Settlement.** Subject to the terms of the Plan and this Award Agreement, your vested RSUs shall be settled in a lump sum as soon as administratively practicable, but no later than 90 days, following the earliest to occur of: (i) your death; (ii) the date you become Disabled (as defined in Section 2(c) of this Award Agreement); or (iii) [Vesting Date] (the “Settlement Date”). Your whole RSUs shall be settled in full Shares, and any fractional RSU shall be settled in cash, determined based upon the Fair Market Value of a Share on the Settlement Date.

(c) **Definitions.** For purposes of this Award Agreement, (i) “Disabled” means (A) any physical or mental condition that would qualify you for a disability benefit under any long-term disability plan maintained by the Company that is applicable to you, (B) if there is no such plan, such condition provided in any applicable governmental statute or regulation that constitutes “Disabled,” or (C) if there is no such applicable statute or regulation, such other condition as may be determined by the Company in its sole discretion to constitute “Disabled”; and (ii) “Terminate” (or any form thereof) means the date of notification of the cessation of the employee-employer relationship between you and the Company and all Affiliates and Subsidiaries for any reason.

3. GENERAL TERMS AND CONDITIONS

(a) **YOU MAY FORFEIT YOUR RSUs IF YOU TERMINATE.** Except as otherwise provided in Section 3(b) of this Award Agreement:

(i) if, prior to the Vesting Date, you (A) Terminate after reaching either (I) age 55 and completing at least 10 years of employment with the Company, its Affiliates and/or its Subsidiaries or (II) age 62 regardless of your years of service, (B) die, or (C) become Disabled, your RSUs will become 100% vested as of the date of such event and will be settled in accordance with Section 2(b) of this Award Agreement; and

(ii) if, prior to the Vesting Date, you Terminate for any reason not described in Section 3(a)(i) of this Award Agreement, your RSUs will be forfeited immediately.

(b) **CHANGE IN CONTROL.** Normally, your RSUs will vest and be settled only under the circumstances described in Sections 2 and 3(a)(i) of this Award Agreement. However, if there is a Change in Control, your RSUs will vest and be settled as described in the Plan. You should read the Plan carefully to ensure that you understand how this may happen.

(c) **NO RIGHT TO EMPLOYMENT.** Your RSU award is a voluntary, discretionary bonus being made on a one-time basis and it does not constitute a commitment to make any future awards. This Award and any payments made hereunder will not be considered salary or other compensation for purposes of any severance pay or similar allowance, except as otherwise required by law. Nothing in this Award Agreement will give you any right to continue employment with the Company or any Subsidiary or Affiliate, as the case may be, or interfere in any way with the right of the Company or a Subsidiary or an Affiliate to terminate your employment.

(d) **DATA PRIVACY.** Information about you and your participation in the Plan, including, but not limited to, your name, home address and telephone number, date of birth, social insurance number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of your RSUs or other entitlement to shares of stock awarded, cancelled, exercised, vested, unvested or outstanding in your favor, may be collected, recorded, held, used and disclosed for any purpose related to the administration and management of the Plan and in order to satisfy legal and regulatory requirements. You understand that the Company will keep your personal data in accordance with the rules set forth by Law No. 78-17, dated January 6, 1978, related to “software, files and liberties” (the “Law”). The Company will also take reasonable measures in order to protect your personal data and to observe the requirements set forth by the Commission Nationale de l’Informatique et des Libertés. Pursuant to the Law, you have the right to access, correct and request deletion of any of your personal data that is inaccurate, incomplete, ambiguous, obsolete or whose collection, use, communication or conservation is prohibited. You also understand that the Company and its Subsidiaries or Affiliates may transfer such information to any third party administrators, regardless of whether such persons are located within your country of residence, the European Economic Area or in countries outside of the European Economic Area, including the United States of America, where the rules protecting such data are less stringent than those applicable within the European Economic Area. You expressly consent and agree to the collection, holding, use, disclosure, transfer in electronic or other form, and processing of information relating to you and your participation in the Plan.

