

New York & Company, Inc.  
Form 10-Q  
December 11, 2008

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

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**FORM 10-Q**

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

for the quarterly period ended November 1, 2008

OR

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

for the transition period from \_\_\_\_\_ to \_\_\_\_\_  
COMMISSION FILE NUMBER: 1-32315

**NEW YORK & COMPANY, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**  
(State of incorporation)

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

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

**(212) 884-2000**  
(Registrant's Telephone Number,  
Including Area Code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

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

As of November 28, 2008, the registrant had 60,141,979 shares of common stock outstanding.

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

**ITEM 1. FINANCIAL STATEMENTS**

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

**Condensed Consolidated Statements of Operations**

(Unaudited)

	Three months ended November 1, 2008	Three months ended November 3, 2007	Nine months ended November 1, 2008	Nine months ended November 3, 2007
(Amounts in thousands, except per share amounts)				
Net sales	\$ 249,027	\$ 276,379	\$ 814,764	\$ 835,531
Cost of goods sold, buying and occupancy costs	186,089	194,263	579,503	595,281
Gross profit	62,938	82,116	235,261	240,250
Selling, general and administrative expenses	76,070	73,758	222,573	214,334
Operating (loss) income	(13,132)	8,358	12,688	25,916
Interest expense, net of interest income of \$293, \$223, \$958, and \$1,183, respectively	232	437	412	917
(Loss) income from continuing operations before income taxes	(13,364)	7,921	12,276	24,999
(Benefit) provision for income taxes	(5,372)	2,630	4,935	9,495
(Loss) income from continuing operations	(7,992)	5,291	7,341	15,504
Income (loss) from discontinued operations, net of taxes	68	(21,321)	235	(27,233)
Net (loss) income	\$ (7,924)	\$ (16,030)	\$ 7,576	\$ (11,729)
Basic earnings (loss) per share:				
Basic (loss) earnings per share from continuing operations	\$ (0.13)	\$ 0.09	\$ 0.12	\$ 0.27
Basic (loss) earnings per share from discontinued operations		(0.36)	0.01	(0.47)
Basic (loss) earnings per share	\$ (0.13)	\$ (0.27)	\$ 0.13	\$ (0.20)
Diluted earnings (loss) per share:				
	\$ (0.13)	\$ 0.09	\$ 0.12	\$ 0.25

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Diluted (loss) earnings per share from continuing operations				
Diluted loss per share from discontinued operations			(0.35)	(0.44)
Diluted (loss) earnings per share				
	\$	(0.13)	\$	(0.26)
			\$	0.12
				\$
				(0.19)
Weighted average shares outstanding:				
Basic shares of common stock	59,858	58,845	59,520	58,304
Diluted shares of common stock	59,858	61,074	61,398	60,966

See accompanying notes.

Table of Contents**New York & Company, Inc. and Subsidiaries****Condensed Consolidated Balance Sheets**

