

New York & Company, Inc.  
Form 10-Q  
June 07, 2012

Use these links to rapidly review the document

[TABLE OF CONTENTS](#)

[Table of Contents](#)

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

---

**FORM 10-Q**

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

**for the quarterly period ended April 28, 2012**

**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: 1-32315**

**NEW YORK & COMPANY, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**  
(State of incorporation)

**33-1031445**  
(I.R.S. Employer Identification No.)

**450 West 33<sup>rd</sup> Street**  
**5<sup>th</sup> Floor**  
**New York, New York 10001**  
(Address of Principal Executive Offices,  
including Zip Code)

**(212) 884-2000**  
(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

## Edgar Filing: New York & Company, Inc. - Form 10-Q

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

As of May 25, 2012, the registrant had 62,392,255 shares of common stock outstanding.

---

Table of Contents

**TABLE OF CONTENTS**

PART I. FINANCIAL INFORMATION

<u>Item 1.</u>	<u>Financial Statements</u>	<u>1</u>
<u>Item 2.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>11</u>
<u>Item 3.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>18</u>
<u>Item 4.</u>	<u>Controls and Procedures</u>	<u>19</u>

PART II. OTHER INFORMATION

<u>Item 1.</u>	<u>Legal Proceedings</u>	<u>20</u>
<u>Item 1A.</u>	<u>Risk Factors</u>	<u>20</u>
<u>Item 2.</u>	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>20</u>
<u>Item 3.</u>	<u>Defaults Upon Senior Securities</u>	<u>20</u>
<u>Item 4.</u>	<u>Mine Safety Disclosures</u>	<u>20</u>
<u>Item 5.</u>	<u>Other Information</u>	<u>20</u>
<u>Item 6.</u>	<u>Exhibits</u>	<u>20</u>

Table of Contents

**PART I.**  
**FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

**New York & Company, Inc. and Subsidiaries**

**Condensed Consolidated Statements of Operations**

(Unaudited)

(Amounts in thousands, except per share amounts)	Three months ended April 28, 2012	Three months ended April 30, 2011
Net sales	\$ 227,736	\$ 239,354
Cost of goods sold, buying and occupancy costs	163,186	177,364
Gross profit	64,550	61,990
Selling, general and administrative expenses	64,626	65,589
Operating loss	(76)	(3,599)
Interest expense, net of interest income of \$3 and \$9, respectively	90	130
Loss before income taxes	(166)	(3,729)
Provision (benefit) for income taxes	45	(51)
Net loss	\$ (211)	\$ (3,678)
Basic loss per share	\$ (0.00)	\$ (0.06)
Diluted loss per share	\$ (0.00)	\$ (0.06)
Weighted average shares outstanding:		
Basic shares of common stock	61,302	60,021
Diluted shares of common stock	61,302	60,021

See accompanying notes.

**New York & Company, Inc. and Subsidiaries**

**Condensed Consolidated Statements of Comprehensive Loss**

(Unaudited)

(Amounts in thousands)	Three months ended April 28, 2012	Three months ended April 30, 2011
Comprehensive loss	\$ (164)	\$ (3,678)

See accompanying notes.



Table of Contents

## New York &amp; Company, Inc. and Subsidiaries

## Condensed Consolidated Balance Sheets

(Amounts in thousands, except per share amounts)	April 28, 2012 (Unaudited)	January 28, 2012 (Audited)	April 30, 2011 (Unaudited)
<b>Assets</b>			
Current assets:			
Cash and cash equivalents	\$ 29,481	\$ 50,787	\$ 35,072
Accounts receivable	11,228	7,269	12,182
Income taxes receivable	475	477	957
Inventories, net	97,413	81,328	112,672
Prepaid expenses	21,398	21,057	20,989
Other current assets	1,091	968	2,279
<b>Total current assets</b>	<b>161,086</b>	<b>161,886</b>	<b>184,151</b>
Property and equipment, net	112,408	115,280	136,903
Intangible assets	14,879	14,879	14,879
Deferred income taxes	4,361	4,361	3,362
Other assets	929	950	645
<b>Total assets</b>	<b>\$ 293,663</b>	<b>\$ 297,356</b>	<b>\$ 339,940</b>
<b>Liabilities and stockholders' equity</b>			
Current liabilities:			
Current portion long-term debt	\$	\$	\$ 6,000
Accounts payable	69,924	72,297	70,038
Accrued expenses	53,514	55,146	57,465
Income taxes payable	3,043	3,064	105
Deferred income taxes	4,361	4,361	3,362
<b>Total current liabilities</b>	<b>130,842</b>	<b>134,868</b>	<b>136,970</b>
Deferred rent	56,748	57,127	64,010
Other liabilities	4,959	5,256	5,871
<b>Total liabilities</b>	<b>192,549</b>	<b>197,251</b>	<b>206,851</b>
Stockholders' equity:			
Common stock, voting, par value \$0.001; 300,000 shares authorized; 62,392, 62,053 and 61,939 shares issued and outstanding at April 28, 2012, January 28, 2012, and April 30, 2011, respectively	62	62	62
Additional paid-in capital	164,113	162,940	159,949
Retained deficit	(56,932)	(56,721)	(21,462)
Accumulated other comprehensive loss	(2,732)	(2,779)	(2,063)
Treasury stock at cost; 1,000 shares at April 28, 2012, January 28, 2012 and April 30, 2011	(3,397)	(3,397)	(3,397)
<b>Total stockholders' equity</b>	<b>101,114</b>	<b>100,105</b>	<b>133,089</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 293,663</b>	<b>\$ 297,356</b>	<b>\$ 339,940</b>

See accompanying notes.

