

STAAR SURGICAL CO
Form 10-Q/A
March 24, 2010

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q/A
Amendment No. 1

(Mark One)

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

For the quarterly period ended: October 2, 2009

Or

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

For the transition period from _____ to _____

Commission file number: 0-11634

STAAR SURGICAL COMPANY
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

95-3797439
(I.R.S. Employer
Identification No.)

1911 Walker Avenue
Monrovia, California 91016
(Address of principal executive offices)
(626) 303-7902

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). 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):

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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

The registrant has 34,729,348 shares of common stock, par value \$0.01 per share, issued and outstanding as of November 10, 2009.

Explanatory Note

STAAR Surgical Company is filing this Amendment No. 1 to its Quarterly Report on Form 10-Q for the period ended October 2, 2009 to provide a revised “Risk Factors” section in response to comments received from the SEC. The only items filed herewith are Item 1A (Risk Factors), the exhibit index, the signature page and the certifications required by Rule 13a-14(a) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350. With the exception of the foregoing, no other information in the Quarterly Report on Form 10-Q for the period ended October 2, 2009 has been supplemented, updated or amended.

STAARSURGICAL COMPANY

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ITEM 1A. RISK FACTORS

The following risk factors speak as of November 12, 2009, the original filing date of the Quarterly Report on Form 10-Q for the period ended October 2, 2009, and have not been updated to reflect events occurring or trends arising after the original filing date. As of that original filing date, there have been no material changes to the risk factors disclosed in Item 1A of Part 1 of our Annual Report on Form 10-K for the fiscal year ended January 2, 2009, except as follows:

We have only limited working capital and limited access to financing.

STAAR generated cash from operations in the second and third fiscal quarters of 2009. While management has projected positive cash flow from operations for the remainder of 2009, STAAR has a history of losses, its business is subject to numerous risks and contingencies and it cannot assure investors that its needs will not again exceed the level of cash generated by operations. Future obligations and liabilities that could result in STAAR exceeding its cash reserves include the following:

- the \$5 million indebtedness under the Senior Secured Promissory Note held by Broadwood Partners, L.P., which becomes due on December 14, 2010 and accrues interest at a rate of 20% per annum; and
- the possibility of a material adverse judgment in the case Scott Moody v. STAAR Surgical Company, in which trial commenced on October 19, 2009, and if such a material adverse judgment occurs and remains unpaid, then we will be in default on the Broadwood Note at that time.

In addition, the holders of our 1.7 million shares of outstanding Series A Redeemable, Convertible Preferred Stock have the right to redeem the stock at a price of \$4.00 per share beginning on December 29, 2010. To the extent we have funds available to redeem the shares without impairing our capital we may be required to use those funds to redeem shares of preferred stock.

If our need for cash exceeds our available funds, we may be required to seek additional financing through the sale of debt and/or equity securities. Our ability to raise financing through sales of equity securities depends on general market conditions and the demand for STAAR's common stock. We may be unable to raise adequate capital through sales of equity securities, and if we are able to do so but our stock has a low market price at the time of such sales our existing stockholders could experience substantial dilution. Debt financing may not be available on favorable terms, or at all. An inability to secure additional and adequate financing could jeopardize our ability to continue operations as a going concern

The global nature of our business may result in significant fluctuations in our results of operations.

Our products are sold in approximately 50 countries. Sales from international operations make up a significant portion of our business, comprising over 75% of our total net sales. The results of operations and the financial position of certain of our foreign operations are reported in the relevant local currencies and then translated into U.S. dollars at the applicable exchange rates for inclusion in our consolidated financial statements, exposing us to translation risk. In addition, we are exposed to foreign exchange transaction risk because some of our expenses are incurred in a different currency from the currency in which our sales are received. Our most significant currency exposures are to the Euro, the Swiss Franc, the Australian dollar, and the Japanese Yen. The exchange rates between these and other local currencies and the U.S. dollar may fluctuate substantially. We have not attempted to offset our exposure to these risks by investing in derivatives or engaging in other hedging transactions in order to mitigate risk.

Economic, social and political conditions, laws, practices and local customs vary widely among the countries in which we sell our products. Our operations outside of the U.S. are subject to a number of risks and potential costs, including lower profit margins, less stringent protection of intellectual property and economic, political and social uncertainty in some countries, especially in emerging markets. Our continued success as a global company depends, in part, on our ability to develop and implement policies and strategies that are effective in anticipating and managing these and other risks in the countries where we do business. These and other risks may have a material adverse effect on our operations in any particular country and on our business as a whole. We price some of our products in U.S. dollars, and as a result changes in exchange rates can make our products more expensive in some foreign markets and reduce our sales. Inflation in emerging markets also makes our products more expensive there and increases the credit risks to which we are exposed.

