New York & Company, Inc.
Form 10-Q
September 08, 2011

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

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

**for the quarterly period ended July 30, 2011**

**OR**

o **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** | **33-1031445** |
| (State of incorporation) | (I.R.S. Employer Identification No.) |
| **450 West 33rd Street**<br>**5th Floor**<br>**New York, New York 10001** | **(212) 884-2000** |
| (Address of Principal Executive Offices, including Zip Code) | (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 ý No o

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 ý No o

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 o | Accelerated filer ý | Non-accelerated filer o<br>(Do not check if a smaller reporting company) | Smaller reporting company o |

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

As of August 26, 2011, the registrant had 62,063,907 shares of common stock outstanding.

Table of Contents

**TABLE OF CONTENTS**


| | | |
|---|---|---|
| PART I. FINANCIAL INFORMATION | | |
| Item 1. | Financial Statements | 1 |
| Item 2. | Management's Discussion and Analysis of Financial Condition and Results of Operations | 13 |
| Item 3. | Quantitative and Qualitative Disclosures About Market Risk | 23 |
| Item 4. | Controls and Procedures | 24 |
| PART II. OTHER INFORMATION | | |
| Item 1. | Legal Proceedings | 24 |
| Item 1A. | Risk Factors | 24 |
| Item 2. | Unregistered Sales of Equity Securities and Use of Proceeds | 24 |
| Item 3. | Defaults Upon Senior Securities | 24 |
| Item 4. | Removed and Reserved | 24 |
| Item 5. | Other Information | 24 |
| Item 6. | Exhibits | 25 |

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 July 30, 2011 | Three months ended July 31, 2010 | Six months ended July 30, 2011 | Six months ended July 31, 2010 |
|---|---|---|---|---|
| Net sales | $ 228,557 | $ 243,317 | $ 467,911 | $ 480,299 |
| Cost of goods sold, buying and occupancy costs | 181,633 | 223,247 | 358,997 | 401,684 |
| Gross profit | 46,924 | 20,070 | 108,914 | 78,615 |
| Selling, general and administrative expenses | 62,038 | 84,864 | 127,627 | 152,112 |
| Restructuring charges | | 1,218 | | 1,218 |
| Operating loss | (15,114) | (66,012) | (18,713) | (74,715) |
| Interest expense, net of interest income of $9, $13, $19, and $25, respectively | 121 | 164 | 251 | 350 |
| Loss before income taxes | (15,235) | (66,176) | (18,964) | (75,065) |
| Provision for income taxes | 163 | 22,297 | 112 | 18,267 |
| Net loss | $ (15,398) | $ (88,473) | $ (19,076) | $ (93,332) |
| Basic loss per share | $ (0.25) | $ (1.49) | $ (0.32) | $ (1.57) |
| Diluted loss per share | $ (0.25) | $ (1.49) | $ (0.32) | $ (1.57) |
| Weighted average shares outstanding: | | | | |
| Basic shares of common stock | 60,953 | 59,396 | 60,487 | 59,367 |
| Diluted shares of common stock | 60,953 | 59,396 | 60,487 | 59,367 |

See accompanying notes.

Table of Contents

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

**Condensed Consolidated Balance Sheets**

| (Amounts in thousands, except per share amounts) | July 30, 2011 (Unaudited) | January 29, 2011 (Audited) | July 31, 2010 (Unaudited) |
|---|---|---|---|
| **Assets** | | | |
| Current assets: | | | |
| Cash and cash equivalents | $ 36,215 | $ 77,392 | $ 19,995 |
| Accounts receivable | 10,698 | 9,756 | 17,589 |
| Income taxes receivable | 927 | 527 | 3,000 |
| Inventories, net | 83,848 | 82,062 | 91,510 |
| Prepaid expenses | 21,612 | 20,707 | 21,682 |
| Other current assets | 1,194 | 1,202 | 1,120 |
| Current assets of discontinued operations | | 54 | 108 |
| Total current assets | 154,494 | 191,700 | 155,004 |
| Property and equipment, net | 130,225 | 144,561 | 159,092 |
| Intangible assets | 14,879 | 14,879 | 14,879 |
| Deferred income taxes | 3,362 | 3,362 | 3,361 |
| Other assets | 584 | 708 | 848 |
| Total assets | $ 303,544 | $ 355,210 | $ 333,184 |
| **Liabilities and stockholders' equity** | | | |
| Current liabilities: | | | |
| Current portion long-term debt | $ 4,500 | $ 7,500 | $ 6,000 |
| Accounts payable | 60,002 | 73,611 | 75,408 |
| Accrued expenses | 49,919 | 64,072 | 49,728 |
| Income taxes payable | 139 | 260 | 2,265 |
| Deferred income taxes | 3,362 | 3,362 | 3,361 |
| Current liabilities of discontinued operations | | 130 | 265 |
| Total current liabilities | 117,922 | 148,935 | 137,027 |
| Long-term debt, net of current portion | | | 4,500 |
| Deferred rent | 61,189 | 66,862 | 70,220 |
| Other liabilities | 5,625 | 5,576 | 5,533 |
| Total liabilities | 184,736 | 221,373 | 217,280 |
| Stockholders' equity: | | | |
| Common stock, voting, par value $0.001; 300,000 shares authorized; 62,064, 60,197 and 59,744 shares issued and outstanding at July 30, 2011, January 29, 2011, and July 31, 2010, respectively | 62 | 60 | 60 |
| Additional paid-in capital | 161,066 | 157,021 | 155,567 |
| Retained deficit | (36,860) | (17,784) | (34,655) |
| Accumulated other comprehensive loss | (2,063) | (2,063) | (1,671) |
| Treasury stock at cost; 1,000 shares at July 30, 2011, January 29, 2011 and July 31, 2010 | (3,397) | (3,397) | (3,397) |
| Total stockholders' equity | 118,808 | 133,837 | 115,904 |
| Total liabilities and stockholders' equity | $ 303,544 | $ 355,210 | $ 333,184 |

See accompanying notes.