	November 1, 2008	February 2, 2008	November 3, 2007
	(Unaudited)	(Audited)	(Unaudited)
	(Amounts in thousands, except per share amounts)		
<b>Assets</b>			
Current assets:			
Cash and cash equivalents	\$ 41,152	\$ 73,734	\$ 14,900
Accounts receivable	15,605	18,523	31,135
Income taxes receivable	4,274	11,730	
Inventories, net	157,906	103,923	167,069
Prepaid expenses	29,887	21,991	24,831
Other current assets	3,663	1,913	3,926
Current assets of discontinued operations	305	716	21,913
Total current assets	252,792	232,530	263,774
Property and equipment, net	247,547	239,557	230,175
Intangible assets	14,879	14,843	14,843
Deferred income taxes			884
Other assets	1,260	1,500	1,440
Non-current assets of discontinued operations		26	424
Total assets	\$ 516,478	\$ 488,456	\$ 511,540
<b>Liabilities and stockholders' equity</b>			
Current liabilities:			
Current portion long-term debt	\$ 6,000	\$ 6,000	\$ 6,000
Accounts payable	101,400	77,177	110,926
Accrued expenses	53,916	53,618	54,148
Deferred income taxes	3,546	3,928	3,723
Current liabilities of discontinued operations	757	7,328	6,402
Total current liabilities	165,619	148,051	181,199
Long-term debt, net of current portion	15,000	19,500	21,000
Deferred income taxes	2,824	3,747	
Deferred rent	77,060	72,537	70,734
Other liabilities	4,680	4,660	4,377
Non-current liabilities of discontinued operations			1,409
Total liabilities	265,183	248,495	278,719
Stockholders' equity:			
Common stock, voting, par value \$0.001; 300,000 shares authorized; 59,973, 59,286 and 59,260 shares issued and outstanding at November 1, 2008, February 2, 2008, and November 3, 2007, respectively	60	59	59
Additional paid-in capital	151,965	148,208	147,866
Retained earnings	99,550	91,974	85,102
Accumulated other comprehensive loss	(280)	(280)	(206)
Total stockholders' equity	251,295	239,961	232,821
Total liabilities and stockholders' equity	\$ 516,478	\$ 488,456	\$ 511,540

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See accompanying notes.

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

## Condensed Consolidated Statements of Cash Flows

(Unaudited)

	Nine months ended November 1, 2008	Nine months ended November 3, 2007
(Amounts in thousands)		
<b>Operating activities</b>		
Net income (loss)	\$ 7,576	\$ (11,729)
Less: Income (loss) from discontinued operations, net of taxes	235	(27,233)
Income from continuing operations	7,341	15,504
Adjustments to reconcile income from continuing operations to net cash provided by operating activities of continuing operations:		
Depreciation and amortization	32,130	28,337
Amortization of deferred financing costs	133	186
Share-based compensation expense	1,274	1,371
Deferred income taxes	(1,305)	(3,574)
Changes in operating assets and liabilities:		
Accounts receivable	2,918	(17,349)
Income taxes receivable	7,456	
Inventories, net	(53,983)	(64,813)
Prepaid expenses	(7,896)	(6,037)
Accounts payable	24,223	47,972
Accrued expenses	298	(5,045)
Income taxes payable		(6,391)
Deferred rent	4,523	16,901
Other assets and liabilities	(1,750)	745
Net cash provided by operating activities of continuing operations	15,362	7,807
<b>Investing activities</b>		
Acquisition of trademarks	(36)	
Proceeds from sale of fixed assets	260	
Capital expenditures	(40,253)	(55,977)
Net cash used in investing activities of continuing operations	(40,029)	(55,977)
<b>Financing activities</b>		
Repayment of debt	(4,500)	(4,500)
Payment of financing costs		(243)
Proceeds from exercise of stock options	148	262
Excess tax benefit from exercise of stock options	2,336	4,431
Other		(136)
Net cash used in financing activities of continuing operations	(2,016)	(186)
<b>Cash flows from discontinued operations</b>		
Operating cash flows	(6,122)	(3,798)
Investing cash flows		(401)
Financing cash flows		
Net cash used in discontinued operations	(6,122)	(4,199)
Net decrease in cash and cash equivalents	(32,805)	(52,555)
	73,957	68,064



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Cash and cash equivalents at beginning of period (including cash at discontinued operations of \$223 and \$206, respectively)

Cash and cash equivalents at end of period (including cash at discontinued operations of \$0 and \$609, respectively)	\$	41,152	\$	15,509
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See accompanying notes.

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**New York & Company, Inc.**

**Notes to Condensed Consolidated Financial Statements**

**November 1, 2008**

**(Unaudited)**

**1. Organization and Basis of Presentation**

New York & Company, Inc. (together with its subsidiaries, collectively the "Company") is a leading specialty retailer of fashion oriented, moderately priced women's apparel. The Company designs and sources its proprietary branded New York & Company merchandise sold exclusively through its national network of retail stores and E-commerce store at *www.nyandcompany.com*. The target customers for the Company's merchandise are fashion conscious, value sensitive women between the ages of 25 and 45. As of November 1, 2008, the Company operated 600 stores in 44 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, including the discontinued business at Jasmine Company, 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 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. Certain amounts in the prior period have been reclassified to conform to the current period presentation.