French translation:

(d) **PROTECTION DES DONNES PERSONNELLES.** Les informations vous concernant ainsi que votre participation dans le Plan, y compris mais non limitativement, votre nom, votre adresse personnelle et numéro de téléphone, date de naissance, numéro de sécurité sociale, salaire, nationalité, intitulé de poste, toutes participations ou tous mandats détenus dans la Société, les renseignements sur le RSUs ou sur tout autre droit à des participations octroyées, annulées, exercées, disponibles ou non disponibles ou en circulation en votre faveur, peuvent être rassemblées, enregistrées, détenues, utilisées et divulguées pour toute raison liée à l’administration et la gestion du Plan et afin de satisfaire aux exigences légales et réglementaires. Vous comprenez que la Société conservera vos données personnelles conformément aux règles posées par la Loi No. 78-17 du 7 janvier 1978 relative à “l’informatique, aux fichiers et aux

libertés” (la “Loi”). La Société prendra également toutes les mesures raisonnables afin de protéger vos données personnelles et d’observer les exigences posées par la Commission Nationale de l’Informatique et des Libertés. En application de la Loi, vous bénéficiez d’un droit d’accès, de modification et de suppression de vos données personnelles qui seraient incorrectes, incomplètes, ambiguës, obsolètes ou dont la collecte, l’utilisation, la communication ou la conservation seraient prohibées. Vous comprenez également que la Société et ses Filiales ou Sociétés Affiliées peuvent transférer ces informations à des tiers administrateurs, peu importe que ces personnes soient situées dans votre pays de résidence, l’Espace Economique Européen ou dans des pays autres que l’Espace Economique Européen, y compris, les Etas-Unis d’Amérique, où les règles de protection de telles données personnelles sont moins contraignantes que celles applicables dans l’Espace Economique Européen. Vous consentez expressément et vous acceptez la collecte, la détention, l’utilisation, la divulgation, le transfert sous forme électronique ou autre et plus généralement le traitement des informations vous concernant et concernant votre participation au Plan.

(e) **AMENDMENT AND TERMINATION.** Subject to the terms of the Plan, the Company may amend or terminate this Award Agreement or the Plan at any time.

(f) **RIGHTS BEFORE YOUR RSUs ARE SETTLED.** Except as provided in Section 3(g) of this Award Agreement, you will have none of the rights of a shareholder with respect to Shares underlying the RSUs unless and until you become the record holder of such Shares.

(g) **DIVIDEND EQUIVALENTS.** You will be entitled to receive a dividend equivalent equal to any dividends declared and paid on each Share represented by a related RSU, subject to the same terms and conditions as the related RSU. A reasonable rate of interest, as determined by the Committee in its sole discretion, will be credited to you for any such amounts relating to cash dividends that are declared and paid during the period beginning on [Grant Date] and ending on the Settlement Date. Any dividend equivalents and interest described in this Section 3(g) will be distributed to you in accordance with Section 2(b) of this Award Agreement or forfeited, depending on whether or not you have met the conditions described in this Award Agreement and the Plan. Any such distributions will be made in (i) cash, for any dividend equivalents and interest relating to cash dividends and (ii) Shares, for any dividend equivalents relating to Share dividends.

(h) **BENEFICIARY DESIGNATION.** You may name a beneficiary or beneficiaries to receive any RSUs and related dividend equivalents that vest before you die but are settled after you die. This may be done only on the attached Beneficiary Designation Form and by following the rules described in that Form. The Beneficiary Designation Form does not need to be completed now and is not required as a condition of receiving your Award. However, if you die without completing a Beneficiary Designation Form or if you do not complete that Form correctly, your beneficiary will be your surviving spouse or, if you do not have a surviving spouse, your estate.

(i) **TRANSFERRING YOUR RSUs AND RELATED DIVIDEND EQUIVALENTS.** Normally, your RSUs and related dividend equivalents may not be transferred to another person. However, as described in Section 3(h) of this Award Agreement, you may complete a Beneficiary Designation Form to name the person to receive any RSUs and

related dividend equivalents that are vested before you die but are settled after you die. Also, the Committee may allow you to place your RSUs and related dividend equivalents into a trust established for your benefit or the benefit of your family. Contact [Third Party Administrator] at [TPA Telephone Number] or at the address given above if you are interested in doing this.