Table of Contents

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

**Condensed Consolidated Statements of Cash Flows**

**(Unaudited)**

| (Amounts in thousands) | Six months ended July 30, 2011 | Six months ended July 31, 2010 |
|---|---|---|
| **Operating activities** | | |
| Net loss | $ (19,076) | $ (93,332) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization | 19,366 | 21,096 |
| Loss from impairment charges | 887 | 16,283 |
| Amortization of deferred financing costs | 108 | 108 |
| Share-based compensation expense | 1,898 | 1,056 |
| Deferred income taxes | | 17,863 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | (942) | (8,142) |
| Income taxes receivable | (400) | |
| Inventories, net | (1,786) | (4,451) |
| Prepaid expenses | (905) | 926 |
| Accounts payable | (13,609) | 3,389 |
| Accrued expenses | (14,283) | (9,204) |
| Income taxes payable | (121) | 1,274 |
| Deferred rent | (5,673) | (1,800) |
| Other assets and liabilities | 108 | (39) |
| Net cash used in operating activities | (34,428) | (54,973) |
| **Investing activities** | | |
| Capital expenditures | (5,898) | (9,344) |
| Net cash used in investing activities | (5,898) | (9,344) |
| **Financing activities** | | |
| Repayment of debt | (3,000) | (3,000) |
| Proceeds from exercise of stock options | 2,149 | 16 |
| Net cash used in financing activities | (851) | (2,984) |
| Net decrease in cash and cash equivalents | (41,177) | (67,301) |
| Cash and cash equivalents at beginning of period | 77,392 | 87,296 |
| Cash and cash equivalents at end of period | $ 36,215 | $ 19,995 |

See accompanying notes.

Table of Contents

**New York & Company, Inc.**

**Notes to Condensed Consolidated Financial Statements**

**July 30, 2011**

**(Unaudited)**

**1. Organization and Basis of Presentation**

The Company is a leading specialty retailer of women's fashion apparel and accessories offering on-trend, multi-functional work solutions. 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. The target customers for the Company's merchandise are modern, fashion-conscious women between the ages of 25 and 45 who want unique fashion at affordable prices. As of July 30, 2011, the Company operated 543 stores in 43 states.

The accompanying condensed consolidated financial statements include the accounts for New York & Company, Inc. and Lerner New York Holding, Inc. ("Lerner Holding") and its wholly-owned subsidiaries, which include Lerner New York, Inc. (and its wholly-owned subsidiaries, which includes Lerner New York Outlet, Inc.), Lernco, Inc. and Nevada Receivable Factoring, Inc. 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.

The condensed consolidated financial statements as of July 30, 2011 and July 31, 2010 and for the 13 weeks ("three months") and 26 weeks ("six months") ended July 30, 2011 and July 31, 2010 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 29, 2011 ("fiscal year 2010"), which were filed with the Company's Annual Report on Form 10-K with the SEC on April 11, 2011. The 52-week fiscal year ending January 28, 2012 is referred to herein as "fiscal year 2011." The Company's fiscal year is a 52- or 53-week year that ends on the Saturday closest to January 31.

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. Restructuring**

On January 8, 2009, the Company announced the launch of a multi-year restructuring and cost reduction program that is expected to generate approximately $175 million in pre-tax savings over a five-year period. This program is designed to streamline the Company's organization by reducing costs and eliminating underperforming assets while enhancing efficiency and profitability.

The key components of the restructuring and cost reduction program include:

- Strategic staff downsizing initiated in January 2009, which resulted in a permanent reduction of approximately 12% of the Company's field management at that time and an approximate 10% reduction of corporate office professionals;

- The optimization of the Company's store portfolio, including the closure of 40 to 50 underperforming stores over a five-year period; and

Table of Contents

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

**2. Restructuring (Continued)**

A broad-based cost reduction effort across all aspects of the Company's business.

The Company recorded pre-tax restructuring charges of $24.5 million during the fourth quarter of fiscal year 2008, which includes a non-cash charge of $22.9 million related to the impairment of store assets and a $1.7 million cash charge related primarily to severance and other costs necessary to implement the restructuring and cost reduction program. During fiscal year 2009, the Company recorded additional pre-tax restructuring charges totaling $2.4 million, which includes a non-cash charge of $1.2 million related to the impairment of store assets and $1.2 million of cash charges related to severance.

During fiscal year 2010, the Company exited an underperforming test accessories concept consisting of five stores. In connection with the exit of this concept, during the three months ended July 31, 2010 the Company recorded pre-tax restructuring charges totaling $2.1 million, which consist of non-cash charges of $1.1 million related to the impairment of store assets and $0.8 million related to the write-off of inventory, plus $0.1 million of severance costs. During the three months ended October 30, 2010, the Company recorded additional pre-tax restructuring charges of $0.1 million related primarily to lease exit costs associated with exiting this concept.

All liabilities related to these restructuring activities were paid as of January 29, 2011. The Company does not currently expect to record any material restructuring charges during fiscal year 2011.