The condensed consolidated financial statements as of November 1, 2008 and November 3, 2007 and for the thirteen weeks ("three months") and thirty-nine weeks ("nine months") ended November 1, 2008 and November 3, 2007 are unaudited and are presented pursuant to the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Accordingly, these unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the 52-week fiscal year ended February 2, 2008 ("fiscal year 2007"), which were filed with the Company's Annual Report on Form 10-K with the SEC on April 8, 2008. The 52-week fiscal year ending January 31, 2009 is referred to herein as "fiscal year 2008." 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. Discontinued Operations**

On October 18, 2007, the Company announced its decision to close all stores operated by the Company's subsidiary, Jasmine Company, Inc. ("JasmineSola"), by the end of the fourth quarter of fiscal year 2007. JasmineSola was a women's retailer of upscale and contemporary apparel, footwear and accessories sold through its chain of JasmineSola branded stores. The Company decided to exit the JasmineSola business after a thorough assessment and analysis. This decision enabled the Company to focus financial and management resources on its New York & Company brand. As of February 2, 2008, the Company, as planned, completed the closure of all of the Company's JasmineSola stores and substantially completed all other exit procedures. As a result, the Company's financial statements reflect JasmineSola as discontinued operations for all periods presented in accordance with Statement

Table of Contents**New York & Company, Inc.****Notes to Condensed Consolidated Financial Statements (Continued)****November 1, 2008****(Unaudited)****2. Discontinued Operations (Continued)**

of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144").

In accordance with SFAS No. 144 and SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS No. 142"), the Company recorded a \$35.2 million non-cash charge in October 2007 related to the impairment of JasmineSola assets, including \$17.2 million of trademarks, \$11.1 million of goodwill, and \$6.9 million of property and equipment. In accordance with SFAS No. 146, "Accounting for Costs Associated With Exit or Disposal Activities," the Company recorded charges during the third and fourth quarters of fiscal year 2007 of \$5.8 million for lease termination costs and \$1.3 million for severance costs. As of February 2, 2008, approximately \$3.4 million of lease termination accruals and \$0.8 million of severance accruals are included in current liabilities of discontinued operations on the consolidated balance sheet. As of November 1, 2008, the Company had paid all lease termination and severance liabilities relating to the discontinued operations.

The operating results of JasmineSola, which are being presented as discontinued operations, are as follows:

	<b>Three months ended November 1, 2008</b>	<b>Three months ended November 3, 2007</b>	<b>Nine months ended November 1, 2008</b>	<b>Nine months ended November 3, 2007</b>
<b>(Amounts in thousands, except per share amounts)</b>				
Net sales	\$	\$ 10,601	\$	\$ 29,813
Income (loss) from discontinued operations before income taxes		194	(35,655)	361
Income tax provision (benefit)		126	(14,334)	126
Income (loss) from discontinued operations, net of taxes	\$	68	\$ (21,321)	\$ 235
			\$	\$ (27,233)

**3. Earnings Per Share**

Basic earnings (loss) per share are computed by dividing net income (loss) by the weighted average number of shares of common stock outstanding for the period. Except when the effect would be anti-dilutive at the continuing operations level, diluted earnings (loss) per share are calculated based on the weighted average number of outstanding shares of common stock plus the dilutive effect, using the

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## New York &amp; Company, Inc.

