

ARK RESTAURANTS CORP
Form 10-Q
May 13, 2008

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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 March 29, 2008

Commission file number 0-14030

ARK RESTAURANTS CORP.

(Exact name of registrant as specified in its charter)

New York
(State or other jurisdiction of
incorporation or organization)

13-3156768
(I.R.S. Employer
Identification No.)

85 Fifth Avenue, New York, New York
(Address of principal executive offices)

10003
(Zip Code)

Registrant's telephone number, including area code: (212) 206-8800

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 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 definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

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 Exchange Act Rule 12b-2). Yes No

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

Class	<u>Outstanding shares at May 12, 2008</u>
(Common stock, \$.01 par value)	3,596,799

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We may make statements in this Quarterly Report on Form 10-Q regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements, other than statements of historical facts, included or incorporated by reference herein relating to management's current expectations of future financial performance, continued growth and changes in economic conditions or capital markets are 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.

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "projects," "targets," "will likely result," "hopes," "will continue" or similar expressions identify forward looking statements. Forward-looking statements involve risks and uncertainties which could cause actual results or outcomes to differ materially from those expressed. We caution that while we make such statements in good faith and we believe such statements are based on reasonable assumptions, including without limitation, management's examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved. Factors that may cause such differences include: economic conditions generally and in each of the markets in which we are located, the amount of sales contributed by new and existing restaurants, labor costs for our personnel, fluctuations in the cost of food products, adverse weather conditions, changes in consumer preferences and the level of competition from existing or new competitors.

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter of subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in "Item 1A Risk Factors" in Part I of our Annual Report on Form 10-K for the fiscal year ended September 29, 2007 as updated by the information contained under the caption "Item 1A. Risk Factors" in Part II of this Quarterly Report on Form 10-Q.

From time to time, oral or written forward-looking statements are also included in our reports on Forms 10-K, 10-Q and 8-K, our Schedule 14A, our press releases and other materials released to the public. Although we believe that at the time made, the expectations reflected in all of these forward-looking statements are and will be reasonable, any or all of the forward-looking statements in this Quarterly Report on Form 10-Q, our reports on Forms 10-K and 8-K, our Schedule 14A and any other public statements that are made by us may prove to be incorrect. This may occur as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties. Many factors discussed in this Quarterly Report on Form 10-Q, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Quarterly Report on Form 10-Q or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. However, your attention is directed to any further disclosures made on related subjects in our subsequent periodic reports filed with the Securities and Exchange Commission on Forms 10-K, 10-Q and 8-K and Schedule 14A.

Unless the context requires otherwise, references to "we," "us," "our," "ARKR" and the "Company" refer specifically to Ark Restaurants Corp. and its subsidiaries and predecessor entities.

PART I
FINANCIAL INFORMATION

Item 1. Financial Information

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED BALANCE SHEETS

(In Thousands)

	March 29, 2008 (unaudited)	September 29, 2007 (see Note 1)
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 2,534	\$ 4,009
Short-term investments in available-for-sale securities	6,613	9,201
Accounts receivable	3,080	2,657
Related party receivables, net	1,001	1,318
Employee receivables	290	316
Current portion of long-term receivables	118	114
Inventories	1,516	1,410
Prepaid expenses and other current assets	661	649
Assets held for sale	-	1,120
Total current assets	15,813	20,794
LONG-TERM RECEIVABLES	292	352
FIXED ASSETS - At cost:		
Leasehold improvements	28,261	27,094
Furniture, fixtures and equipment	26,500	25,692
Construction in progress	1,571	1,142
	56,332	53,928
Less accumulated depreciation and amortization	34,182	33,880
FIXED ASSETS - Net	22,150	20,048
INTANGIBLE ASSETS - Net	71	80
GOODWILL	5,107	5,107
TRADEMARKS	721	721
DEFERRED INCOME TAXES	4,790	4,763
OTHER ASSETS	730	316
TOTAL	\$ 49,674	\$ 52,181
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade	\$ 2,641	\$ 2,404
Accrued expenses and other current liabilities	5,062	5,503
Accrued income taxes	114	1,135
Current portion of note payable	188	181
Total current liabilities	8,005	9,223
OPERATING LEASE DEFERRED CREDIT	3,743	3,771
NOTE PAYABLE	609	704