**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

Table of Contents

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

**3. Earnings Per Share (Continued)**

under the treasury stock method. A reconciliation between basic and diluted loss per share is as follows:

| | Three months ended July 30, 2011 | Three months ended July 31, 2010 | Six months ended July 30, 2011 | Six months ended July 31, 2010 |
|---|---|---|---|---|
| | (Amounts in thousands, except per share amounts) | | | |
| Net loss | $ (15,398) | $ (88,473) | $ (19,076) | $ (93,332) |
| *Basic loss per share* | | | | |
| Weighted average shares outstanding: | | | | |
| Basic shares of common stock | 60,953 | 59,396 | 60,487 | 59,367 |
| Basic loss per share | $ (0.25) | $ (1.49) | $ (0.32) | $ (1.57) |
| *Diluted loss per share* | | | | |
| Weighted average shares outstanding: | | | | |
| Basic shares of common stock | 60,953 | 59,396 | 60,487 | 59,367 |
| Plus impact of share-based awards | | | | |
| Diluted shares of common stock | 60,953 | 59,396 | 60,487 | 59,367 |
| Diluted loss per share | $ (0.25) | $ (1.49) | $ (0.32) | $ (1.57) |

The calculation of diluted loss per share for the three and six months ended July 30, 2011 excludes 3,375,994 and 3,477,004 potential shares, respectively, due to their anti-dilutive effect. The calculation of diluted loss per share for the three and six months ended July 31, 2010 excludes 4,993,626 and 4,340,495 potential shares, respectively, due to their anti-dilutive effect.

**4. Share-Based Compensation**

The Company accounts for all share-based payments in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification™ ("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 $0.6 million for the three months ended July 30, 2011 and July 31, 2010, respectively, and $1.9 million and $1.1 million for the six months ended July 30, 2011 and July 31, 2010, respectively.

During the six months ended July 30, 2011, the Company issued 338,260 restricted stock awards, 169,500 stock options and 435,000 stock appreciation rights ("SAR") in connection with the Company's annual performance review process for all associates, the Company's annual awards to certain non-management members of its board of directors, and the hiring of new associates. The vesting period for awards to associates during the six months ended July 30, 2011 range from three to four years, subject to continued employment with the Company. Annual awards to non-management

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

**4. Share-Based Compensation (Continued)**

members of the Company's board of directors typically vest on the one year anniversary of the grant date, subject to continued service on the Company's board of directors.

In addition, on February 15, 2011, Gregory J. Scott was issued 200,000 shares of performance-based restricted stock and 200,000 SARs in connection with his promotion to Chief Executive Officer of the Company. The 200,000 shares of restricted stock vest on the third anniversary of the grant date, subject to the Company achieving minimum, target and maximum operating income levels. The minimum threshold and maximum goal are 80% and 110%, respectively, of the operating income target. If operating income falls below the minimum threshold, all of the restricted shares will be forfeited. If the operating income achieved is between the minimum threshold and the target goal, Mr. Scott will receive between 20,000 and 99,999 shares of common stock. If the operating income achieved is between the target and maximum goals, Mr. Scott will receive between 100,000 and 200,000 shares of common stock. The 200,000 SARs granted to Mr. Scott on February 15, 2011 vest in four equal annual installments on the following dates: 50,000 SARs on February 15, 2012; 50,000 SARs on February 15, 2013; 50,000 SARs on February 15, 2014; and 50,000 SARs on February 15, 2015.

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 stock options and SARs are calculated using the Black-Scholes option-pricing model. The fair value of restricted stock is based on the closing stock price of an unrestricted share of the Company's common stock on the grant date. 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 six months ended July 30, 2011, 1,390,009 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 total employees. The collective bargaining agreement with the Local 1102 unit of the Retail, Wholesale and Department Store Union ("RWDSU") AFL-CIO ("Local 1102") has been extended indefinitely, subject to 30 days advance notice by either party to negotiate a modification to the agreement or to terminate the agreement. The Company and Local 1102 have reached an agreement in principle on the terms of a new collective bargaining agreement, subject to final negotiation of the agreement and ratification by the union membership.

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. The

Table of Contents

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

**5. Pension Plan (Continued)**

Company anticipates contributing approximately $0.9 million to the plan during fiscal year 2011. Net periodic benefit cost includes the following components:

| | Three months ended July 30, 2011 | Three months ended July 31, 2010 | Six months ended July 30, 2011 | Six months ended July 31, 2010 |
|---|---|---|---|---|
| | (Amounts in thousands) | | | |
| Service cost | $ 81 | $ 83 | $ 170 | $ 166 |
| Interest cost | 108 | 126 | 227 | 252 |
| Expected return on plan asset | (129) | (120) | (249) | (240) |
| Amortization of unrecognized prior service cost | (8) | | (8) | |
| Amortization of unrecognized losses | 30 | 32 | 65 | 64 |
| Net periodic benefit cost | $ 82 | $ 121 | $ 205 | $ 242 |

**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 each year thereafter and state and local income tax examinations for the 2007 tax year and each year thereafter.

At January 29, 2011, the Company reported a total liability of $2.2 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 six months ended July 30, 2011. The Company does not anticipate any significant increases or decreases to the balance of unrecognized tax benefits during the next 12 months.

The effective tax rate for the three months ended July 30, 2011 reflects a provision of 1.1%, as compared to a provision of 33.7% for the three months ended July 31, 2010. The effective tax rate for the six months ended July 30, 2011 reflects a provision of 0.6%, as compared to a provision of 24.3% for the six months ended July 31, 2010.

The change in the effective tax rate during the three and six months ended July 30, 2011, as compared to the same periods last year, is primarily due to adjustments to the valuation allowance recorded against deferred tax assets. 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. As a result, during the three months ended July 31, 2010, the Company recorded a $48.5 million non-cash charge to income tax expense, which includes a $48.0 million valuation

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

**6. Income Taxes (Continued)**

allowance against the Company's deferred tax assets and a $0.5 million reserve for uncertain tax positions. 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 July 30, 2011, the Company's valuation allowance against its deferred tax assets was $48.3 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 obligations under the Loan Agreement are guaranteed by New York & Company, Inc. and its other subsidiaries. The Loan Agreement amended and restated the Second Amended and Restated Loan and Security Agreement (the "Existing Agreement"), dated August 22, 2007, among Lerner New York, Inc., Lernco, Inc., and Lerner New York Outlet, Inc. (as successor-in-interest to Jasmine Company, Inc.) as borrowers, together with the Agent and the lenders party thereto, as amended. The Existing Agreement was scheduled to mature on March 17, 2012. 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 Existing 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 sub-facility 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 up to $100 million or decrease it to a minimum of $60 million, subject to certain restrictions. Furthermore, the amendments to the Existing Agreement provide for, but are not limited to: (i) an extension of the term of the credit facility to August 10, 2016, (ii) a modest increase in interest rates and certain fees as described in greater detail below, and (iii) a reduction in financial covenants. 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

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

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

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 lenders 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 July 30, 2011, the Company had availability under its revolving credit facility of $54.8 million, net of letters of credit outstanding of $7.7 million, as compared to availability of $46.3 million, net of letters of credit outstanding of $7.2 million, as of January 29, 2011, and $63.1 million, net of letters of credit outstanding of $7.3 million, as of July 31, 2010.