## Notes to Condensed Consolidated Financial Statements (Continued)

November 1, 2008

(Unaudited)

## 3. Earnings Per Share (Continued)

treasury stock method, of stock options as if they were exercised and unvested restricted stock as if it were vested. A reconciliation between basic and diluted earnings (loss) per share is as follows:

	Three months ended November 1, 2008	Three months ended November 3, 2007	Nine months ended November 1, 2008	Nine months ended November 3, 2007
(Amounts in thousands, except per share amounts)				
(Loss) income from continuing operations	\$ (7,992)	\$ 5,291	\$ 7,341	\$ 15,504
Income (loss) from discontinued operations, net of taxes	68	(21,321)	235	(27,233)
Net (loss) income	\$ (7,924)	\$ (16,030)	\$ 7,576	\$ (11,729)
<i>Basic earnings (loss) per share</i>				
Weighted average shares outstanding:				
Basic shares of common stock	59,858	58,845	59,520	58,304
Basic (loss) earnings per share from continuing operations	\$ (0.13)	\$ 0.09	\$ 0.12	\$ 0.27
Basic (loss) earnings per share from discontinued operations		(0.36)	0.01	(0.47)
Basic (loss) earnings per share	\$ (0.13)	\$ (0.27)	\$ 0.13	\$ (0.20)
<i>Diluted earnings (loss) per share</i>				
Weighted average shares outstanding:				
Basic shares of common stock	59,858	58,845	59,520	58,304
Plus impact of stock options and restricted stock, net		2,229	1,878	2,662
Diluted shares of common stock	59,858	61,074	61,398	60,966
Diluted (loss) earnings per share from continuing	\$ (0.13)	\$ 0.09	\$ 0.12	\$ 0.25

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operations							
Diluted loss per share from discontinued operations							
			(0.35)				(0.44)
Diluted (loss) earnings per share							
	\$	(0.13)	\$	(0.26)	\$	0.12	\$ (0.19)

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**New York & Company, Inc.**

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

**November 1, 2008**

**(Unaudited)**

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

The calculation of diluted (loss) earnings per share for the three and nine months ended November 1, 2008 excludes options to purchase 3,052,364 and 1,396,452 shares, respectively, due to their anti-dilutive effect. The calculation of diluted earnings (loss) per share for the three and nine months ended November 3, 2007 excludes options to purchase 965,585 and 974,865 shares, respectively, due to their anti-dilutive effect.

**4. Share-Based Compensation**

In December 2004, the Financial Accounting Standards Board ("FASB") published SFAS No. 123 (Revised 2004), "Share Based Payment" ("SFAS No. 123-R"). SFAS No. 123-R retains certain of the requirements of the original SFAS No. 123, "Accounting for Stock Based Compensation" ("SFAS No. 123") and requires that the cost resulting from all share-based payment transactions be treated as compensation and recognized in the consolidated financial statements. The Company adopted SFAS No. 123-R in December 2004, utilizing the modified prospective method. Prior to the Company's adoption of SFAS No. 123-R, the Company followed SFAS No. 123 and treated all forms of share-based payments as compensation recognized in the consolidated statement of operations. Therefore, the adoption of SFAS No. 123-R did not have a material impact on the Company's consolidated financial statements.

The Company recorded share-based compensation expense in the amount of \$0.5 million and \$0.4 million for the three months ended November 1, 2008 and November 3, 2007, respectively, and \$1.3 million and \$1.4 million for the nine months ended November 1, 2008 and November 3, 2007, respectively.

During the nine months ended November 1, 2008, the Company issued 44,000 shares of restricted stock and 650,476 shares of common stock were issued upon exercise of 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 10% of the Company's total employees. The Company's collective bargaining agreement with the Local 1102 unit of the Retail, Wholesale and Department Store Union (RWDSU) AFL-CIO is set to expire on February 28, 2009. The Company anticipates that the collective bargaining agreement with Local 1102 will be extended.