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OTHER LIABILITIES	193	229
TOTAL LIABILITIES	12,550	13,927
LIMITED PARTNER INTEREST IN VARIABLE INTEREST ENTITY	163	164
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued, 5,667 shares at March 29, 2008 and September 29, 2007, respectively	57	57
Additional paid-in capital	21,912	21,756
Accumulated other comprehensive income	58	49
Retained earnings	23,444	24,780
	45,471	46,642
Less stock option receivable	(124)	(166)
Less treasury stock of 2,070 shares at March 29, 2008 and September 29, 2007	(8,386)	(8,386)
Total shareholders' equity	36,961	38,090
TOTAL	\$ 49,674	\$ 52,181

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS (Unaudited)

(In Thousands, Except Per Share Amounts)

	13 Weeks Ended		26 Weeks Ended
	March 29, 2008	March 31, 2007	March 29, 2008
REVENUES			
Food and beverage sales	\$ 25,742	\$ 24,728	\$ 55,409
Other income	619	645	1,270
Total revenues	26,361	25,373	56,679
COST AND EXPENSES:			
Food and beverage cost of sales	6,961	6,656	14,695
Payroll expenses	8,949	8,709	18,490
Occupancy expenses	3,771	3,450	7,790
Other operating costs and expenses	3,410	3,203	7,495
General and administrative expenses	2,183	2,072	4,334
Depreciation and amortization	723	668	1,400
Total cost and expenses	25,997	24,758	54,204
OPERATING INCOME	364	615	2,475
OTHER (INCOME) EXPENSE:			
Interest expense	14	-	30
Interest income	(148)	(38)	(293)
Other income	(44)	(237)	(163)
Total other income	(178)	(275)	(426)
Income from continuing operations before provision for income taxes and limited partner interest in variable interest entity	542	890	2,901
Provision for income taxes	181	335	1,033
Limited partner interest in (income) loss of variable interest entity	-	(21)	1
INCOME FROM CONTINUING OPERATIONS	361	534	1,869
DISCONTINUED OPERATIONS:			
Income (loss) from operations of discontinued restaurants (includes net gain on disposal of \$7,814 for the 26 weeks ended March 31, 2007)	(23)	(129)	(60)
Provision (benefit) for income taxes	(8)	27	(21)
INCOME (LOSS) FROM DISCONTINUED OPERATIONS	(15)	(156)	(39)
NET INCOME	\$ 346	\$ 378	\$ 1,830
PER SHARE INFORMATION - BASIC AND DILUTED:			
Income from continuing operations	\$ 0.10	\$ 0.15	\$ 0.52
Discontinued operations	(0.00)	(0.04)	(0.01)
BASIC	\$ 0.10	\$ 0.11	\$ 0.51
Income from continuing operations	\$ 0.10	\$ 0.14	\$ 0.51
Discontinued operations	(0.00)	(0.04)	(0.01)

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DILUTED	\$ 0.10	\$ 0.10	\$ 0.50
WEIGHTED AVERAGE NUMBER OF SHARES - BASIC	3,597	3,590	3,597
WEIGHTED AVERAGE NUMBER OF SHARES - DILUTED	3,609	3,604	3,625

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS (Unaudited)

(In Thousands)