Table of Contents

**New York & Company, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Cash Flows**  
**(Unaudited)**

(Amounts in thousands)	Three months ended April 28, 2012	Three months ended April 30, 2011
<b>Operating activities</b>		
Net loss	\$ (211)	\$ (3,678)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	8,735	9,894
Amortization of deferred financing costs	30	54
Share-based compensation expense	1,108	816
Changes in operating assets and liabilities:		
Accounts receivable	(3,959)	(2,426)
Income taxes receivable	2	(430)
Inventories, net	(16,085)	(30,610)
Prepaid expenses	(341)	(282)
Accounts payable	(2,373)	(3,573)
Accrued expenses	(1,632)	(6,772)
Income taxes payable	(21)	(155)
Deferred rent	(379)	(2,852)
Other assets and liabilities	(382)	(729)
<b>Net cash used in operating activities</b>	<b>(15,508)</b>	<b>(40,743)</b>
<b>Investing activities</b>		
Capital expenditures	(5,863)	(2,226)
<b>Net cash used in investing activities</b>	<b>(5,863)</b>	<b>(2,226)</b>
<b>Financing activities</b>		
Repayment of debt		(1,500)
Proceeds from exercise of stock options	65	2,149
<b>Net cash provided by financing activities</b>	<b>65</b>	<b>649</b>
<b>Net decrease in cash and cash equivalents</b>	<b>(21,306)</b>	<b>(42,320)</b>
Cash and cash equivalents at beginning of period	50,787	77,392
<b>Cash and cash equivalents at end of period</b>	<b>\$ 29,481</b>	<b>\$ 35,072</b>

See accompanying notes.

Table of Contents

**New York & Company, Inc.**

**Notes to Condensed Consolidated Financial Statements**

**April 28, 2012**

**(Unaudited)**

**1. Organization and Basis of Presentation**

New York & Company, Inc. (together with its subsidiaries, collectively the "Company") is a leading specialty retailer of women's fashion apparel and accessories, and the modern wear-to-work destination for women, providing perfectly fitting pants and NY Style that is feminine, polished, on-trend and versatile all at an amazing value. The Company's proprietary branded New York & Company® merchandise is sold exclusively through its national network of retail stores and eCommerce store at [www.nyandcompany.com](http://www.nyandcompany.com). The target customers for the Company's merchandise are fashion-conscious, value-sensitive women between the ages of 25 and 45. As of April 28, 2012, the Company operated 541 stores in 43 states.

The condensed consolidated financial statements as of April 28, 2012 and April 30, 2011 and for the 13 weeks ("three months") ended April 28, 2012 and April 30, 2011 are unaudited and are presented pursuant to the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Accordingly, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the 52-week fiscal year ended January 28, 2012 ("fiscal year 2011"), which were filed with the Company's Annual Report on Form 10-K with the SEC on April 9, 2012. The 53-week fiscal year ending February 2, 2013 is referred to herein as "fiscal year 2012." The Company's fiscal year is a 52- or 53-week year that ends on the Saturday closest to January 31.

On a stand-alone basis, without the consolidation of Lerner Holding and its subsidiaries, New York & Company, Inc. has no significant independent assets or operations. All significant intercompany balances and transactions have been eliminated in consolidation. In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, which are of a normal recurring nature, necessary to present fairly the financial condition, results of operations and cash flows for the interim periods.

Due to seasonal variations in the retail industry, the results of operations for any interim period are not necessarily indicative of the results expected for the full fiscal year.

**2. New Accounting Pronouncements**

In May 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2011-04, "Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in GAAP and IFRSs" ("ASU 2011-04"), which amends Accounting Standards Codification™ ("ASC") Topic 820, "Fair Value Measurements and Disclosures" ("ASC 820"). The updated guidance amends U.S. generally accepted accounting principles ("GAAP") to create more commonality with International Financial Reporting Standards ("IFRS") by changing some of the wording used to describe requirements for measuring fair value and for disclosing information about fair value measurements. ASU 2011-04 is effective for interim and annual periods beginning after December 15, 2011 and has been applied prospectively. The Company's adoption of ASU 2011-04 during the three months ended April 28, 2012 did not have a material impact on its financial position and results of operations.

In June 2011, the FASB issued ASU No. 2011-05, "Presentation of Comprehensive Income" ("ASU 2011-05"), which amends FASB ASC Topic 220, "Comprehensive Income." The objective of



Table of Contents**New York & Company, Inc.****Notes to Condensed Consolidated Financial Statements (Continued)****April 28, 2012****(Unaudited)****2. New Accounting Pronouncements (Continued)**

ASU 2011-05 is to improve the comparability, consistency, and transparency of financial reporting and to increase the prominence of items reported in other comprehensive income. The amendments in this standard eliminate the option to present components of other comprehensive income as part of the statement of stockholders' equity. The amendments in this standard require that all non-owner changes in stockholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In the two-statement approach, the first statement should present total net income and its components followed consecutively by a second statement that should present for annual periods total other comprehensive income, the components of other comprehensive income, and the total of comprehensive income and for interim periods present the total of comprehensive income. ASU 2011-05 is effective for interim and annual periods beginning after December 15, 2011 and has been applied retrospectively. In December 2011, the FASB issued ASU 2011-12, which indefinitely deferred the requirement of ASU 2011-05 related to presentation of reclassification adjustments from other comprehensive income to net income on the face of the financial statements. ASU 2011-05, as modified by ASU 2011-12, was adopted by the Company during the three months ended April 28, 2012 by showing two separate but consecutive statements for interim periods.

**3. Earnings Per Share**

Basic loss per share is computed by dividing net loss by the weighted average number of shares of common stock outstanding for the period. Diluted loss per share is calculated based on the weighted average number of outstanding shares of common stock plus the dilutive effect of share-based awards (stock options, stock appreciation rights, unvested restricted stock, and performance awards) calculated under the treasury stock method. A reconciliation between basic and diluted loss per share is as follows:

	<b>Three months ended April 28, 2012</b>	<b>Three months ended April 30, 2011</b>
	<b>(Amounts in thousands, except per share amounts)</b>	
Net loss	\$ (211)	\$ (3,678)
<i>Basic loss per share</i>		
<b>Weighted average shares outstanding:</b>		
Basic shares of common stock	61,302	60,021
Basic loss per share	\$ (0.00)	\$ (0.06)
<i>Diluted loss per share</i>		
<b>Weighted average shares outstanding:</b>		
Basic shares of common stock	61,302	60,021
Plus impact of share-based awards		
Diluted shares of common stock	61,302	60,021
Diluted loss per share	\$ (0.00)	\$ (0.06)

Table of Contents**New York & Company, Inc.****Notes to Condensed Consolidated Financial Statements (Continued)****April 28, 2012****(Unaudited)****3. Earnings Per Share (Continued)**

The calculation of diluted loss per share for the three months ended April 28, 2012 and April 30, 2011 excludes the share-based awards listed in the following table due to their anti-dilutive effect:

	<b>Three months ended April 28, 2012</b>	<b>Three months ended April 30, 2011</b>
	<b>(Amounts in thousands)</b>	
Stock options	1,181	1,812
Stock appreciation rights(1)	3,272	1,334
Restricted stock and units	814	432
 Total anti-dilutive potential shares	 5,267	 3,578

(1)

Each stock appreciation right ("SAR") referred to above represents the right to receive a payment measured by the increase in the fair market value of one share of common stock from the date of grant of the SAR to the date of exercise of the SAR. Upon exercise the SARs will be settled in stock.