The plan provides retirement benefits for union employees, consisting of non-management store associates, 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 Company does not anticipate the need for a

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material contribution to the plan for the remainder of the current fiscal year. Net periodic benefit cost includes the following components:

	<b>Three months ended November 1, 2008</b>	<b>Three months ended November 3, 2007</b>	<b>Nine months ended November 1, 2008</b>	<b>Nine months ended November 3, 2007</b>
	(Amounts in thousands)			
Service cost	\$ 61	\$ 90	\$ 184	\$ 270
Interest cost	138	137	413	411
Expected return on plan assets	(173)	(178)	(519)	(536)
Net periodic benefit cost	\$ 26	\$ 49	\$ 78	\$ 145

**6. Income Taxes**

The effective tax rates for the three months ended November 1, 2008 and November 3, 2007 were 40.2% and 33.2%, respectively. The effective tax rates for the nine months ended November 1, 2008 and November 3, 2007 were 40.2% and 38.0%, respectively. The change in the effective tax rates for the three and nine months ended November 1, 2008, as compared to last year, is primarily due to the recognition of tax benefits during the three months ended November 3, 2007 related to the settlement of U.S. federal income taxes for the tax years 2003 through 2005.

The Company files U.S. federal income tax returns and income tax returns in various state and local jurisdictions. The Company is subject to U.S. federal income tax examinations for the 2006 tax year and each year thereafter and state and local income tax examinations for the 2004 tax year and each year thereafter.

At February 2, 2008, the Company reported a total liability of \$4.3 million for unrecognized tax benefits, including interest and penalties, all of which would impact the Company's effective tax rate if reversed. There were no material changes to the liability for unrecognized tax benefits during the nine months ended November 1, 2008. The Company does not anticipate any significant increases or decreases to the balance of unrecognized tax benefits during the next twelve months.

The Company accrues interest and penalties related to unrecognized tax benefits in income tax expense.

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

The Company's credit facilities currently consist of a term loan, of which \$21.0 million was outstanding at November 1, 2008, and a \$90.0 million revolving credit facility (which includes a sub-facility available for issuance of letters of credit of up to \$75.0 million), both having a maturity date of March 17, 2012.

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**New York & Company, Inc.**

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

**November 1, 2008**

**(Unaudited)**

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

As of November 1, 2008, the Company had availability under its revolving credit facility of \$74.6 million, net of letters of credit outstanding of \$7.3 million, as compared to availability of \$75.3 million, net of letters of credit outstanding of \$6.9 million, as of November 3, 2007.

The revolving loans under the credit facilities bear interest, at the Company's option, either at a floating rate equal to the Eurodollar rate plus a margin of between 1.00% and 1.25% per year, depending upon the Company's financial performance, or the Prime rate. The Company pays the lenders under the revolving credit facility a monthly fee on outstanding commercial letters of credit at a rate of 0.625% per year and on standby letters of credit at a rate of between 1.00% and 1.25% per year, depending upon the Company's financial performance, plus a monthly fee on a proportion of the unused commitments under that facility at a rate of 0.20% per year. The term loan bears interest at a floating rate equal to the Eurodollar rate plus 2.50% per year. If any default were to exist under the revolving credit facility and for so long as such default were to continue, at the option of the agent or lenders, the monthly fee on outstanding standby letters of credit may increase to 3.25% per year, interest on the revolving loans may increase to 3.25% per year above the Eurodollar rate for Eurodollar rate loans and 2.00% per year above the Prime rate for all Prime rate loans, and interest on the term loan may increase to the Eurodollar rate plus 4.50% per year.

The Company's credit facilities contain certain covenants, including restrictions on the Company's ability to pay dividends on its common stock, 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. The terms of the Company's credit facilities also subject it to certain maintenance covenants, which were amended on December 9, 2008. The amendment removed the maximum leverage ratio of 2.75 to 1.00 and limited the application of the minimum fixed charge coverage ratio of 1.00 to 1.00, such that the Company is only subject to the minimum fixed charge coverage ratio if borrowing availability under its revolving credit facility plus qualified cash falls below specified minimum levels. Prior to the existing term loan being repaid in full, the Company will only be subject to the minimum fixed charge coverage ratio in the event that borrowing availability under its revolving credit facility plus qualified cash falls below \$30.0 million (\$20.0 million during March and November). Should the Company fully repay its existing term loan, the Company will only be subject to the minimum fixed charge coverage ratio in the event that borrowing availability under its revolving credit facility falls below \$12.5 million. In addition, the Company is required at all times to maintain minimum borrowing availability under its credit facility of \$10.0 million. The Company is currently in compliance with the financial covenants referred to above.