The lenders have 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**

FASB ASC Topic 820, "Fair Value Measurements and Disclosures" ("ASC 820") establishes a common definition for fair value to be applied to United States generally accepted accounting principles ("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 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 carrying value on the balance sheet for the Company's long-term debt approximates its fair value due to the variable interest rate it carries, and as such it is classified within Level 2 of the fair value hierarchy.

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

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

In accordance with the provisions of FASB ASC Topic 360, "Property, Plant, and Equipment" ("ASC 360"), during the three months ended July 30, 2011, certain long-lived store assets held and used in underperforming New York & Company stores with a carrying value of $1.1 million were written down to their fair value of $0.2 million, resulting in a pre-tax non-cash impairment charge of $0.9 million and is reported in "Selling, general and administrative expenses" on the Company's condensed consolidated statements of operations. During the three months ended July 31, 2010, certain long-lived store assets held and used with a carrying value of $24.3 million were written down to their fair value of $8.0 million, resulting in a pre-tax non-cash impairment charge of $16.3 million, of which $15.2 million relates to underperforming New York & Company stores and is reported in "Selling, general and administrative expenses" and $1.1 million relates to a test accessories concept and is reported in "Restructuring charges" on the Company's condensed consolidated statements of operations. Refer to Note 2, "Restructuring" for other charges incurred in connection with exiting the underperforming test accessories concept. The Company classifies these store assets in Level 3 of the fair value hierarchy. The Company evaluates long-lived assets for recoverability in accordance with ASC 360 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.

**9. New Accounting Pronouncements**

In May 2011, the FASB issued Accounting Standards Update No. 2011-04, "Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in GAAP and IFRSs" ("ASU 2011-04"), which amends ASC 820. ASU 2011-04 improves the comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with GAAP and International Financial Reporting Standards. The amended guidance changes the wording used to describe many requirements in GAAP for measuring fair value and for disclosing information about fair value measurements. Additionally, the amendments clarify the FASB's intent about the application of existing fair value measurement requirements. While many of the amendments to GAAP are not expected to have a significant effect on practice, the new guidance changes some fair value measurement principles and disclosure requirements. ASU 2011-04 is effective for interim and annual periods beginning after December 15, 2011 and will be applied prospectively. Early application by public entities is not permitted. The Company does not anticipate that the adoption of ASU 2011-04 will have a material impact on its financial position and results of operations.

In June 2011, the FASB issued Accounting Standards Update 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 nonowner changes in stockholders' equity be presented either in a single

**New York & Company, Inc.**

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

**July 30, 2011**

**(Unaudited)**

**9. New Accounting Pronouncements (Continued)**

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 total other comprehensive income, the components of other comprehensive income, and the total of comprehensive income. ASU 2011-05 is effective for interim and annual periods beginning after December 15, 2011 and will be applied retrospectively. Early adoption is permitted, because compliance with the amendments is already permitted. The Company's adoption of ASU 2011-05 will not have an impact on its financial position and results of operations.

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

the Company's ability to successfully integrate new or acquired businesses, including the Company's New York & Company Outlet stores, into its existing business;

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

Table of Contents

- the Company's dependence on the success of its brand;
- 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;
- 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 11, 2011.

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 offering on-trend, multi-functional work solutions. 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. The target customers for the Company's merchandise are modern, fashion-conscious women between the ages of 25 and 45 who want unique fashion at affordable prices. As of July 30, 2011, the Company operated 543 stores in 43 states.

Operating loss for the three months ended July 30, 2011 was $15.1 million, as compared to an operating loss of $66.0 million for the three months ended July 31, 2010. The prior year's operating loss included $17.8 million of previously disclosed restructuring and asset impairment charges. During the quarter, the Company's customers continued to respond favorably to the Company's improved wear-to-work assortment. In addition, the Company advanced its multi-channel growth initiative with strong results reported in its outlet business and more than a 50% sales increase in the Company's eCommerce business. Despite these strong efforts, weakness in the casual assortment combined with significantly less clearance merchandise than last year led to a comparable store sales decline during the three months ended July 30, 2011.

Net sales for the three months ended July 30, 2011 decreased by 6.1% to $228.6 million, as compared to $243.3 million for the three months ended July 31, 2010. Comparable store sales decreased 3.4% for the three months ended July 30, 2011, as compared to a comparable store sales decrease of 1.8% for the three months ended July 31, 2010. Net loss for the three months ended July 30, 2011 narrowed to $15.4 million, or $0.25 per diluted share, with a negative effective tax rate of 1.1%. This compares to a net loss of $88.5 million, or $1.49 per diluted share for the three months

Table of Contents

ended July 31, 2010, with a negative effective tax rate of 33.7%. On a non-GAAP basis, normalizing taxes to eliminate the valuation allowance against deferred tax assets recorded during the three months ended July 30, 2011, the Company's adjusted net loss was $9.3 million or $0.15 per diluted share. On a non-GAAP basis, excluding restructuring and asset impairment and disposal charges totaling $17.8 million, and normalizing taxes to eliminate the valuation allowance against deferred tax assets, the Company's adjusted net loss for the three months ended July 31, 2010 was $29.3 million, or $0.49 per diluted share. Please refer to the "Non-GAAP Financial Measures" section below for a reconciliation of the GAAP to non-GAAP financial measures.