(j) **ELECTRONIC DELIVERY.** The Company may, in its sole discretion, deliver any documents related to your RSUs and your participation in the Plan, or future awards that may be granted under the Plan, by electronic means or to request your consent to participate in the Plan by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

(k) **GOVERNING LAW.** This Award Agreement shall be governed by the laws of the State of Ohio, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of the Plan to the substantive law of another jurisdiction.

(l) **OTHER AGREEMENTS.** Your RSUs and related dividend equivalents will be subject to the terms of any other written agreements between you and the Company or any Affiliate or Subsidiary to the extent that those other agreements do not directly conflict with the terms of the Plan or this Award Agreement.

(m) **ADJUSTMENTS TO YOUR RSUs.** Subject to the terms of the Plan, your RSUs and related dividend equivalents will be adjusted, if appropriate, to reflect any change to the Company's capital structure (*e.g.*, the number of Shares underlying your RSUs will be adjusted to reflect a stock split).

(n) **OTHER RULES.** Your RSUs and related dividend equivalents are subject to more rules described in the Plan. You should read the Plan carefully to ensure you fully understand all the terms and conditions of the grant of RSUs and related dividend equivalents under this Award Agreement.

4. YOUR ACKNOWLEDGMENT OF AWARD CONDITIONS

By signing below, you acknowledge and agree that:

- (a) Copies of the Plan and the Plan Prospectus, as supplemented, have been made available to you;
- (b) You understand and accept the terms and conditions of your Award;
- (c) You will consent (on your own behalf and on behalf of your beneficiaries and transferees and without any further consideration) to any necessary change to your Award or this Award Agreement to comply with any law; and
- (d) You must return a signed copy of this Award Agreement to the address given above before [Date 30 Days After Grant Date].

[Grantee's Name]

By: _____

Date signed: _____

THE SCOTTS MIRACLE-GRO COMPANY

By: _____

[Name of Company Representative]

[Title of Company Representative]

Date signed: _____

France

**THE SCOTTS MIRACLE-GRO COMPANY
AMENDED AND RESTATED
2006 LONG-TERM INCENTIVE PLAN**

NONQUALIFIED STOCK OPTION AWARD AGREEMENT FOR EMPLOYEES

**NONQUALIFIED STOCK OPTION GRANTED
TO [Grantee's Name] ON [Grant Date]**

The Scotts Miracle-Gro Company (the "Company") believes that its business interests are best served by ensuring that you have an opportunity to share in the Company's business success. To this end, the Company adopted The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (the "Plan") through which key employees, like you, may acquire (or share in the appreciation of) common shares, without par value, of the Company ("Shares"). Capitalized terms that are not defined in this Award Agreement have the same meanings as in the Plan.

This Award Agreement describes the type of Award that you have been granted and the terms and conditions of your Award. To ensure you fully understand these terms and conditions, you should:

- Read the Plan, this Award Agreement and the Plan Prospectus, as supplemented, carefully; and
- Contact [Title] at [Telephone Number] if you have any questions about your Award. Or, you may send a written inquiry to the address shown below:

The Scotts Miracle-Gro Company
Attention: [Title]
14111 Scottslawn Road
Marysville, Ohio 43041

Also, no later than [Date 30 Days After Grant Date], you must return a signed copy of this Award Agreement to:

[Third Party Administrator]
Attention: [TPA Contact's Name]
[TPA Contact's Address]
[TPA Telephone Number]

1. DESCRIPTION OF YOUR NONQUALIFIED STOCK OPTION

You have been granted a Nonqualified Stock Option (“NSO”) to purchase [Number of Common Shares] Shares at an exercise price of U.S. \$[Exercise Price] for each Share (“Exercise Price”) on or before [Day Prior to Tenth Anniversary of Grant Date] (the “Expiration Date”), subject to the terms and conditions of the Plan and this Award Agreement. The Grant Date of the NSO is [Grant Date].