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 facilities. In addition, New York & Company, Inc. and certain of its subsidiaries have fully and unconditionally guaranteed the credit facilities, and such guarantees are joint and several.



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**New York & Company, Inc.**

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

**November 1, 2008**

**(Unaudited)**

**8. New Accounting Pronouncements**

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 establishes a common definition for fair value to be applied to US GAAP guidance requiring the use of fair value, establishes a framework for measuring fair value, and expands the disclosure about such fair value measurements. The application of SFAS No. 157 as it relates to financial assets and financial liabilities is effective for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. On February 12, 2008, the FASB issued FSP FAS 157-2, "Effective Date of FASB Statement No. 157," which delays the effective date of SFAS No. 157 for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on at least an annual basis, to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years. The Company's adoption of SFAS No. 157 on February 3, 2008 for all financial assets and liabilities and any other assets and liabilities that are recognized or disclosed at fair value on a recurring basis did not impact the Company's consolidated financial statements. The provisions of SFAS No. 157 are to be applied prospectively as of the beginning of the fiscal year in which it is applied, with any transition adjustment recognized as a cumulative effect adjustment to the opening balance of retained earnings. The Company does not anticipate that the adoption of SFAS No. 157 for nonfinancial assets and liabilities measured at fair value on a non-recurring basis will have a material impact on its financial position and results of operations.

In September 2006, the FASB issued SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB statements No. 87, 88, 106, and 132(R)" ("SFAS No. 158"). SFAS No. 158 requires recognition of the overfunded or underfunded status of defined benefit postretirement plans as an asset or liability in the statement of financial position and requires companies to recognize changes in that funded status in comprehensive income (loss) in the year in which the changes occur. SFAS No. 158 also requires measurement of the funded status of a plan as of the date of the statement of financial position. SFAS No. 158 is effective for recognition of the funded status of benefit plans for fiscal years ending after December 15, 2006 and is effective for the measurement date provisions for fiscal years ending after December 15, 2008. The adoption of the recognition provisions of this Statement at February 3, 2007 did not have an impact on the Company's financial position and results of operations. The Company does not anticipate that the adoption of the measurement date provisions of this Statement will have a material impact on its financial position and results of operations.

In May 2008, the FASB issued SFAS No. 162, "The Hierarchy of Generally Accepted Accounting Principles" ("SFAS No. 162"). SFAS No. 162 is intended to improve financial reporting by identifying a consistent framework, or hierarchy, for selecting accounting principles to be used in preparing financial statements that are presented in conformity with US GAAP for non-governmental entities. SFAS No. 162 is effective on November 15, 2008, which is 60 days following the SEC's September 16, 2008 approval of the Public Company Accounting Oversight Board amendments to AU Section 411, the meaning of "Present Fairly in Conformity with GAAP." Any effect of applying the provisions of SFAS No. 162 is to be reported as a change in accounting principle in accordance with FASB Statement No. 154, "Accounting Changes and Error Corrections." The Company's adoption of SFAS No. 162 will not have a material impact on its financial position and results of operations.

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**New York & Company, Inc.**

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

**November 1, 2008**

**(Unaudited)**

**9. Fair Value Measurements**

As described in footnote 8, "New Accounting Pronouncements," on February 3, 2008 the Company adopted SFAS No. 157 for financial assets and liabilities and any other assets and liabilities that are recognized or disclosed at fair value on a recurring basis. SFAS No. 157 establishes a common definition for fair value to be applied to US GAAP guidance requiring the use of fair value, establishes a framework for measuring fair value, and expands the disclosure about such fair value measurements. SFAS No. 157 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.

As of November 1, 2008, the carrying amount of 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.