Capital spending for the six months ended July 30, 2011 was $5.9 million, as compared to $9.3 million for the six months ended July 31, 2010. The $5.9 million of capital spending represents $4.2 million related to the remodeling of six existing stores and $1.7 million related to non-store capital projects. The Company ended the second quarter of fiscal year 2011 operating 543 stores, including 24 New York & Company Outlet stores. Capital spending during the six months ended July 31, 2010 represents $6.9 million related to the construction of 17 new stores, including 16 New York & Company Outlet stores, and the remodeling of two existing stores, and $2.4 million related to non-store capital projects.

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 the fourth quarter. 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.

**General**

*Net Sales.* Net sales consist of sales from comparable and non-comparable stores and the Company's eCommerce store. A store is included in the comparable store sales calculation after it has completed 13 full fiscal months of operation from the store's original opening date or once it has been reopened after remodeling. Non-comparable store sales include stores 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 from the sale of merchandise at the Company's eCommerce store are recognized when the merchandise is shipped to the customer. 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, payroll and related costs for design, sourcing, production, merchandising, planning and allocation personnel, and store occupancy and related costs.

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

Table of Contents

*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 and six months ended July 30, 2011 and July 31, 2010:

| As a % of net sales | Three months ended July 30, 2011 | Three months ended July 31, 2010 | Six months ended July 30, 2011 | Six months ended July 31, 2010 |
|---|---|---|---|---|
| Net sales | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of goods sold, buying and occupancy costs | 79.5% | 91.8% | 76.7% | 83.6% |
| Gross profit | 20.5% | 8.2% | 23.3% | 16.4% |
| Selling, general and administrative expenses | 27.1% | 34.8% | 27.3% | 31.7% |
| Restructuring charges | % | 0.5% | % | 0.3% |
| Operating loss | (6.6)% | (27.1)% | (4.0)% | (15.6)% |
| Interest expense, net | 0.1% | 0.1% | 0.1% | 0.1% |
| Loss before income taxes | (6.7)% | (27.2)% | (4.1)% | (15.7)% |
| Provision for income taxes | % | 9.2% | % | 3.7% |
| Net loss | (6.7)% | (36.4)% | (4.1)% | (19.4)% |

| Selected operating data: | Three months ended July 30, 2011 | Three months ended July 31, 2010 | Six months ended July 30, 2011 | Six months ended July 31, 2010 |
|---|---|---|---|---|
| | (Dollars in thousands, except square foot data) | | | |
| Comparable store sales (decrease) increase | (3.4)% | (1.8)% | (0.4)% | 0.5% |
| Net sales per average selling square foot(1) | $ 77 | $ 76 | $ 157 | $ 151 |
| Net sales per average store(2) | $ 417 | $ 420 | $ 852 | $ 830 |
| Average selling square footage per store(3) | 5,423 | 5,481 | 5,423 | 5,481 |

(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.

| | Three months ended July 30, 2011 | | Three months ended July 31, 2010 | | Six months ended July 30, 2011 | | Six months ended July 31, 2010 | |
|---|---|---|---|---|---|---|---|---|
| Store count and selling square feet: | Store Count | Selling Square Feet | Store Count | Selling Square Feet | Store Count | Selling Square Feet | Store Count | Selling Square Feet |
| Stores open, beginning of period | 553 | 3,013,070 | 579 | 3,197,637 | 555 | 3,026,483 | 576 | 3,193,602 |
| New stores | | | 11 | 37,101 | | | 17 | 57,662 |
| Closed stores | (10) | (49,025) | (9) | (49,452) | (12) | (58,408) | (12) | (62,863) |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Net impact of remodeled stores on selling square feet | | (19,232) | | (989) | | (23,262) | | (4,104) |
| Stores open, end of period | 543 | 2,944,813 | 581 | 3,184,297 | 543 | 2,944,813 | 581 | 3,184,297 |

Table of Contents

***Three Months Ended July 30, 2011 Compared to Three Months Ended July 31, 2010***

*Net Sales.* Net sales for the three months ended July 30, 2011 decreased 6.1% to $228.6 million, as compared to $243.3 million for the three months ended July 31, 2010. Contributing to the decline in net sales is the Company's lower store base which consisted of 543 stores at July 30, 2011, as compared to 581 stores at July 31, 2010. Comparable store sales decreased 3.4% for the three months ended July 30, 2011, as compared to a decrease of 1.8% for the three months ended July 31, 2010. The decline in comparable store sales reflects a reduction in the Company's level of promotional activity and significantly reduced markdowns. In the comparable store base, average dollar sales per transaction increased by 24.0%, while the number of transactions per average store decreased by 22.1%, as compared to the same period last year.

*Gross Profit.* Gross profit for the three months ended July 30, 2011 increased to $46.9 million, or 20.5% of net sales, as compared to $20.1 million, or 8.2% of net sales, for the three months ended July 31, 2010. The Company entered the second quarter of fiscal year 2011 with lean inventory levels, which were down 11.4% on an average store basis at the end of the first quarter of fiscal year 2011 versus the prior year's level. This lean inventory position, combined with the impact of an improved spring merchandise assortment, allowed the Company to improve product flow, rationalize its promotional calendar, and optimize sales productivity. As a result, merchandise margin improved as a percentage of net sales by 1,160 basis points, as compared to the prior year's second quarter, primarily due to a reduction in markdowns. In addition, buying and occupancy costs decreased as a percentage of net sales by 70 basis points during the three months ended July 30, 2011.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses were $62.0 million, or 27.1% of net sales, for the three months ended July 30, 2011, as compared to $84.9 million, or 34.8% of net sales, for the three months ended July 31, 2010. Selling, general and administrative expenses during the three months ended July 31, 2010 were impacted by the inclusion of non-cash charges totaling $15.7 million, of which $15.2 million relates to the impairment of New York & Company store assets and $0.5 million relates to the disposal of certain information technology assets. After excluding these prior year charges, selling, general and administrative expenses decreased by $7.1 million, or 130 basis points, reflecting the favorable impact of store payroll efficiencies as well as a reduction in the Company's store base since the end of the second quarter of last year.