	26 Weeks Ended	
	March 29, 2008	March 31, 2007 (see Note 1)
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 1,830	\$ 6,968
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred income taxes	(27)	(83)
Tax benefit on exercise of stock options	-	(89)
Stock-based compensation	156	252
Depreciation and amortization	1,422	2,384
Gain on disposal of discontinued operation	-	(7,814)
Impairment loss on assets held for sale of discontinued operations	-	537
Limited partner interest in income (loss) of consolidated variable interest entity	(1)	34
Operating lease deferred credit	(28)	(95)
Changes in operating assets and liabilities:		
Accounts receivable	(423)	(956)
Related party receivables	317	129
Employee receivables	26	25
Inventories	(106)	(40)
Prepaid expenses and other current assets	(29)	(192)
Other assets	(414)	144
Accounts payable - trade	237	(281)
Accrued income taxes	(1,021)	1,244
Accrued expenses and other current liabilities	(441)	(214)
Net cash provided by continuing operating activities	1,498	1,953
Net cash provided by discontinued operating activities	54	103
Net cash provided by operating activities	1,552	2,056
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(3,659)	(2,626)
Proceeds from sale of discontinued operation	1,030	14,000
Purchases of investment securities	(7,584)	(13,162)
Proceeds from sales of investment securities	10,181	8,074
Payment for purchase of Durgin Park	-	(2,000)
Payments received on long-term receivables	56	635
Net cash provided by continuing investing activities	24	4,921
Net cash provided by discontinued investing activities	161	-
Net cash provided by investing activities	185	4,921
CASH FLOWS FROM FINANCING ACTIVITIES:		
Tax benefit on exercise of stock options	-	89

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Principal payments on note payable	(88)	(28)
Dividends paid	(3,166)	(13,245)
Exercise of stock options	-	568
Payments received on stock option receivable	42	-
Distributions to limited partners of consolidated variable interest entity	-	(61)
Net cash used in financing activities	(3,212)	(12,677)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(1,475)	(5,700)
CASH AND CASH EQUIVALENTS, Beginning of period	4,009	7,671
CASH AND CASH EQUIVALENTS, End of period	\$ 2,534	\$ 1,971

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

Interest	\$ 30	\$ 12
Income taxes	\$ 2,052	\$ 2,140

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

March 29, 2008

(Unaudited)

1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The condensed balance sheet as of September 29, 2007, which has been derived from audited financial statements, and the unaudited interim condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to form 10-Q and Article 10 of Regulation S-X. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company's annual report on Form 10-K for the year ended September 29, 2007. The accompanying condensed consolidated balance sheet as of September 29, 2007 has been derived from the audited balance sheet as of that date included in the Form 10-K. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year.

PRINCIPLES OF CONSOLIDATION □ The consolidated interim financial statements included the accounts of the Company and all of its partnerships and other entities in which it has a controlling interest. Also included in the consolidated financial statements are certain variable interest entities, as discussed below. All significant intercompany balances and transactions have been eliminated in consolidation.

RECLASSIFICATIONS □ In connection with the closure of one facility, the operations of this restaurant has been presented as discontinued operations for the for the 13-week and 26-week periods ended March 29, 2008 and the Company has reclassified its statements of operations and cash flows data for the prior periods presented, in accordance with Statement of Financial Accounting Standards (□SFAS□) No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("FAS 144"). This disposition is discussed below in □Recent Restaurant Dispositions.□

CONSOLIDATION OF VARIABLE INTEREST ENTITIES □ Effective October 1, 2006 the Company determined that one of its managed restaurants, El Rio Grande (□Rio□), should be presented on a consolidated basis in accordance with the Emerging Issues Task Force No. 04-5, □Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights□, and as a result included Rio in its consolidated financial statements. The impact of such consolidation was not material to the Company's condensed consolidated financial position or results of operations for any period presented.

CASH AND CASH EQUIVALENTS □ Cash and cash equivalents, which primarily consist of money market funds, are stated at cost, which approximates fair value. For financial statement presentation purposes, the Company considers all highly liquid investments having original maturities of three months or less to be cash equivalents. Outstanding checks in excess of account balances, typically vendor payments, payroll and other contractual obligations disbursed on or near the last day of a reporting period are reported as a current liability in the accompanying consolidated balance sheets.

AVAILABLE-FOR-SALE SECURITIES □ Available-for-sale securities consist of US Treasury Bills, government bonds, corporate bonds and other fixed income securities, all of which have a high degree of liquidity and are reported at fair value, with unrealized gains and losses recorded in accumulated other comprehensive income. The cost of investments in available-for-sale securities is determined on a specific identification basis. Realized gains or losses and declines in value judged to be other than temporary, if any, are reported in other income, net. The Company evaluates its investments periodically for possible impairment and reviews factors such as the length of time and extent to which fair value has been below cost basis and the Company's ability and intent to hold the investment for a period of time which may be sufficient for anticipated recovery in market value.