**4. Share-Based Compensation**

The Company accounts for all share-based payments in accordance with FASB ASC Topic 718, "Compensation Stock Compensation" ("ASC 718"). ASC 718 requires that the cost resulting from all share-based payment transactions be treated as compensation and recognized in the consolidated financial statements.

The Company recorded share-based compensation expense in the amount of \$1.1 million and \$0.8 million for the three months ended April 28, 2012 and April 30, 2011, respectively.

During the three months ended April 28, 2012, the Company issued 967,000 SARs, 230,096 shares of restricted stock and 200,000 performance units primarily in connection with the Company's annual performance review process for all employees. The restricted stock and SAR awards granted to employees during the three months ended April 28, 2012 cliff vest on the third anniversary of the grant date, subject to continued employment with the Company. The 200,000 performance units were issued to Gregory J. Scott, the Company's Chief Executive Officer, in connection with his annual performance review. If the Company achieves the operating income target approved by the board of directors for fiscal year 2012, the performance units will vest as follows subject to Mr. Scott's continued employment with the Company through such dates: 100,000 units on April 16, 2014 and 100,000 units on April 16, 2015. Upon vesting, each performance unit will be convertible into one share of the Company's common stock.

Each SAR granted represents the right to receive a payment measured by the increase in the fair market value of one share of common stock from the date of grant of the SAR to the date of exercise of the SAR. Upon exercise, the SARs will be settled in stock. The fair value of a SAR is calculated using the Black-Scholes option-pricing model. The fair value of the restricted stock and the performance units is based on the closing stock price of an unrestricted share of the Company's

Table of Contents**New York & Company, Inc.****Notes to Condensed Consolidated Financial Statements (Continued)****April 28, 2012****(Unaudited)****4. Share-Based Compensation (Continued)**

common stock on the grant date. Total compensation expense related to share-based awards is recognized in the consolidated financial statements on a straight-line basis over the requisite service period of the awards.

During the three months ended April 28, 2012, 109,362 shares of common stock were issued upon exercise of previously issued stock options.

**5. Pension Plan**

The Company sponsors a single employer defined benefit pension plan (the "plan") covering substantially all union employees. Employees covered by collective bargaining agreements are primarily non-management store associates, representing approximately 8% of the Company's workforce. The collective bargaining agreement with the Local 1102 unit of the Retail, Wholesale and Department Store Union ("RWDSU") AFL-CIO ("Local 1102") is set to expire on August 31, 2013. The Company believes its relationship with its employees is good.

The plan provides retirement benefits for union employees who have attained the age of 21 and complete 1,000 or more hours of service in any calendar year following the date of employment. The plan provides benefits based on length of service. The Company's funding policy for the pension plan is to contribute annually the amount necessary to provide for benefits based on accrued service and to contribute at least the minimum required by ERISA rules. The Company anticipates contributing approximately \$0.9 million to the plan during fiscal year 2012. Net periodic benefit cost includes the following components:

	<b>Three months ended April 28, 2012</b>	<b>Three months ended April 30, 2011</b>
	(Amounts in thousands)	
Service cost	\$ 88	\$ 89
Interest cost	104	119
Expected return on plan assets	(122)	(120)
Amortization of unrecognized losses	51	35
Amortization of prior service credit	(4)	
Net periodic benefit cost	\$ 117	\$ 123

In accordance with ASC 220, comprehensive loss reported on the Company's condensed consolidated statements of comprehensive loss includes net loss and other comprehensive income (loss). During the three months ended April 28, 2012 and April 30, 2011, other comprehensive income (loss) consisted of immaterial adjustments related to the Company's minimum pension liability. As of January 28, 2012, the Company reported a minimum pension liability of \$3.6 million due to the unfunded status of the plan. The minimum pension liability is reported in other liabilities on the condensed consolidated balance sheets.

Table of Contents

**New York & Company, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

**April 28, 2012**

**(Unaudited)**

**6. Income Taxes**

The Company files U.S. federal income tax returns and income tax returns in various state and local jurisdictions. In November 2008, the Internal Revenue Service ("IRS") began its examination of the Company's U.S. federal income tax return for the 2006 tax year. Thereafter, the IRS expanded the 2006 tax year audit to include the Company's 2007, 2008 and 2009 federal income tax returns, as well as the Company's previously settled 2005 federal income tax return as a result of the Company's refund claims carrying back the Company's net operating losses. In addition, the Company is subject to U.S. federal income tax examinations for the Company's 2010 tax return and state and local income tax examinations for the 2007 to 2010 tax returns.

At January 28, 2012, the Company reported a total liability of \$1.6 million in other liabilities on the consolidated balance sheet for unrecognized tax benefits, including interest and penalties, all of which would impact the Company's effective tax rate if recognized. There were no material changes to the liability for unrecognized tax benefits during the three months ended April 28, 2012. The Company does not anticipate any significant increases or decreases to the balance of unrecognized tax benefits during the next 12 months.

As previously disclosed, during the three months ended July 31, 2010, the Company concluded that a full valuation allowance against the Company's deferred tax assets was necessary in order to reflect the Company's assessment of its ability to realize the benefits of those deferred tax assets. The Company made this determination after weighing both negative and positive evidence in accordance with FASB ASC Topic 740, "Income Taxes" ("ASC 740"), which requires that deferred tax assets be reduced by a valuation allowance if, based on all available evidence, it is considered more likely than not that some portion or all of the recorded deferred tax assets will not be realized in a future period. The evidence weighed included a historical three-year cumulative loss related to earnings before taxes in addition to an assessment of sources of taxable income, availability of tax planning strategies, and future projections of earnings. The Company will continue to maintain a valuation allowance against its deferred tax assets until the Company believes it is more likely than not that these assets will be realized in the future. If sufficient positive evidence arises in the future indicating that all or a portion of the deferred tax assets meet the more-likely-than-not standard under ASC 740, the valuation allowance would be reversed accordingly in the period that such determination is made. As of April 28, 2012, the Company's valuation allowance against its deferred tax assets was \$58.5 million.