*Restructuring charges.* As previously announced, the Company exited an underperforming test accessories concept consisting of five stores. In connection with the exit of this concept, during the three months ended July 31, 2010, the Company recorded $1.1 million of non-cash charges related to the impairment of store assets and $0.1 million of severance costs, which are reported in "Restructuring charges" on the condensed consolidated statements of operations. In addition, the Company recorded a $0.8 million charge related to the write-off of inventory, which is reported in "Cost of goods sold, buying and occupancy costs" on the condensed consolidated statements of operations. No restructuring charges were incurred during the three months ended July 30, 2011.

*Operating Loss.* For the reasons discussed above, operating loss for the three months ended July 30, 2011 was $15.1 million, or 6.6% of net sales, reflecting a $50.9 million improvement from an operating loss of $66.0 million, or 27.1% of net sales, for the three months ended July 31, 2010.

*Interest Expense, Net.* Net interest expense was $0.1 million for the three months ended July 30, 2011, as compared to $0.2 million for the three months ended July 31, 2010.

*Provision for Income Taxes.* The effective tax rate for the three months ended July 30, 2011 reflects a provision of 1.1%, as compared to a provision of 33.7% for the three months ended July 31, 2010. During the three months ended July 31, 2010, the Company recorded a $48.5 million non-cash charge which includes a $48.0 million valuation allowance against the Company's deferred tax assets and a $0.5 million reserve for uncertain tax positions. The Company continues to provide for adjustments to the deferred tax valuation allowance initially recorded during the three months ended July 31, 2010. 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 July 30, 2011 was $15.4 million, or 6.7% of net sales, as compared to a net loss of $88.5 million, or 36.4% of net sales, for the three months ended July 31, 2010.

***Six Months Ended July 30, 2011 Compared to Six Months Ended July 31, 2010***

*Net Sales.* Net sales for the six months ended July 30, 2011 decreased 2.6% to $467.9 million, as compared to $480.3 million for the six months ended July 31, 2010. Contributing to the decline in net sales is the Company's lower store base which consisted of 543 stores at July 30, 2011, as compared to 581 stores at July 31, 2010. Comparable store sales for the six months ended July 30, 2011 decreased by 0.4%, as compared to an increase of 0.5% for the six months ended July 31, 2010. The decline in comparable store sales reflects a reduction in the Company's level of promotional activity and significantly reduced markdowns. In the comparable store base, average dollar sales per transaction increased by 22.3%, while the number of transactions per average store decreased by 18.6%, as compared to the same period last year.

*Gross Profit.* Gross profit for the six months ended July 30, 2011 increased to $108.9 million, or 23.3% of net sales, as compared to $78.6 million, or 16.4% of net sales, for the six months ended July 31, 2010. During the six months ended July 30, 2011, the Company conservatively managed its inventory levels while delivering an improved spring merchandise assortment, which allowed the Company to improve product flow, rationalize its promotional calendar, and optimize sales productivity. As a result, merchandise margin improved as a percentage of net sales by 580 basis points, primarily due to a reduction in markdowns. In addition, buying and occupancy costs decreased as a percentage of net sales by 110 basis points during the six months ended July 30, 2011.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses were $127.6 million, or 27.3% of net sales, for the six months ended July 30, 2011, as compared to $152.1 million, or 31.7% of net sales, for the six months ended July 31, 2010. Selling, general and administrative expenses during the six months ended July 31, 2010 were impacted by the inclusion of non-cash charges totaling $15.7 million, of which $15.2 million relates to the impairment of New York & Company store assets and $0.5 million relates to the disposal of certain information technology assets. After excluding these prior year charges, selling, general and administrative expenses decreased by $8.8 million, or 110 basis points, reflecting the favorable impact of store payroll efficiencies as well as a reduction in the Company's store base since the end of the second quarter of last year.

*Restructuring charges.* As previously announced, the Company exited an underperforming test accessories concept consisting of five stores. In connection with the exit of this concept, during the three months ended July 31, 2010, the Company recorded $1.1 million of non-cash charges related to the impairment of store assets and $0.1 million of severance costs, which are reported in "Restructuring charges" on the condensed consolidated statements of operations. In addition, the Company recorded a $0.8 million charge related to the write-off of inventory, which is reported in "Cost of goods sold, buying and occupancy costs" on the condensed consolidated statements of operations. No restructuring charges were incurred during the six months ended July 30, 2011.

Table of Contents

*Operating Loss.* For the reasons discussed above, operating loss for the six months ended July 30, 2011 was $18.7 million, or 4.0% of net sales, reflecting a $56.0 million improvement from an operating loss of $74.7 million, or 15.6% of net sales, for the six months ended July 31, 2010.

*Interest Expense, Net.* Net interest expense was $0.3 million for the six months ended July 30, 2011, as compared to $0.4 million for the six months ended July 31, 2010.

*Provision for Income Taxes.* The effective tax rate for the six months ended July 30, 2011 reflects a provision of 0.6%, as compared to a provision of 24.3% for the six months ended July 31, 2010. During the three months ended July 31, 2010, the Company recorded a $48.5 million non-cash charge which includes a $48.0 million valuation allowance against the Company's deferred tax assets and a $0.5 million reserve for uncertain tax positions. The Company continues to provide for adjustments to the deferred tax valuation allowance initially recorded during the three months ended July 31, 2010. 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 six months ended July 30, 2011 was $19.1 million, or 4.1% of net sales, as compared to a net loss of $93.3 million, or 19.4% of net sales, for the six months ended July 31, 2010.