RECENT ACCOUNTING DEVELOPMENTS □ In June 2006, the FASB issued FASB Interpretation No. 48, □Accounting for Uncertainty in Income Taxes □ an interpretation of FASB Statement No. 109 □ (□FIN 48□). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in financial statements in accordance with FASB Statement No. 109, □Accounting for Income Taxes.□ FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company adopted the provisions of FIN 48 during the first fiscal quarter of 2008. The adoption of FIN 48 had no impact on our consolidated financial position, results of operation, cash flows or financial statement disclosures, nor did the Company have any related interest or penalties.

2. RECENT RESTAURANT DISPOSITIONS

During the first fiscal quarter of 2008, we discontinued the operation of our Columbus Bakery retail and wholesale bakery located in New York City. Columbus Bakery was originally intended to serve as the bakery that would provide all of our New York restaurants with baked goods as well as being a retail bakery operation. As a result of the sale and closure of several of our restaurants in New York City during the last several years, this bakery operation was no longer profitable.

During the second fiscal quarter of 2008 we opened, along with certain third party investors, a new concept at this location called "Pinch & S" Mac which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5% .

3. RECEIVABLES FROM EMPLOYEES IN RESPECT OF STOCK OPTION EXERCISES

Receivables from employees in respect of stock option exercises includes amounts due from officers and directors totaling \$124,000 and \$166,000 at March 29, 2008 and September 29, 2007, respectively. Such amounts, which are due from the exercise of stock options in accordance with the Company's Stock Option Plan, are payable on demand with interest at ½% above prime (6% at March 29, 2008).

4. INCOME PER SHARE OF COMMON STOCK

Net income per share is computed in accordance with Statement of Financial Accounting Standards No. 128, *Earnings Per Share*, and is calculated on the basis of the weighted average number of common shares outstanding during each period plus, for diluted earnings per share, the additional dilutive effect of potential common stock. Potential common stock using the treasury stock method consists of dilutive stock options and warrants.

For the 13-week period ended March 29, 2008, options to purchase 166,500 shares of common stock at a price of \$29.60 were included in diluted earnings per share. Options to purchase 105,000 shares of common stock at a price of \$32.15 were not included in diluted earnings per share as their impact was antidilutive for the 13-week period ended March 29, 2008. For the 26-week period ended March 29, 2008, options to purchase 271,500 shares of common stock at a price range of \$29.60 - \$32.15 were included in earning per share.

Options to purchase 282,000 shares of common stock at a price range of \$29.60 - \$32.15 were included in diluted earnings per share for the 13-week and 26-week periods ended March 31, 2007.

During the 26-week period ended March 29, 2008, no options were exercised.

5. SHARE-BASED COMPENSATION

The Company has options outstanding under its 2004 Stock Option Plan (the "2004 Plan"). Options granted under the 2004 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant. During fiscal 2005, options to purchase 194,000 shares of common stock were granted and are exercisable as to 50% of the shares commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the second anniversary of the date of grant. During fiscal 2007, options to purchase 105,000 shares of common stock were granted and are exercisable as to 25% of the shares commencing on the first anniversary of the date of grant and as to an additional 25% commencing on each of the second, third and fourth anniversaries of the grant date.

A summary of stock option activity is presented below:

**Weighted
Average
Excercise**

Options Shares Price

Net loss available to common stockholders

Shares:

Weighted average number of common shares outstanding

Dilutive shares

Weighted average number of common shares outstanding

Basic net loss per share

Diluted net loss per share

Net loss

Other comprehensive (loss) income:

Foreign currency translation

Total comprehensive loss

Restaurant
General and
Marketing a

Stock-based
Income tax

Net compen

Domestic
Foreign

Total

Since August 2002, a number of the Company's current and f

New senior revolving credit facility, including interest (a)
Mortgage loan with GE Capital Franchise Finance, including interest

Subtotal
Operating leases
Purchase commitments
Letters of credit

Total

(a)

Interest is b

Since August 2002, a number of the Company's current and f

Exhibit No.

Date: October 27, 2006

Date: October 27, 2006