**7. Long-Term Debt and Credit Facilities**

On August 10, 2011, Lerner New York, Inc., Lernco, Inc. and Lerner New York Outlet, Inc., wholly-owned indirect subsidiaries of New York & Company, Inc., entered into a Third Amended and Restated Loan and Security Agreement (the "Loan Agreement") with Wells Fargo Bank, N.A., as Agent and sole lender. The Loan Agreement expires on August 10, 2016. Concurrent with the closing of the Loan Agreement, the Company repaid in full the \$4.5 million outstanding balance on the term loan under the prior agreement and wrote off \$0.1 million of unamortized deferred financing costs related to the prior agreement.

The Loan Agreement provides the Company with up to \$100 million of credit, consisting of a \$75 million revolving credit facility (which includes a subfacility for issuance of letters of credit up to

Table of Contents

**New York & Company, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

**April 28, 2012**

**(Unaudited)**

**7. Long-Term Debt and Credit Facilities (Continued)**

\$45 million) with a fully committed accordion option that allows the Company to increase the revolving credit facility to a maximum of \$100 million or decrease it to a minimum of \$60 million, subject to certain restrictions. Under the Loan Agreement, the Company is currently subject to a Minimum Excess Availability (as defined in the Loan Agreement) covenant of \$7.5 million. The Company's credit facility contains other covenants, including restrictions on the Company's ability to pay dividends on its common stock; to incur additional indebtedness; and to prepay, redeem, defease or purchase other debt. Subject to such restrictions, the Company may incur more debt for working capital, capital expenditures, stock repurchases, acquisitions and for other purposes.

Under the terms of the Loan Agreement, the revolving loans under the credit facility bear interest, at the Company's option, either at a floating rate equal to the Eurodollar rate plus a margin of between 1.75% and 2.00% per year for Eurodollar rate loans or a floating rate equal to the Prime rate plus a margin of between 0.75% and 1.00% per year for Prime rate loans, depending upon the Company's Average Compliance Excess Availability (as defined in the Loan Agreement). The Company pays the lender under the revolving credit facility a monthly fee on outstanding commercial letters of credit at a rate of between 0.875% and 1.00% per year and on standby letters of credit at a rate of between 1.75% and 2.00% per year, depending upon the Company's Average Compliance Excess Availability, plus a monthly fee on a proportion of the unused commitments under the revolving credit facility at a rate of 0.375% per year.

The maximum borrowing availability under the Company's revolving credit facility is determined by a monthly borrowing base calculation that is based on the application of specified advance rates against inventory and certain other eligible assets. As of April 28, 2012, the Company had availability under its revolving credit facility of \$61.4 million, net of letters of credit outstanding of \$11.3 million, as compared to availability of \$36.6 million, net of letters of credit outstanding of \$7.2 million, as of January 28, 2012, and \$71.1 million, net of letters of credit outstanding of \$6.9 million, as of April 30, 2011.

The lender has been granted a pledge of the common stock of Lerner Holding and certain of its subsidiaries, and a first priority security interest in substantially all other tangible and intangible assets of New York & Company, Inc. and its subsidiaries, as collateral for the Company's obligations under the credit facility. In addition, New York & Company, Inc. and certain of its subsidiaries have fully and unconditionally guaranteed the credit facility, and such guarantees are joint and several.

**8. Fair Value Measurements**

ASC 820 establishes a common definition for fair value to be applied to GAAP guidance requiring the use of fair value, establishes a framework for measuring fair value, and expands the disclosure about such fair value measurements. ASC 820 establishes a three-level fair value hierarchy that requires

Table of Contents

**New York & Company, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

**April 28, 2012**

**(Unaudited)**

**8. Fair Value Measurements (Continued)**

entities to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of inputs used to measure fair value are as follows:

Level 1: Observable inputs such as quoted prices in active markets;

Level 2: Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and

Level 3: Unobservable inputs in which there is little or no market data and require the reporting entity to develop its own assumptions.

The Company's financial instruments consist of cash and cash equivalents, short-term trade receivables, accounts payable and long-term debt. The carrying values on the balance sheet for cash and cash equivalents, short-term trade receivables and accounts payable approximate their fair values due to the short-term maturities of such items. The Company did not have any long-term debt outstanding as of April 28, 2012. As of April 30, 2011, the carrying value on the balance sheet for the Company's long-term debt approximates its fair value due to the variable interest rate it carried, and as such it is classified within Level 2 of the fair value hierarchy.

The Company evaluates long-lived assets for recoverability in accordance with FASB ASC Topic 360, "Property, Plant, and Equipment" whenever events or changes in circumstances indicate that an asset may have been impaired. In evaluating an asset for recoverability, the Company estimates the future cash flow expected to result from the use of the asset and eventual disposition and market data assumptions. If the sum of the expected future undiscounted cash flow is less than the carrying amount of the asset, an impairment loss equal to the excess of the carrying amount over the fair value of the asset is recognized. At April 28, 2012 and April 30, 2011, the Company's evaluation of long-lived assets did not result in any material impairments.