2. LIMITS ON EXERCISING YOUR NSO

(a) Normally, your NSO will vest (and become exercisable) on [Third Anniversary of Grant Date] (the “Vesting Date”) but only if you are actively employed by the Company or any Subsidiary or Affiliate on the Vesting Date and all other conditions described in this Award Agreement and the Plan are met. This does not mean that you must exercise your NSO on this date; this is merely the first date that you may do so. However, except as described below, your NSO will expire to the extent it is not exercised on or before the Expiration Date.

There are some special situations in which your NSO may vest earlier. These are described in Sections 4(a) and 4(b) of this Award Agreement.

(b) At any one time, you may not exercise your NSO to buy fewer than 100 Shares (or, if less, the number of Shares underlying the vested portion of your NSO). Also, you may never exercise your NSO to purchase a fractional Share. Any fractional Share shall be redeemed for cash equal to the Fair Market Value of such fractional Share.

3. EXERCISING YOUR NSO

(a) After your NSO vests, you may exercise the NSO by completing an Exercise Notice. A copy of this Exercise Notice is attached to this Award Agreement. Also, a copy of this Exercise Notice and a description of the procedures that you must follow to exercise your NSO are available from [Third Party Administrator] at [TPA Telephone Number] or at the address given above.

(b) You may use one of three methods to exercise your NSO and to pay any taxes related to that exercise. You will decide on the method at the time of exercise.

CASHLESS EXERCISE AND SELL: If you elect this alternative, you will be deemed to have simultaneously exercised the NSO and to have sold the Shares underlying the portion of the NSO you exercised. When the transaction is complete, you will receive cash (but no Shares) equal to the difference between the aggregate Fair Market Value of the Shares deemed to have been acquired through the exercise minus the aggregate Exercise Price and related taxes.

COMBINATION EXERCISE: If you elect this alternative, you will be deemed to have simultaneously exercised the NSO and to have sold a number of those Shares with a Fair Market Value equal to the aggregate Exercise Price and related taxes. When the transaction is complete, the balance of the Shares subject to the portion of the NSO you exercised will be transferred to you.

EXERCISE AND HOLD: If you elect this alternative, you must pay the full Exercise Price plus related taxes (in cash, a cash equivalent or in Shares having a Fair Market Value equal to the Exercise Price and which you have owned for at least six months before the exercise date). When the transaction is complete, you will receive the number of Shares purchased.

(c) Before choosing an exercise method, you should read the Plan Prospectus, as supplemented, to ensure you understand the income tax effect of exercising your NSO.

(d) If you do not elect one of the methods set forth in Section 3(b) above, the Company will apply the Cashless Exercise and Sell method described in Section 3(b).

4. GENERAL TERMS AND CONDITIONS

(a) **YOU MAY FORFEIT YOUR NSO IF YOU TERMINATE.** Normally, you may exercise your NSO after it vests and before the Expiration Date. However, to the extent permitted by law, your NSO may be cancelled earlier than the Expiration Date if you Terminate. For purposes of this Award Agreement, "Terminate" (or any form thereof) means the date of notification of the cessation of the employee-employer relationship between you and the Company and all Affiliates and Subsidiaries for any reason.

(i) If you are Terminated for Cause, the portion of your NSO that has not been exercised will be forfeited (whether or not then vested) on the date you Terminate; or

(ii) If you die or you Terminate due to your Disability (as defined below), your NSO will become fully vested and expire on the Expiration Date. For purposes of this Award Agreement, "Disability" means your inability to perform your normal duties for a period of at least six months due to a physical or mental infirmity; or

(iii) If you Terminate after reaching either (A) age 55 and completing at least 10 years of employment with the Company, its Affiliates and/or its Subsidiaries or (B) age 62 regardless of your years of service, your NSO will become fully vested and expire on the Expiration Date; or

(iv) If you Terminate for any other reason, the unvested portion of your NSO will be forfeited immediately and the vested portion of your NSO will expire on the earlier of the Expiration Date or 90 days after you Terminate.

Note, it is your responsibility to keep track of when your NSO expires.