**Non-GAAP Financial Measure**

A reconciliation of the Company's GAAP to non-GAAP loss before income taxes, provision (benefit) for income taxes, net loss and loss per diluted share for the three and six months ended July 30, 2011 and July 31, 2010 are indicated below. For the three and six months ended July 30, 2011 and July 31, 2010, this information reflects, on a non-GAAP adjusted basis, the Company's operating results after excluding the effects of restructuring and certain asset impairment and disposal charges, and normalizing taxes to eliminate the valuation allowance adjustments against deferred tax assets. This non-GAAP financial information is provided to enhance the user's overall understanding of the Company's current financial performance. Specifically, the Company believes the non-GAAP adjusted results provide useful information to both management and investors by excluding expenses and earnings that the Company believes are not indicative of the Company's operating results. The non-GAAP financial information should be considered in addition to, not as a substitute for or as being superior to, measures of financial performance prepared in accordance with GAAP.

| | Three months ended July 30, 2011 | | | |
|---|---|---|---|---|
| **(Amounts in thousands, except per share amounts)** | **Loss before income taxes** | **Provision (benefit) for income taxes** | **Net loss** | **Loss per diluted share** |
| GAAP as reported | $ (15,235) | $ 163 | $ (15,398) | $ (0.25) |
| *Adjustments affecting comparability* | | | | |
| Deferred tax valuation allowance | | 6,124 | 6,124 | 0.10 |
| Non-GAAP as adjusted | $ (15,235) | $ (5,961) | $ (9,274) | $ (0.15) |

Table of Contents

| (Amounts in thousands, except per share amounts) | Three months ended July 31, 2010<br>Loss before income taxes | Provision (benefit) for income taxes | Net loss | Loss per diluted share |
|---|---|---|---|---|
| GAAP as reported | $ (66,176) | $ 22,297 | $ (88,473) | $ (1.49) |
| *Adjustments affecting comparability* | | | | |
| Restructuring charges(a) | 2,063 | (829) | 1,234 | 0.02 |
| New York & Company asset impairments and disposals(a) | 15,725 | (6,321) | 9,404 | 0.16 |
| Deferred tax valuation allowance and reserve for uncertain tax positions | | 48,494 | 48,494 | 0.82 |
| Non-GAAP as adjusted | $ (48,388) | $ (19,047) | $ (29,341) | $ (0.49) |

| (Amounts in thousands, except per share amounts) | Six months ended July 30, 2011<br>Loss before income taxes | Provision (benefit) for income taxes | Net loss | Loss per diluted share |
|---|---|---|---|---|
| GAAP as reported | $ (18,964) | $ 112 | $ (19,076) | $ (0.32) |
| *Adjustments affecting comparability* | | | | |
| Deferred tax valuation allowance | | 7,623 | 7,623 | 0.13 |
| Non-GAAP as adjusted | $ (18,964) | $ (7,511) | $ (11,453) | $ (0.19) |

| (Amounts in thousands, except per share amounts) | Six months ended July 31, 2010<br>Loss before income taxes | Provision (benefit) for income taxes | Net loss | Loss per diluted share |
|---|---|---|---|---|
| GAAP as reported | $ (75,065) | $ 18,267 | $ (93,332) | $ (1.57) |
| *Adjustments affecting comparability* | | | | |
| Restructuring charges(a) | 2,063 | (829) | 1,234 | 0.02 |
| New York & Company asset impairments and disposals(a) | 15,725 | (6,321) | 9,404 | 0.16 |
| Deferred tax valuation allowance and reserve for uncertain tax positions | | 48,494 | 48,494 | 0.82 |
| Non-GAAP as adjusted(b) | $ (57,277) | $ (23,077) | $ (34,200) | $ (0.58) |

(a) The tax effect is calculated using a 40.2% effective tax rate.

(b) Amounts may not add due to rounding.

**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. The Company is in compliance with all debt covenants as of July 30, 2011.

Table of Contents

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

| | July 30, 2011 | January 29, 2011 | July 31, 2010 |
|---|---|---|---|
| | (Amounts in thousands) | | |
| Cash and cash equivalents | $ 36,215 | $ 77,392 | $ 19,995 |
| Working capital | $ 36,572 | $ 42,765 | $ 17,977 |

| | Six months ended July 30, 2011 | Six months ended July 31, 2010 |
|---|---|---|
| | (Amounts in thousands) | |
| Net cash used in operating activities | $ (34,428) | $ (54,973) |
| Net cash used in investing activities | $ (5,898) | $ (9,344) |
| Net cash used in financing activities | $ (851) | $ (2,984) |
| Net decrease in cash and cash equivalents | $ (41,177) | $ (67,301) |

**Operating Activities**

Net cash used in operating activities was $34.4 million for the six months ended July 30, 2011, as compared to $55.0 million for the six months ended July 31, 2010. The decrease in net cash used in operating activities during the six months ended July 30, 2011, as compared to the six months ended July 31, 2010 is primarily due to a decrease in net loss and changes in accounts receivable, inventories and other assets and liabilities, partially offset by changes in income taxes receivable, prepaid expenses, accounts payable, accrued expenses, income taxes payable and deferred rent.

**Investing Activities**

Net cash used in investing activities was $5.9 million for the six months ended July 30, 2011, as compared to $9.3 million for the six months ended July 31, 2010. Net cash used in investing activities during the six months ended July 30, 2011 reflects capital expenditures of $4.2 million related to the remodeling of six existing stores and $1.7 million for non-store capital projects. Net cash used in investing activities during the six months ended July 31, 2010 reflects capital expenditures of $6.9 million related to the construction of 17 new stores, including 16 New York & Company Outlet stores, and the remodeling of two existing stores, and $2.4 million related to non-store capital projects.