Table of Contents

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

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND RISK FACTORS  
(Cautionary Statements Under the Private Securities Litigation Reform Act of 1995)**

This Quarterly Report on Form 10-Q includes forward looking statements. Certain matters discussed in "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations" and other sections of this Quarterly Report on Form 10-Q are forward looking statements intended to qualify for safe harbors from liability established by the Private Securities Litigation Reform Act of 1995. Some of these statements can be identified by terms and phrases such as "anticipate," "believe," "intend," "estimate," "expect," "continue," "could," "may," "plan," "project," "predict" and similar expressions and include references to assumptions that the Company believes are reasonable and relate to its future prospects, developments and business strategies. Factors that could cause the Company's actual results to differ materially from those expressed or implied in such forward looking statements, include, but are not limited to those discussed under the heading "Item 3. Quantitative and Qualitative Disclosures About Market Risk" in this Quarterly Report on Form 10-Q and:

the impact of general economic conditions and their effect on consumer confidence and spending patterns;

changes in the cost of raw materials, distribution services or labor;

the potential for current economic conditions to negatively impact the Company's merchandise vendors and their ability to deliver products, as well as the Company's retail landlords and their ability to maintain their shopping centers in a first-class condition and otherwise perform their obligations as a landlord;

the Company's ability to anticipate and respond to fashion trends, develop new merchandise and launch new product lines successfully;

the Company's ability to effectively market to customers and drive traffic to its stores;

fluctuations in comparable store sales and results of operations;

seasonal fluctuations in the Company's business;

the Company's reliance on foreign sources of production, including the disruption of imports by labor disputes, political instability, legal and regulatory matters, duties, taxes, other charges, local business practices, potential delays in shipping and related pricing impacts and political issues and fluctuation in currency and exchange rates;

the potential impact of national and international security concerns on the retail environment, including any possible military action, terrorist attacks or other hostilities;

the potential impact of natural disasters and health concerns relating to outbreaks of widespread diseases, particularly on manufacturing operations of the Company's vendors;

the ability of the Company's manufacturers to manufacture and deliver products in a timely manner while meeting its quality standards;

## Edgar Filing: New York & Company, Inc. - Form 10-Q

the Company's ability to open and operate stores successfully, including its New York & Company Outlet stores, and the potential lack of availability of suitable store locations on acceptable terms;

the Company's dependence on mall traffic for its sales;

the Company's dependence on the success of its brand;



## Edgar Filing: New York & Company, Inc. - Form 10-Q

### Table of Contents

the susceptibility of the Company's business to extreme and/or unseasonable weather conditions;

the Company's reliance on third parties to manage some aspects of its business;

the Company's reliance on the effective use of customer information;

the Company's reliance on manufacturers to maintain ethical business practices;

the effects of government regulation;

competition in the Company's market, including promotional and pricing competition;

the Company's ability to protect its trademarks and other intellectual property rights;

the Company's ability to maintain, and its reliance on, its information technology infrastructure, and its ability to prevent security breaches and cyber incidents;

the Company's ability to service any debt it incurs from time to time as well as its ability to maintain the requirements that the agreements related to such debt impose upon the Company;

the Company's ability to retain, recruit and train key personnel;

the control of the Company by its sponsors and any potential change of ownership of those sponsors; and

risks and uncertainties as described in the Company's documents filed with the SEC, including its Annual Report on Form 10-K, as filed on April 9, 2012.

The Company undertakes no obligation to revise the forward looking statements included in this Quarterly Report on Form 10-Q to reflect any future events or circumstances. The Company's actual results, performance or achievements could differ materially from the results expressed or implied by these forward looking statements.

### **Overview**

The Company is a leading specialty retailer of women's fashion apparel and accessories, and the modern wear-to-work destination for women, providing perfectly fitting pants and NY Style that is feminine, polished, on-trend and versatile all at an amazing value. The Company's proprietary branded New York & Company® merchandise is sold exclusively through its national network of retail stores and eCommerce store at [www.nyandcompany.com](http://www.nyandcompany.com). The target customers for the Company's merchandise are fashion-conscious, value-sensitive women between the ages of 25 and 45. As of April 28, 2012, the Company operated 541 stores in 43 states.

During the three months ended April 28, 2012, the Company remained focused on its six strategic initiatives: maximizing sales and profitability, particularly during peak traffic times of the year; increasing marketing efforts to grow traffic in stores and on-line; maintaining dominance in the Company's wear-to-work assortment, while redefining its casual assortment; improving average unit cost; optimizing the Company's real estate portfolio; and expanding its eCommerce and Outlet businesses. Progress made on each of these fronts during the three months ended April 28, 2012 contributed to an improved gross margin and operating performance versus the three months ended April 30, 2011.

## Edgar Filing: New York & Company, Inc. - Form 10-Q

For the three months ended April 28, 2012, the Company's operating loss was \$0.1 million, as compared to an operating loss of \$3.6 million for the three months ended April 30, 2011.

Net sales for the three months ended April 28, 2012 were \$227.7 million, as compared to \$239.4 million for the three months ended April 30, 2011. Comparable store sales decreased by 2.9% for the three months ended April 28, 2012, as compared to a comparable store sales increase of 2.5% for the three months ended April 30, 2011. Net loss for the three months ended April 28, 2012

Table of Contents

narrowed to \$0.2 million, or breakeven on a per diluted share basis, as compared to a net loss of \$3.7 million, or \$0.06 per diluted share for the three months ended April 30, 2011.

Capital spending for the three months ended April 28, 2012 was \$5.9 million, as compared to \$2.2 million for the three months ended April 30, 2011. The \$5.9 million of capital spending represents \$5.6 million related to the opening of new stores and the remodeling of existing stores, and \$0.2 million related to information technology enhancements. During the three months ended April 28, 2012, the Company opened 10 new stores, including nine New York & Company Outlet stores, and remodeled four existing stores. At April 28, 2012, the Company operated 541 stores, including 35 New York & Company Outlet stores. Capital spending during the three months ended April 30, 2011 represents \$2.0 million related to the remodeling of existing stores and \$0.3 million related to non-store capital projects, which principally represent information technology enhancements.

The Company views the retail apparel market as having two principal selling seasons: spring (first and second quarter) and fall (third and fourth quarter). The Company's business experiences seasonal fluctuations in net sales and operating income, with a significant portion of its operating income typically realized during its fourth quarter. Any decrease in sales or margins during either of the principal selling seasons in any given year could have a disproportionate effect on the Company's financial condition and results of operations. Seasonal fluctuations also affect inventory levels. The Company must carry a significant amount of inventory, especially before the holiday season selling period in the fourth quarter and prior to the Easter and Mother's Day holidays toward the end of the first quarter and beginning of the second quarter.