(b) **CHANGE IN CONTROL.** Normally, your NSO will vest only in the circumstances described in Sections 2(a) and 4(a) of this Award Agreement. However, if there is a Change in Control, your NSO may vest earlier. You should read the Plan carefully to ensure that you understand how this may happen.

(c) **NO RIGHT TO EMPLOYMENT.** Your NSO award is a voluntary, discretionary bonus being made on a one-time basis and it does not constitute a commitment to make any future awards. This Award and any payments made hereunder will not be considered salary or other compensation for purposes of any severance pay or similar allowance, except as otherwise required by law. Nothing in this Award Agreement will give you any right to continue employment with the Company or any Subsidiary or Affiliate, as the case may be, or interfere in any way with the right of the Company or a Subsidiary or an Affiliate to terminate your employment.

(d) **DATA PRIVACY.** Information about you and your participation in the Plan, including, but not limited to, your name, home address and telephone number, date of birth, social insurance number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of your NSO or other entitlement to shares of stock awarded, cancelled, exercised, vested, unvested or outstanding in your favor, may be collected, recorded, held, used and disclosed for any purpose related to the administration and management of the Plan and in order to satisfy legal and regulatory requirements. You understand that the Company will keep your personal data in accordance with the rules set forth by Law No. 78-17, dated January 6, 1978, related to “software, files and liberties” (the “Law”). The Company will also take reasonable measures in order to protect your personal data and to observe the requirements set forth by the Commission Nationale de l’Informatique et des Libertés. Pursuant to the Law, you have the right to access, correct and request deletion of any of your personal data that is inaccurate, incomplete, ambiguous, obsolete or whose collection, use, communication or conservation is prohibited. You also understand that the Company and its Subsidiaries or Affiliates may transfer such information to any third party administrators, regardless of whether such persons are located within your country of residence, the European Economic Area or in countries outside of the European Economic Area, including the United States of America, where the rules protecting such data are less stringent than those applicable within the European Economic Area. You expressly consent and agree to the collection, holding, use, disclosure, transfer in electronic or other form, and processing of information relating to you and your participation in the Plan.

French translation:

(d) **PROTECTION DES DONNES PERSONNELLES.** Les informations vous concernant ainsi que votre participation dans le Plan, y compris mais non limitativement, votre nom, votre adresse personnelle et numéro de téléphone, date de naissance, numéro de sécurité sociale, salaire, nationalité, intitulé de poste, toutes participations ou tous mandats détenus dans la Société, les renseignements sur le NSO ou sur tout autre droit à des participations octroyées, annulées, exercées, disponibles ou non disponibles ou en circulation en votre faveur, peuvent être rassemblées, enregistrées, détenues, utilisées et divulguées pour toute raison liée à l’administration et la gestion du Plan et afin de satisfaire aux exigences légales et réglementaires. Vous comprenez que la Société conservera vos données personnelles conformément aux règles

posées par la Loi No. 78-17 du 7 janvier 1978 relative à “l’informatique, aux fichiers et aux libertés” (la “Loi”). La Société prendra également toutes les mesures raisonnables afin de protéger vos données personnelles et d’observer les exigences posées par la Commission Nationale de l’Informatique et des Libertés. En application de la Loi, vous bénéficiez d’un droit d’accès, de modification et de suppression de vos données personnelles qui seraient incorrectes, incomplètes, ambiguës, obsolètes ou dont la collecte, l’utilisation, la communication ou la conservation seraient prohibées. Vous comprenez également que la Société et ses Filiales ou Sociétés Affiliées peuvent transférer ces informations à des tiers administrateurs, peu importe que ces personnes soient situées dans votre pays de résidence, l’Espace Economique Européen ou dans des pays autres que l’Espace Economique Européen, y compris, les Etas-Unis d’Amérique, où les règles de protection de telles données personnelles sont moins contraignantes que celles applicables dans l’Espace Economique Européen. Vous consentez expressément et vous acceptez la collecte, la détention, l’utilisation, la divulgation, le transfert sous forme électronique ou autre et plus généralement le traitement des informations vous concernant et concernant votre participation au Plan.