**10. Legal Matters**

On April 29, 2008, a class action claim was filed in the Superior Court of the State of California for the County of Contra Costa captioned *Jannika Schakow v. Lerner New York, Inc. and New York & Company, Inc.* The class action seeks relief for, among other things, meal and rest periods allegedly not provided or permitted to certain eligible employees in California. The Company has denied liability and is defending the matter.

On March 25, 2008, a class action claim was filed in the Superior Court of the State of California for the County of San Diego, the caption of which has been changed to *Leslie Johnson v. Lerner New York, Inc.* The class action seeks relief for, among other things, collection of customers' personal information in a manner that is allegedly in violation of California law. The Company has denied liability and is defending the matter.

**11. Subsequent Events**

On November 26, 2008, the Company announced that its Board of Directors authorized the repurchase of up to 3,750,000 shares over the next 12 months. Repurchases, if any, will be made from time to time in the manner the Company believes appropriate, through open market or private transactions including through pre-established trading plans. The Company plans to fund repurchases, if any, with cash from operations.

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**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 Company's business is impacted by general economic conditions and their effect on consumer confidence and spending patterns, which have recently deteriorated significantly and may continue to do so for the foreseeable future;

the deteriorating economic conditions could negatively impact the Company's merchandise vendors and their ability to deliver products;

the Company's ability to open and operate stores successfully and the potential lack of availability of suitable store locations on acceptable terms;

seasonal fluctuations in the Company's business;

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

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

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

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

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

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

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

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

changes in the cost of raw materials, distribution services or labor, including federal and state minimum wage 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 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 and

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quotas on imports, 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 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 successfully integrate new or acquired businesses into its existing business;

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

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 effects of government regulation;

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 8, 2008.

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 fashion oriented, moderately priced women's apparel. The Company designs and sources its proprietary branded New York & Company merchandise sold exclusively through its national network of retail stores and E-commerce store at *www.nyandcompany.com*. The target customers for the Company's merchandise are fashion conscious, value sensitive women between the ages of 25 and 45. As of November 1, 2008, the Company operated 600 stores in 44 states.

As of February 2, 2008, the Company, as planned, completed the closure of the Company's 23 JasmineSola stores and substantially completed all other exit procedures. As a result, the Company's financial statements reflect JasmineSola as discontinued operations for all periods presented. Unless otherwise noted, all financial and store operating data presented in this Quarterly Report on Form 10-Q relate to the New York & Company business.

The dramatic deterioration in financial markets and the adverse effect on the U.S. and global economy throughout the three months ended November 1, 2008, resulted in a significant reduction in consumer confidence and the level of consumer spending on the merchandise the Company offers. As a result, the Company's comparable store sales decreased significantly, which resulted in a loss of leverage on buying and occupancy costs and a decline in profit margins. In response, the Company continued to manage expenses and inventory tightly, reducing selling, general and administrative expenses during the three months ended November 1, 2008 by 2.9% on an average store basis and reducing inventory levels at November 1, 2008 by 10.5% on an average store basis, as compared to last year. Despite the economic downturn, the Company strengthened its financial position as of November 1, 2008, as compared to November 3, 2007, ending the quarter with \$41.2 million in cash



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and cash equivalents, working capital of \$87.2 million and \$74.6 million of availability under its revolving credit facility.

Net sales for the three months ended November 1, 2008 decreased 9.9% to \$249.0 million, as compared to \$276.4 million for the three months ended November 3, 2007. Comparable store sales decreased 14.0% for the three months ended November 1, 2008, as compared to a comparable store sales decrease of 4.8% for the three months ended November 3, 2007. Income from continuing operations for the three months ended November 1, 2008 decreased to a loss of \$8.0 million, or \$0.13 per diluted share, as compared to income of \$5.3 million, or \$0.09 per diluted share, for the three months ended November 3, 2007.