**General**

*Net Sales.* Net sales consist of sales from comparable and non-comparable stores. A store is included in the comparable store sales calculation after it has completed 13 full fiscal months of operations from the store's opening date or once it has been reopened after remodeling if the gross square footage did not change by more than 20%. Sales from the Company's eCommerce store are included in comparable store sales. Non-comparable store sales include new stores, stores relocated within the same shopping center and remodeled stores that have a change in gross square footage of more than 20% which have not completed 13 full fiscal months of operations, sales from closed stores, and sales from stores closed or in temporary locations during periods of remodeling. In addition, in a year with 53 weeks, sales in the last week of the year are not included in determining comparable store sales. Net sales from the sale of merchandise at the Company's stores are recognized when the customer takes possession of the merchandise and the purchases are paid for, primarily with either cash or credit card. Net sales, including shipping fees billed to customers, from the sale of merchandise at the Company's eCommerce store are recognized when the merchandise is shipped to the customer and the purchases are paid for. A reserve is provided for projected merchandise returns based on prior experience.

The Company issues gift cards which do not contain provisions for expiration or inactivity fees. The portion of the dollar value of gift cards that ultimately is not used by customers to make purchases is known as breakage. The Company recognizes gift card breakage as revenue as gift cards are redeemed over a two-year redemption period based on its historical gift card breakage rate. The Company considers the likelihood of redemption remote beyond a two-year redemption period, at which point any unrecognized gift card breakage is recognized as revenue. The Company determined the redemption period and the gift card breakage rate based on its historical redemption patterns.

*Cost of Goods Sold, Buying and Occupancy Costs.* Cost of goods sold, buying and occupancy costs is comprised of direct inventory costs for merchandise sold, distribution costs, shipping costs, payroll and related costs for design, sourcing, production, merchandising, planning and allocation personnel, and store occupancy and related costs.

Table of Contents

*Gross Profit.* Gross profit represents net sales less cost of goods sold, buying and occupancy costs.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses include selling, store management and corporate expenses, including payroll and employee benefits, employment taxes, management information systems, marketing, insurance, legal, store pre-opening and other corporate level expenses. Store pre-opening expenses include store level payroll, grand opening event marketing, travel, supplies and other store opening expenses.

**Results of Operations**

The following tables summarize the Company's results of operations as a percentage of net sales and selected store operating data for the three months ended April 28, 2012 and April 30, 2011:

	Three months ended April 28, 2012	Three months ended April 30, 2011
Net sales	100.0%	100.0%
Cost of goods sold, buying and occupancy costs	71.7%	74.1%
<b>Gross profit</b>	<b>28.3%</b>	<b>25.9%</b>
Selling, general and administrative expenses	28.3%	27.4%
<b>Operating loss</b>	<b>0.0%</b>	<b>(1.5)%</b>
Interest expense, net	0.0%	0.1%
<b>Loss before income taxes</b>	<b>0.0%</b>	<b>(1.6)%</b>
Provision (benefit) for income taxes	0.1%	(0.1)%
<b>Net loss</b>	<b>(0.1)%</b>	<b>(1.5)%</b>

	Three months ended April 28, 2012	Three months ended April 30, 2011
(Dollars in thousands, except square foot data)		
<b>Selected operating data:</b>		
Comparable store sales (decrease) increase	(2.9)%	2.5%
Net sales per average selling square foot(1)	\$ 79	\$ 79
Net sales per average store(2)	\$ 424	\$ 432
Average selling square footage per store(3)	5,329	5,449

(1) Net sales per average selling square foot is defined as net sales divided by the average of beginning and end of period selling square feet.

(2) Net sales per average store is defined as net sales divided by the average of beginning and end of period number of stores.

(3) Average selling square footage per store is defined as end of period selling square feet divided by end of period number of stores.

Edgar Filing: New York & Company, Inc. - Form 10-Q

Table of Contents

	Three months ended April 28, 2012		Three months ended April 30, 2011	
	Store Count	Selling Square Feet	Store Count	Selling Square Feet
<b>Store count and selling square feet:</b>				
Stores open, beginning of period	532	2,873,436	555	3,026,483
New stores	10	35,167		
Closed stores	(1)	(5,285)	(2)	(9,383)
Net impact of remodeled stores on selling square feet		(20,119)		(4,030)
Stores open, end of period	541	2,883,199	553	3,013,070

**Three Months Ended April 28, 2012 Compared to Three Months Ended April 30, 2011**

*Net Sales.* Net sales for the three months ended April 28, 2012 decreased by 4.9% to \$227.7 million, as compared to \$239.4 million for the three months ended April 30, 2011. Contributing to the decline in net sales was the Company's lower store base, which consisted of 532 stores at the beginning of fiscal year 2012 as compared to 555 stores at the beginning of fiscal year 2011. In addition, comparable store sales for the three months ended April 28, 2012 decreased by 2.9%, as compared to an increase of 2.5% for the three months ended April 30, 2011. In the comparable store sales base, average dollar sales per transaction increased by 2.3%, while the number of transactions per average store decreased by 5.1%, as compared to the same period last year.

*Gross Profit.* Gross profit for the three months ended April 28, 2012 was \$64.6 million, or 28.3% of net sales, as compared to \$62.0 million, or 25.9% of net sales, for the three months ended April 30, 2011. The increase in gross profit as a percentage of net sales during the three months ended April 28, 2012 was driven by a 70 basis point decrease in buying and occupancy costs reflecting the Company's continued focus on expense controls combined with a 170 basis point improvement in merchandise margin due in large part to improved product costs and sourcing efficiencies.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses were \$64.6 million, or 28.3% of net sales, for the three months ended April 28, 2012, as compared to \$65.6 million, or 27.4% of net sales, for the three months ended April 30, 2011. While the Company continues to manage expenses tightly, selling, general and administrative expenses increased as a percentage of net sales primarily due to the decrease in comparable store sales.

*Operating Loss.* For the reasons discussed above, operating loss for the three months ended April 28, 2012 was \$0.1 million, reflecting an improvement from the operating loss of \$3.6 million for the three months ended April 30, 2011.

*Interest Expense, Net.* Net interest expense was \$0.1 million for the three months ended April 28, 2012 and the three months ended April 30, 2011.

*Provision (Benefit) for Income Taxes.* As previously disclosed, the Company continues to provide for adjustments to the deferred tax valuation allowance initially recorded during the three months ended July 31, 2010. The income tax provision for the three months ended April 28, 2012 was \$45,000, as compared to a benefit of \$51,000 for the three months ended April 30, 2011. For further information related to the deferred tax valuation allowance, please refer to Note 6, "Income Taxes" in the Notes to Condensed Consolidated Financial Statements appearing elsewhere in this Quarterly Report on Form 10-Q.