(e) **AMENDMENT AND TERMINATION.** Subject to the terms of the Plan, the Company may amend or terminate this Award Agreement or the Plan at any time.

(f) **RIGHTS BEFORE YOUR NSO IS EXERCISED.** You may not vote, or receive any dividends associated with, the Shares underlying your NSO before your NSO is exercised with respect to such Shares.

(g) **BENEFICIARY DESIGNATION.** You may name a beneficiary or beneficiaries to receive or to exercise the vested portion of your NSO that is unexercised when you die. This may be done only on the attached Beneficiary Designation Form and by following the rules described in that Form. The Beneficiary Designation Form need not be completed now and is not required as a condition of receiving your Award. If you die without completing a Beneficiary Designation Form or if you do not complete that Form correctly, your beneficiary will be your surviving spouse or, if you do not have a surviving spouse, your estate.

(h) **TRANSFERRING YOUR NSO.** Normally your NSO may not be transferred to another person. However, you may complete a Beneficiary Designation Form to name the person who may exercise your NSO if you die before the Expiration Date. Also, the Committee may allow you to place your NSO into a trust established for your benefit or for the benefit of your family. Contact [Third Party Administrator] at [TPA Telephone Number] or at the address given above if you are interested in doing this.

(i) **ELECTRONIC DELIVERY.** The Company may, in its sole discretion, deliver any documents related to your NSO and your participation in the Plan, or future awards that may be granted under the Plan, by electronic means or to request your consent to participate in the Plan by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

(j) **GOVERNING LAW.** This Award Agreement shall be governed by the laws of the State of Ohio, excluding any conflicts or choice of law rule or principle that might otherwise

refer construction or interpretation of the Plan to the substantive law of another jurisdiction.

(k) **OTHER AGREEMENTS.** Your NSO will be subject to the terms of any other written agreements between you and the Company or any Affiliate or Subsidiary to the extent that those other agreements do not directly conflict with the terms of the Plan or this Award Agreement.

(l) **ADJUSTMENTS TO YOUR NSO.** Subject to the terms of the Plan, your NSO will be adjusted, if appropriate, to reflect any change to the Company's capital structure (e.g., the number of Shares underlying your NSO and the Exercise Price will be adjusted to reflect a stock split).

(m) **OTHER TERMS AND CONDITIONS.** Your NSO is subject to more rules described in the Plan. You should read the Plan carefully to ensure you fully understand all the terms and conditions of the grant of the NSO made to you under this Award Agreement.

5. YOUR ACKNOWLEDGMENT OF AWARD CONDITIONS

By signing below, you acknowledge and agree that:

(a) Copies of the Plan and Plan Prospectus, as supplemented, have been made available to you;

(b) You understand and accept the terms and conditions of your NSO;

(c) You will consent (on your own behalf and on behalf of your beneficiaries and transferees and without any further consideration) to any necessary change to your NSO or this Award Agreement to comply with any law; and

(d) You must return a signed copy of this Award Agreement to the address given above before [Date 30 Days After Grant Date].

[Grantee's Name]

THE SCOTTS MIRACLE-GRO COMPANY

BY: _____

BY: _____

Date signed: _____

[Name of Company representative]

[Title of Company representative]

Date signed: _____

THE SCOTTS MIRACLE-GRO COMPANY
AMENDED AND RESTATED
2006 LONG-TERM INCENTIVE PLAN
NONQUALIFIED STOCK OPTION EXERCISE NOTICE
FOR NONQUALIFIED STOCK OPTION GRANTED
TO [Grantee's Name] ON [Grant Date]

Additional copies of this Nonqualified Stock Option Exercise Notice ("Exercise Notice") (and any further information you may need about this Exercise Notice or exercising your NSO) are available from [Third Party Administrator] at the address given below.

By completing this Exercise Notice and returning it to [Third Party Administrator] at the address given below, I elect to exercise all or a portion of the NSO and to purchase the Shares described below. Capitalized terms not defined in this Exercise Notice have the same meanings as in the Plan and applicable Award Agreement.