As of July 30, 2011, the Company operated 543 stores, including 24 New York & Company Outlet stores. The Company plans to end fiscal year 2011 with approximately 519 to 529 stores, including 26 New York & Company Outlet stores, and 2.8 million selling square feet. The Company's future capital requirements will depend 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 used in financing activities was $0.9 million for the six months ended July 30, 2011, as compared to $3.0 million for the six months ended July 31, 2010. Net cash used in financing activities for the six months ended July 30, 2011 consists of quarterly payments against the Company's outstanding term loan totaling $3.0 million, partially offset by $2.1 million of proceeds from the exercise of stock options. Net cash used in financing activities for the six months ended July 31, 2010 consists primarily of quarterly payments against the Company's outstanding term loan totaling $3.0 million.

Table of Contents

**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 obligations under the Loan Agreement are guaranteed by New York & Company, Inc. and its other subsidiaries. The Loan Agreement amended and restated the Second Amended and Restated Loan and Security Agreement (the "Existing Agreement"), dated August 22, 2007, among Lerner New York, Inc., Lernco, Inc., and Lerner New York Outlet, Inc. (as successor-in-interest to Jasmine Company, Inc.) as borrowers, together with the Agent and the lenders party thereto, as amended. The Existing Agreement was scheduled to mature on March 17, 2012. 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 Existing 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 sub-facility 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 up to $100 million or decrease it to a minimum of $60 million, subject to certain restrictions. Furthermore, the amendments to the Existing Agreement provide for, but are not limited to: (i) an extension of the term of the credit facility to August 10, 2016, (ii) a modest increase in interest rates and certain fees as described in greater detail below, and (iii) a reduction in financial covenants. 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 lenders 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 July 30, 2011, the Company had availability under its revolving credit facility of $54.8 million, net of letters of credit outstanding of $7.7 million, as compared to availability of $46.3 million, net of letters of credit outstanding of $7.2 million, as of January 29, 2011, and $63.1 million, net of letters of credit outstanding of $7.3 million, as of July 31, 2010.

The lenders have 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.

Table of Contents

**Critical Accounting Policies**

Management has determined that the Company's most critical accounting policies are those related to inventory valuation, impairment of long-lived assets, goodwill and other 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 29, 2011.

**Adoption of New Accounting Standards**

In May 2011, the FASB issued Accounting Standards Update No. 2011-04, "Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in GAAP and IFRSs" ("ASU 2011-04"), which amends ASC 820. ASU 2011-04 improves the comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with GAAP and International Financial Reporting Standards. The amended guidance changes the wording used to describe many requirements in GAAP for measuring fair value and for disclosing information about fair value measurements. Additionally, the amendments clarify the FASB's intent about the application of existing fair value measurement requirements. While many of the amendments to GAAP are not expected to have a significant effect on practice, the new guidance changes some fair value measurement principles and disclosure requirements. ASU 2011-04 is effective for interim and annual periods beginning after December 15, 2011 and will be applied prospectively. Early application by public entities is not permitted. The Company does not anticipate that the adoption of ASU 2011-04 will have a material impact on its financial position and results of operations.

In June 2011, the FASB issued Accounting Standards Update 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 nonowner 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 total other comprehensive income, the components of other comprehensive income, and the total of comprehensive income. ASU 2011-05 is effective for interim and annual periods beginning after December 15, 2011 and will be applied retrospectively. Early adoption is permitted, because compliance with the amendments is already permitted. The Company's adoption of ASU 2011-05 will not have an impact on its financial position and results of operations.

## 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, the consolidated statements of operations and the consolidated statements of cash flows will be exposed to changes in interest rates. A 1.0% interest rate increase would not materially affect the Company's interest expense. The Company historically has not engaged in interest rate hedging activities.

*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 suppliers in China, for which the Company pays U.S. Dollars. Since July 2005, China has been slowly increasing the value of the Chinese Yuan, which is now 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 July 30, 2011, 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.

## 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 11, 2011.

### 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 11, 2011.

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

None.

### ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

### ITEM 4. REMOVED AND RESERVED

### ITEM 5. OTHER INFORMATION

None.

Table of Contents

**ITEM 6. EXHIBITS**

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

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| 10.1 | Third Amended and Restated Loan and Security Agreement made by and among Lerner New York, Inc., Lernco, Inc. and Lerner New York Outlet, Inc., wholly-owned indirect subsidiaries of New York & Company, Inc., and Wells Fargo Bank, N.A., as Agent and Sole Lender, dated as of August 10, 2011. |
| 10.2 | Third Amended and Restated Guarantee, made by New York & Company, Inc., Lerner New York Holding, Inc., Nevada Receivable Factoring, Inc., New York & Company Stores, Inc. (formerly known as Associated Lerner Shops of America, Inc.), and Lerner New York GC, LLC, in favor of Wells Fargo Bank, N.A., as Agent and Sole Lender named in the Third Amended and Restated Loan and Security Agreement, dated as of August 10, 2011. |
| 10.3 | Collateral Assignment of Transition Services Documents, made by Lerner New York Holding, Inc. and New York & Company, Inc., in favor of Wells Fargo Bank, N.A., as Agent and Sole Lender named in the Third Amended and Restated Loan and Security Agreement, dated as of August 10, 2011. |
| 10.4 | Post-Closing Letter to the Third Amended and Restated Loan and Security Agreement made by and among Lerner New York, Inc., Lernco, Inc. and Lerner New York Outlet, Inc., wholly-owned indirect subsidiaries of New York & Company, Inc., and Wells Fargo Bank, N.A., as Agent and Sole Lender, dated as of August 10, 2011. |
| 31.1 | Certification by the Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated September 8, 2011. |
| 31.2 | Certification by the Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated September 8, 2011. |
| 32.1 | Written Statement of the Chief Executive Officer and the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated September 8, 2011. |
| 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: September 8, 2011