Our defined benefit pension plans are currently underfunded and we may be subject to significant increases in pension benefit obligations under those pension plans

We sponsor two defined benefit pension plans through our wholly owned Swiss and Japanese subsidiaries. Both plans are underfunded and may require significant cash payments. We contributed \$178,000 to our Swiss Plan and \$75,000 to our Japan Plan during the nine months ended October 2, 2009. For the Swiss Plan, we currently expect to contribute approximately \$59,000 for the remainder of 2009.

Beginning October 1, 2009, as part of the Amendment of the Japan Plan discussed in Note 7 to the consolidated financial statements included in this report, STAAR Japan will maintain and administer the Japan Plan, including paying the pension benefits as they are due solely from its continuing operations. STAAR Japan is not required to, and does not expect to make any contributions to the Japan Plan in order to meet future pension benefit obligations. Therefore, STAAR Japan has no plan assets now and does not expect to have any in the future.

STAAR determines its pension benefit obligations and funding status using many assumptions, such as inflation, investment rates, mortality, turnover and interest rates, as applicable, any of which could prove to be different than projected. If the investment performance does not meet our expectations, or if other actuarial assumptions are modified, or not realized, we may be required to contribute more than we currently expect and increase our future pension benefit obligations to be funded from our operations.

Our pension plans in the aggregate are underfunded by approximately \$1.8 million (\$1.0 million for the Japan Plan and \$0.8 million for the Swiss Plan) as of October 2, 2009 (based on the actuarial assumptions used for FASB ASC 715-30, "Defined Benefits Plans — Pensions" purposes and comparing our projected benefit obligation to the fair value of plan assets).

If our cash flow from operations is insufficient to fund our worldwide pension obligations, we may be materially and adversely harmed and have to seek additional capital

ITEM 6. EXHIBITS

Exhibits

- 3.1 Certificate of Incorporation, as amended to date.(1)
- 3.2 By-laws, as amended to date.(2)
- 4.1 Certificate of Designation of Series A Convertible Preferred Stock.(1)
- 4.2 1991 Stock Option Plan of STAAR Surgical Company.(3)
- 4.3 1998 STAAR Surgical Company Stock Plan, adopted April 17, 1998.(4)
- 4.4 Form of Certificate for Common Stock, par value \$0.01 per share.(5)
- 4.5 2003 Omnibus Equity Incentive Plan, as amended, and form of Option Grant and Stock Option Agreement.(6)
- 10.74 Stock Purchase Agreement.(8)
- 10.75 Amendment Agreement between the Company and Broadwood Partners, L.P.(8)
- 10.76 Employment Agreement between the Company and Deborah Andrews, dated December 2, 2002.(9)
- 10.77 Bonus, Salary Increase and Stock Option Grant to Deborah Andrews, dated April 11, 2007.(9)
- 10.78 Service Agreement between Domilens GmbH, a wholly owned subsidiary, and Dr. Reinhard Pichl, Managing Director, dated November 1, 2007.(9)
- 10.79 Employment Agreement between STAAR Surgical AG, a wholly owned subsidiary, and Mr. Hans Martin Blickensdoerfer, dated January 1, 2005.(9)
- 10.80 Credit Agreement between STAAR Japan Inc. with Mizuho Bank Inc., dated October 31, 2007.(*)
- 10.81 Amended Credit Agreement between Staar Japan and Mizuho Bank Ltd., dated June 30, 2009.(*)
- 31.1 Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(*)
- 31.2 Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(*)
- 32.1 Certification Pursuant to 18 U.S.C. Section 1350, Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.(*)

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- (1) Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 2007, as filed with the Commission on March 12, 2008.
 - (2) Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on May 23, 2006.
 - (3) Incorporated by reference to the Company's Registration Statement on Form S-8, File No. 033-76404, as filed with the Commission on March 11, 1994.
 - (4) Incorporated by reference to the Company's Proxy Statement for its Annual Meeting of Stockholders held on May 29, 1998, filed with the Commission on May 1, 1998.
 - (5) Incorporated by reference to Exhibit 4.1 to Amendment No. 1 to the Company's Registration Statement on Form 8-A/A, as filed with the Commission on April 18, 2003.
 - (6) Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on January 8, 2009.
 - (7) Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on April 17, 2009.
 - (8) Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on June 25, 2009.
 - (9) Incorporated by reference to the Company's Current Report on Form 8-K filed with the Commission on October 1, 2009.
 - (*) Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Amendment No. 1 to its Report on Form 10-Q/A to be signed on its behalf by the undersigned thereunto duly authorized.

STAAR SURGICAL COMPANY

Date: March 23, 2010

By: /s/ Deborah Andrews
Deborah Andrews

Chief Financial Officer
(on behalf of the Registrant and as its
principal financial officer)