NOTE: You must complete a separate Exercise Notice for each NSO being exercised (e.g., if you are simultaneously exercising an NSO to purchase 200 Shares granted on January 1, 2008 and an NSO to purchase 100 Shares granted on January 1, 2009 under a separate award agreement, you must complete two Exercise Notices, one for each NSO being exercised).

NSO TO BE EXERCISED AND SHARES TO BE PURCHASED: This Exercise Notice relates to the following NSO and number of Shares (*fill in the blanks*):

Grant Date of NSO: [Grant Date]

Number of Shares Being Purchased: _____

EXERCISE PRICE: The aggregate Exercise Price due is U.S. \$ _____.

NOTE: This amount must equal the product of [Exercise Price] multiplied by the number of Shares being purchased.

PAYMENT OF EXERCISE PRICE: I have decided to pay the Exercise Price and any related taxes by (*check one*):

NOTE: These methods are described in the applicable Award Agreement.

Cashless Exercise and Sell.

Combination Exercise.

Exercise and Hold.

NOTE:

- If you select the Exercise and Hold method, you must follow the procedures described in the Award Agreement to pay the Exercise Price and the taxes related to this exercise. You should contact [Third Party Administrator] at the address given below to find out the amount of taxes due.
- If you select either the Cashless Exercise and Sell method or the Combination Exercise method, you should contact [Third Party Administrator] at the address given below to be sure you understand how your choice of payment will affect the number of Shares you will receive.

YOUR ACKNOWLEDGMENT

By signing below, you acknowledge and agree that:

- You fully understand the effect (including the investment effect) of exercising your NSO and buying Shares and understand that there is no guarantee that the value of these Shares will appreciate or will not depreciate;
- This Exercise Notice will have no effect if it is not returned to [Third Party Administrator] at the address given below before the NSO expires, as specified in the Award Agreement under which the NSO was granted; and
- The Shares you are buying by completing and returning this Exercise Notice will be issued to you as soon as administratively practicable. You will not have any rights as a shareholder of the Company until the Shares are issued.

[Grantee's Name]

(signature)

Date signed: _____

A signed copy of this Exercise Notice must be received at the following address no later than the date the NSO expires, as specified in the Award Agreement under which the NSO was granted:

[Third Party Administrator]
Attention: [TPA Contact's Name]
[TPA Contact's Address]
[TPA Telephone Number]

ACKNOWLEDGEMENT OF RECEIPT

A signed copy of the Nonqualified Stock Option Exercise Notice was received on:

_____.

[Grantee's Name]:

Has effectively exercised the portion of the NSO described in this Exercise Notice; or

Has not effectively exercised the portion of the NSO described in this Exercise Notice because:

describe deficiency

The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan Committee

By: _____

Date: _____

Note: Keep a copy of this Exercise Notice as part of the Plan's permanent records.

**AMENDMENTS TO
EMPLOYMENT AGREEMENT**

WHEREAS, an Employment Agreement, dated as of May 19, 1995 (the "Agreement"), was entered into by and between The Scotts Company, an Ohio corporation, and James Hagedorn (the "Employee");

WHEREAS, The Scotts Company was merged with and into The Scotts Company LLC, an Ohio limited liability company (the "Company"), a wholly-owned subsidiary of The Scotts Miracle-Gro Company (the "Corporation");

WHEREAS, effective as of October 1, 2008, the Company, the Corporation and Employee (collectively the "parties") desire to amend the Agreement, to bring it into compliance with Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A").

NOW, THEREFORE, the parties agree as follows:

1. Section 7(f) is amended by adding the following at the end thereof:

Notwithstanding the foregoing, for purposes of this Agreement, a termination of employment occurs when Employee and the Company reasonably anticipate that (i) no further services will be performed by Employee after a certain date, or (ii) the level of bona fide services which Employee is expected to perform for the Company, the Corporation and their affiliates, as an employee or otherwise, as of a certain date is expected to permanently decrease to a level equal to twenty (20) percent or less of the average level of services performed by Employee during the immediately preceding thirty-six (36) month period (or Employee's entire period of service if less than thirty-six (36) months). Whether there has been a termination of employment will be determined by the Board of Directors of the Corporation taking into account all of the facts and circumstances at the time of the termination of employment in accordance with the guidelines described in Treas. Regs. Section 1.409-1(h).