*Net Loss.* For the reasons discussed above, net loss for the three months ended April 28, 2012 was \$0.2 million, as compared to a net loss of \$3.7 million for the three months ended April 30, 2011.

Table of Contents**Liquidity and Capital Resources**

The Company's primary uses of cash are to fund working capital, operating expenses, debt service and capital expenditures related primarily to the construction of new stores, remodeling of existing stores and development of the Company's information technology infrastructure. Historically, the Company has financed these requirements from internally generated cash flow. The Company intends to fund its ongoing capital and working capital requirements, as well as debt service obligations, primarily through cash flows from operations, supplemented by borrowings under its credit facility, if needed. As of the date of this Quarterly Report on Form 10-Q, the Company is in compliance with all debt covenants.

The following tables contain information regarding the Company's liquidity and capital resources:

	April 28, 2012	January 28, 2012	April 30, 2011
	(Amounts in thousands)		
Cash and cash equivalents	\$ 29,481	\$ 50,787	\$ 35,072
Working capital	\$ 30,244	\$ 27,018	\$ 47,181
		<b>Three months ended April 28, 2012</b>	<b>Three months ended April 30, 2011</b>
		(Amounts in thousands)	
Net cash used in operating activities	\$	(15,508)	\$ (40,743)
Net cash used in investing activities	\$	(5,863)	\$ (2,226)
Net cash provided by financing activities	\$	65	\$ 649
Net decrease in cash and cash equivalents	\$	(21,306)	\$ (42,320)

**Operating Activities**

Net cash used in operating activities was \$15.5 million for the three months ended April 28, 2012, as compared to \$40.7 million for the three months ended April 30, 2011. The decrease in net cash used in operating activities during the three months ended April 28, 2012, as compared to the three months ended April 30, 2011, is primarily due to a decrease in net loss and changes in income taxes receivable, inventories, accounts payable, accrued expenses, income taxes payable, deferred rent and other assets and liabilities, partially offset by changes in accounts receivable and prepaid expenses.

**Investing Activities**

Net cash used in investing activities was \$5.9 million for the three months ended April 28, 2012, as compared to \$2.2 million for the three months ended April 30, 2011. Net cash used in investing activities during the three months ended April 28, 2012 represents capital expenditures of \$5.6 million related to the opening of new stores and remodeling of existing stores, and \$0.2 million related to information technology enhancements. During the three months ended April 28, 2012, the Company opened 10 new stores, including nine New York & Company Outlet stores, and remodeled four existing stores. Net cash used in investing activities during the three months ended April 30, 2011 reflects capital expenditures of \$2.0 million related to the remodeling of existing stores and \$0.3 million for non-store capital projects, which principally represent information technology enhancements.

As of April 28, 2012, the Company operated 541 stores, including 35 New York & Company Outlet stores. During fiscal year 2012, the Company expects to open 15 to 20 new stores, remodel 10 to 15 existing locations, and close between 25 and 30 stores, ending the year with between 517 and 527 stores, including 41 to 46 Outlet stores. The Company's future capital requirements will depend

Table of Contents

primarily on the number of new stores it opens, the number of existing stores it remodels and the timing of these expenditures.

**Financing Activities**

Net cash provided by financing activities was \$0.1 million for the three months ended April 28, 2012, as compared to \$0.6 million for the three months ended April 30, 2011. Net cash provided by financing activities for the three months ended April 28, 2012 consists of proceeds from the exercise of stock options. Net cash provided by financing activities for the three months ended April 30, 2011 consists of \$2.1 million of proceeds from the exercise of stock options, partially offset by a \$1.5 million quarterly payment against a term loan, which was paid in full on August 10, 2011 as discussed below.

**Long-Term Debt and Credit Facilities**

On August 10, 2011, Lerner New York, Inc., Lernco, Inc. and Lerner New York Outlet, Inc., wholly-owned indirect subsidiaries of New York & Company, Inc., entered into a Third Amended and Restated Loan and Security Agreement (the "Loan Agreement") with Wells Fargo Bank, N.A., as Agent and sole lender. The Loan Agreement expires on August 10, 2016. Concurrent with the closing of the Loan Agreement, the Company repaid in full the \$4.5 million outstanding balance on the term loan under the prior agreement and wrote off \$0.1 million of unamortized deferred financing costs related to the prior agreement.

The Loan Agreement provides the Company with up to \$100 million of credit, consisting of a \$75 million revolving credit facility (which includes a subfacility for issuance of letters of credit up to \$45 million) with a fully committed accordion option that allows the Company to increase the revolving credit facility to a maximum of \$100 million or decrease it to a minimum of \$60 million, subject to certain restrictions. Under the Loan Agreement, the Company is currently subject to a Minimum Excess Availability (as defined in the Loan Agreement) covenant of \$7.5 million. The Company's credit facility contains other covenants, including restrictions on the Company's ability to pay dividends on its common stock; to incur additional indebtedness; and to prepay, redeem, defease or purchase other debt. Subject to such restrictions, the Company may incur more debt for working capital, capital expenditures, stock repurchases, acquisitions and for other purposes.

Under the terms of the Loan Agreement, the revolving loans under the credit facility bear interest, at the Company's option, either at a floating rate equal to the Eurodollar rate plus a margin of between 1.75% and 2.00% per year for Eurodollar rate loans or a floating rate equal to the Prime rate plus a margin of between 0.75% and 1.00% per year for Prime rate loans, depending upon the Company's Average Compliance Excess Availability (as defined in the Loan Agreement). The Company pays the lender under the revolving credit facility a monthly fee on outstanding commercial letters of credit at a rate of between 0.875% and 1.00% per year and on standby letters of credit at a rate of between 1.75% and 2.00% per year, depending upon the Company's Average Compliance Excess Availability, plus a monthly fee on a proportion of the unused commitments under the revolving credit facility at a rate of 0.375% per year.

