

CHART INDUSTRIES INC
Form 10-K/A
March 16, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

þ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 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 No. 1-11442

CHART INDUSTRIES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of

34-1712937
(IRS Employer

Incorporation or Organization)

Identification No.)

One Infinity Corporate Centre Drive,

Suite 300, Garfield Heights, Ohio
(Address of Principal Executive Offices)

44125-5370
(Zip Code)

Registrant's telephone number, including area code: (440) 753-1490

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

Edgar Filing: CHART INDUSTRIES INC - Form 10-K/A

| Title of Each Class | Name of Each Exchange on Which Registered |
|---|--|
| Common Stock, par value \$0.01 | The NASDAQ Stock Market LLC |
| Securities registered pursuant to Section 12(g) of the Act: None | |

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

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

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

Edgar Filing: CHART INDUSTRIES INC - Form 10-K/A

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 definition 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 (Do not check if a smaller reporting company) Smaller reporting company

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

The aggregate market value of the voting common equity held by non-affiliates computed by reference to the price of \$48.64 per share at which the common equity was last sold, as of the last business day of the registrant's most recently completed second fiscal quarter was \$1,365,225,769.

As of February 15, 2009, there were 28,403,491 outstanding shares of the Company's common stock, par value \$0.01 per share.

Explanatory Note

Chart Industries, Inc. (the Company or Chart) is filing this amendment (Amendment No. 1) to its Annual Report on Form 10-K for the Company's fiscal year ended December 31, 2008 (the Original Report) to correct voluntary disclosures regarding the Company's senior credit facility and indenture covenant compliance ratios in Item 7A of Part II of the Original Report and to provide additional footnote disclosure with respect to compliance with the indenture covenant. In addition, this report corrects the number of shares outstanding at February 15, 2009, as reported on the Original Report cover, to 28,403,491. Chart is in compliance with all covenants, including financial covenants, under the senior credit facility and the indenture.

Except as described above, no changes have been made to the Original Report, and this Amendment No. 1 does not amend, update or change the financial statements or any other items or disclosures in the Original Report. This Amendment No. 1 does not reflect events occurring after the filing of the Original Report or modify or update those disclosures and should be read in conjunction with the Original Report.

As required by Rule 12b-15 of the Securities Exchange Act of 1934, as amended, the Company is also filing as exhibits to this Amendment No. 1 the certifications required under Rule 13a-14(a). Since financial statements are not contained in this Amendment No. 1, the Company is not furnishing Rule 13a-14(b) certifications in connection with this Form 10-K/A.

Part II

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

In the normal course of business, our operations are exposed to continuing fluctuations in foreign currency values and interest rates that can affect the cost of operating and financing. Accordingly, we address a portion of these risks through a program of risk management.

Our primary interest rate risk exposure results from the current Senior Credit Facility's various floating rate pricing mechanisms. If interest rates were to increase 200 basis points (2%) from December 31, 2008 rates, and assuming no changes in debt from the December 31, 2008 levels, our additional annual expense would be approximately \$1.6 million on a pre-tax basis.

The Company has assets, liabilities and cash flows in foreign currencies creating exposure to foreign currency exchange fluctuations in the normal course of business. Chart's primary exchange rate exposure is with the euro, the British pound, the Czech koruna and the Chinese yuan. Monthly measurement, evaluation and forward exchange rate contracts are employed as methods to reduce this risk. The Company enters into foreign exchange forward contracts to hedge anticipated and firmly committed foreign currency transactions. Chart does not use derivative financial instruments for speculative or trading purposes. The terms of the contracts are generally one year or less. The Company held positions in foreign exchange forward contracts at December 31, 2008.

Covenant Compliance

We believe that our Senior Credit Facility and the indenture governing our outstanding Subordinated Notes are material agreements, that the covenants are material terms of these agreements and that information about the covenants is material to an investor's understanding of our financial condition and liquidity. The breach of covenants in the Senior Credit Facility that are tied to ratios based on Adjusted EBITDA, as defined below, could result in a default under the Senior Credit Facility and the lenders could elect to declare all amounts borrowed due and payable. Any such acceleration would also result in a default under our indenture. Additionally, under the Senior Secured Facility and indenture, our ability to engage in activities such as incurring additional indebtedness, making investments and paying dividends is also tied to ratios based on Adjusted EBITDA.

Covenant levels and pro forma ratios for the four quarters ended December 31, 2008 are as follows:

| | Covenant Level | Four Quarters Ended December 31, 2008 Ratio |
|---|----------------|---|
| Senior Secured Credit Facility(1) | | |
| Minimum Adjusted EBITDA* to cash interest ratio | 2.25x | 8.25x |
| Maximum funded indebtedness to Adjusted EBITDA* ratio | 5.00x | 0.60x |
| Indenture(2) | | |
| Minimum pro forma Adjusted EBITDA* to pro forma fixed charge coverage ratio required to incur additional debt pursuant to ratio provisions(3) | 2.0x | 8.4x |

- (1) Failure to satisfy these ratio requirements would constitute a default under the Senior Credit Facility. If lenders under the Senior Credit Facility failed to waive any such default, repayment obligations under the Senior Credit Facility could be accelerated, which would also constitute a default under the indenture.
- (2) Our ability to incur additional debt and make certain restricted payments under our indenture, subject to specified exceptions, is tied to an Adjusted EBITDA to fixed charge ratio of at least 2.0 to 1.0.
- (3) The ratio is calculated giving pro forma effect to our acquisition of Flow and our purchase of a portion of our outstanding Subordinated Notes during 2008.

* Adjusted EBITDA as used herein is defined as net income before interest expense, provision for income taxes, depreciation and amortization and further adjusted to exclude non-recurring items, non-cash items and other adjustments permitted in calculating covenants contained in the related Senior Credit Facility and indenture governing the Subordinated Notes.

Part IV

Item 15. Exhibits and Financial Statement Schedules.

(a) The following documents are filed as part of this Amendment No. 1 to our Annual Report on Form 10-K:

(3) *Exhibits.*

31.1 Rule 13a-14(a) Certification of the Company's Chief Executive Officer.

31.2 Rule 13a-14(a) Certification of the Company's Chief Financial Officer.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

CHART INDUSTRIES, INC.

Date: March 16, 2009

By: /s/ SAMUEL F. THOMAS
Samuel F. Thomas
Chairman, Chief Executive Officer

and President

By: /s/ MICHAEL F. BIEHL
Michael F. Biehl
Executive Vice President

and Chief Financial Officer

EXHIBIT INDEX

| Exhibit No. | Description |
|--------------------|--|
| 31.1 | Rule 13a-14(a) Certification of the Company's Chief Executive Officer. (x) |
| 31.2 | Rule 13a-14(a) Certification of the Company's Chief Financial Officer. (x) |

(x) Filed herewith.