2. Section 8 is amended by adding the following new subsection (d) at the end thereof:

(d) Notwithstanding anything in this Agreement to the contrary, if Employee is a "specified employee" of the Corporation (within the meaning of Section 409A and as determined under the Corporation's policy for determining specified employees) on the Date of Termination, the payment due under Section 8(c)(3) that is required to be delayed under Section 409A shall be delayed for six (6) months following the Date of Termination, and the accumulated postponed amounts paid in a lump sum Payment within five (5) days after the end of such six (6) month period. If Employee dies during the postponement period prior to the payment of such amounts, the amounts postponed on account of Section 409A shall be

paid to Employee's Beneficiary within sixty (60) days after the date of Employee's death.

3. The following new Section 17 is added in sequence.

17. Section 409A. This Agreement is intended to be fully compliant with the requirements of Section 409A, the final regulations promulgated thereunder, taking into account any and all transition rules and relief promulgated by the Internal Revenue Service or the U.S. Department of Treasury regarding compliance therewith, and, to the maximum extent permitted by law, shall be administered, operated and construed consistent with this intent. For purposes of the limitations on nonqualified deferred compensation under Section 409A, each payment of compensation under the Agreement shall be treated as a separate payment of compensation for purposes of applying the Section 409A deferral election rules and the exclusion from Section 409A for certain short-term deferral amounts. Any amounts payable solely on account of an involuntary separation from service within the meaning of Section 409A shall be excludible from the requirements of Section 409A, either as involuntary separation pay or as short-term deferral amounts (*e.g.*, amounts payable under the schedule prior to March 15 of the calendar year following the calendar year of involuntary separation) to the maximum possible extent. Further, any reimbursements or in-kind benefits provided under the Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during the period of time specified in the Agreement, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

IN WITNESS WHEREOF, the parties have executed this Amendment Agreement effective as of October 1, 2008, except to the extent an earlier or later date is required to comply with Section 409A or other applicable law. The parties have executed this document on separate signature pages intentionally.

THE SCOTTS MIRACLE-GRO COMPANY
THE SCOTTS COMPANY LLC

December 22, 2008

By: /s/ Denise Stump
Denise Stump, Executive Vice President
Global Human Resources

December 30, 2008

By: /s/ Vincent C. Brockman
Vincent C. Brockman, Executive Vice President
General Counsel

December 22, 2008

EMPLOYEE

/s/ James Hagedorn
James Hagedorn

SECTION 1350 CERTIFICATION*

In connection with the Quarterly Report on Form 10-Q of The Scotts Miracle-Gro Company (the "Company") for the quarterly period ended December 27, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, James Hagedorn, Chief Executive Officer and Chairman of the Board of the Company, and David C. Evans, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of their knowledge:

- 1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the consolidated financial condition and results of operations of the Company and its subsidiaries.

/s/ JAMES HAGEDORN

James Hagedorn
Chief Executive Officer
and Chairman of the Board

February 5, 2009

/s/ DAVID C. EVANS

David C. Evans
Executive Vice President
and Chief Financial Officer

February 5, 2009

* THIS CERTIFICATION IS BEING FURNISHED AS REQUIRED BY RULE 13a-14(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934 (THE "EXCHANGE ACT") AND SECTION 1350 OF CHAPTER 63 OF TITLE 18 OF THE UNITED STATES CODE, AND SHALL NOT BE DEEMED "FILED" FOR PURPOSES OF SECTION 18 OF THE EXCHANGE ACT OR OTHERWISE SUBJECT TO THE LIABILITY OF THAT SECTION. THIS CERTIFICATION SHALL NOT BE DEEMED TO BE INCORPORATED BY REFERENCE INTO ANY FILING UNDER THE SECURITIES ACT OF 1933 OR THE EXCHANGE ACT, EXCEPT TO THE EXTENT THAT THE COMPANY SPECIFICALLY INCORPORATES THIS CERTIFICATION BY REFERENCE.