The maximum borrowing availability under the Company's revolving credit facility is determined by a monthly borrowing base calculation that is based on the application of specified advance rates against inventory and certain other eligible assets. As of April 28, 2012, the Company had availability under its revolving credit facility of \$61.4 million, net of letters of credit outstanding of \$11.3 million, as compared to availability of \$36.6 million, net of letters of credit outstanding of \$7.2 million, as of January 28, 2012, and \$71.1 million, net of letters of credit outstanding of \$6.9 million, as of April 30, 2011.

The lender has been granted a pledge of the common stock of Lerner Holding and certain of its subsidiaries, and a first priority security interest in substantially all other tangible and intangible assets

Table of Contents

of New York & Company, Inc. and its subsidiaries, as collateral for the Company's obligations under the credit facility. In addition, New York & Company, Inc. and certain of its subsidiaries have fully and unconditionally guaranteed the credit facility, and such guarantees are joint and several.

**Critical Accounting Policies**

Management has determined that the Company's most critical accounting policies are those related to inventory, long-lived assets, intangible assets and income taxes. Management continues to monitor these accounting policies to ensure proper application of current rules and regulations. There have been no significant changes to these policies as discussed in the Company's Annual Report on Form 10-K for the fiscal year ended January 28, 2012.

**Adoption of New Accounting Standards**

In May 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2011-04, "Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in GAAP and IFRSs" ("ASU 2011-04"), which amends Accounting Standards Codification<sup>TM</sup> ("ASC") Topic 820, "Fair Value Measurements and Disclosures" ("ASC 820"). The updated guidance amends U.S. generally accepted accounting principles ("GAAP") to create more commonality with International Financial Reporting Standards ("IFRS") by changing some of the wording used to describe requirements for measuring fair value and for disclosing information about fair value measurements. ASU 2011-04 is effective for interim and annual periods beginning after December 15, 2011 and has been applied prospectively. The Company's adoption of ASU 2011-04 during the three months ended April 28, 2012 did not have a material impact on its financial position and results of operations.

In June 2011, the FASB issued ASU No. 2011-05, "Presentation of Comprehensive Income" ("ASU 2011-05"), which amends FASB ASC Topic 220, "Comprehensive Income." The objective of ASU 2011-05 is to improve the comparability, consistency, and transparency of financial reporting and to increase the prominence of items reported in other comprehensive income. The amendments in this standard eliminate the option to present components of other comprehensive income as part of the statement of stockholders' equity. The amendments in this standard require that all non-owner changes in stockholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In the two-statement approach, the first statement should present total net income and its components followed consecutively by a second statement that should present for annual periods total other comprehensive income, the components of other comprehensive income, and the total of comprehensive income and for interim periods present the total of comprehensive income. ASU 2011-05 is effective for interim and annual periods beginning after December 15, 2011 and has been applied retrospectively. In December 2011, the FASB issued ASU 2011-12, which indefinitely deferred the requirement of ASU 2011-05 related to presentation of reclassification adjustments from other comprehensive income to net income on the face of the financial statements. ASU 2011-05, as modified by ASU 2011-12, was adopted by the Company during the three months ended April 28, 2012 by showing two separate but consecutive statements for interim periods.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

*Interest Rates.* The Company's market risks relate primarily to changes in interest rates. The Company's credit facility carries floating interest rates that are tied to the Eurodollar rate and the Prime rate and therefore, if the Company borrows under the credit facility, the consolidated statements of operations and the consolidated statements of cash flows will be exposed to changes in interest rates. As of April 28, 2012, the Company had no borrowings outstanding under its credit facility. The Company historically has not engaged in interest rate hedging activities.



Table of Contents

*Currency Exchange Rates.* The Company historically has not been exposed to currency exchange rate risks with respect to inventory purchases as such expenditures have been, and continue to be, denominated in U.S. Dollars. The Company purchases some of its inventory from vendors in China, for which the Company pays U.S. Dollars. Since July 2005, China has taken steps to slowly increase the value of the Chinese Yuan, which is linked to a basket of world currencies. If the exchange rate of the Chinese Yuan to the U.S. Dollar continues to increase, the Company may experience fluctuations in the cost of inventory purchased from China and the Company would adjust its supply chain accordingly.

**ITEM 4. CONTROLS AND PROCEDURES**

(a) *Evaluation of disclosure controls and procedures.* The Company carried out an evaluation, as of April 28, 2012, under the supervision and with the participation of the Company's management, including the Company's Principal Executive Officer and Principal Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures pursuant to Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended. Based upon that evaluation, the Principal Executive Officer and Principal Financial Officer concluded that the Company's disclosure controls and procedures are effective in ensuring that all information required to be filed in this Quarterly Report on Form 10-Q was (i) recorded, processed, summarized and reported within the time period specified in the Securities and Exchange Commission's rules and forms (ii) and that the disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its Principal Executive and Principal Financial Officers, as appropriate to allow timely decisions regarding required disclosure.

(b) *Changes in internal control over financial reporting.* There has been no change in the Company's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Exchange Act Rule 13a-15 or 15d-15 that occurred during the Company's last fiscal quarter (the Company's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Table of Contents

**PART II.  
OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

There have been no material changes in the Company's legal proceedings from what was reported in its Annual Report on Form 10-K filed with the SEC on April 9, 2012.

**ITEM 1A. RISK FACTORS**

There have been no material changes in the Company's risk factors from what was reported in its Annual Report on Form 10-K filed with the SEC on April 9, 2012.

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

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

None.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

The following exhibits are filed with this report and made a part hereof.

31.1 Certification by the Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated June 7, 2012.

31.2 Certification by the Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated June 7, 2012.

32.1 Certification of the Chief Executive Officer and the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated June 7, 2012.

101.INS XBRL Instance Document.

101.SCH XBRL Taxonomy Extension Schema Document.

101.CAL XBRL Taxonomy Extension Calculation Linkbase Document.

101.DEF XBRL Taxonomy Definition Linkbase Document.

101.LAB XBRL Taxonomy Extension Label Linkbase Document.

101.PRE XBRL Taxonomy Extension Presentation Linkbase Document.



Table of Contents

**SIGNATURES**

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

NEW YORK & COMPANY, INC.

/s/ SHEAMUS TOAL

---

By: Sheamus Toal

Its: *Executive Vice President and Chief Financial Officer*  
*(Principal Financial Officer)*

Date: June 7, 2012

21

---