Capital spending for the nine months ended November 1, 2008 was \$40.3 million, as compared to \$56.0 million for the nine months ended November 3, 2007. The \$40.3 million of capital spending represents \$26.3 million related to the construction of new stores and the remodeling of existing stores and \$13.9 million related to non-store capital projects, which principally represent information technology enhancements including, among other projects, a new POS system implemented across the chain and the upgrade of the Company's existing merchandise planning system. The Company completed the implementation of the new POS system during the third quarter and expects to complete the upgrade of its merchandise planning system during fiscal year 2009. During the nine months ended November 1, 2008, the Company opened 25 new stores, closed three stores and completed 13 remodels, ending the period operating 600 stores, as compared to 568 stores as of November 3, 2007. During the nine months ended November 3, 2007, the Company opened 37 new stores, closed five stores and remodeled 23 stores. Total selling square footage as of November 1, 2008 was 3.372 million, as compared to 3.318 million as of November 3, 2007.

The Company views the retail apparel market as having two principal selling seasons: spring (first and second quarters) and fall (third and fourth quarters). 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.

**General**

*Net Sales.* Net sales consist of sales from comparable and non-comparable stores and the Company's E-commerce 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. Beginning in February 2008, sales from the Company's E-commerce store are included in comparable store sales. 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 E-commerce 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 estimates gift card breakage and records such amount as revenue as gift cards are redeemed. The Company's estimate of gift card breakage is based on analysis of

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historical redemption patterns as well as the remaining balance of gift cards for which the Company believes the likelihood of redemption to be remote.

*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.

*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 nine months ended November 1, 2008 and November 3, 2007:

	Three months ended November 1, 2008	Three months ended November 3, 2007	Nine months ended November 1, 2008	Nine months ended November 3, 2007
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of goods sold, buying and occupancy costs	74.7%	70.3%	71.1%	71.2%
Gross profit	25.3%	29.7%	28.9%	28.8%
Selling, general and administrative expenses	30.6%	26.7%	27.3%	25.7%
Operating (loss) income	(5.3)%	3.0%	1.6%	3.1%
Interest expense, net	0.1%	0.2%	0.1%	0.1%
(Loss) income from continuing operations before income taxes	(5.4)%	2.8%	1.5%	3.0%
(Benefit) provision for income taxes	(2.2)%	0.9%	0.6%	1.1%
(Loss) income from continuing operations	(3.2)%	1.9%	0.9%	1.9%
Income (loss) from discontinued operations, net of taxes	%	(7.7)%	%	(3.3)%
Net (loss) income	(3.2)%	(5.8)%	0.9%	(1.4)%



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	Three months ended November 1, 2008	Three months ended November 3, 2007	Nine months ended November 1, 2008	Nine months ended November 3, 2007
(Dollars in thousands, except square foot data)				
<b>Selected operating data:</b>				
Comparable store sales decrease	(14.0)%	(4.8)%	(7.6)%	(0.3)%
Net sales per average selling square foot(1)	\$ 74	\$ 84	\$ 243	\$ 255
Net sales per average store(2)	\$ 416	\$ 491	\$ 1,383	\$ 1,514
Average selling square footage per store(3)	5,620	5,841	5,620	5,841

- (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 November 1, 2008		Three months ended November 3, 2007		Nine months ended November 1, 2008		Nine months ended November 3, 2007	
	Store Count	Selling Square Feet	Store Count	Selling Square Feet	Store Count	Selling Square Feet	Store Count	Selling Square Feet
<b>Store count and selling square feet:</b>								
Stores open, beginning of period	596	3,380,169	557	3,289,341	578	3,327,450	536	3,236,540
New stores	5	22,181	12	52,063	25	104,641	37	162,527
Closed stores	(1)	(8,682)	(1)	(8,800)	(3)	(22,804)	(5)	(36,823)
Net impact of remodeled stores on selling square feet		(21,649)		(14,752)		(37,268)		(44,392)
Stores open, end of period	600	3,372,019	568	3,317,852	600	3,372,019	568	3,317,852

**Three Months Ended November 1, 2008 Compared to Three Months Ended November 3, 2007**

**Net Sales.** Net sales for the three months ended November 1, 2008 decreased 9.9% to \$249.0 million, as compared to \$276.4 million for the three months ended November 3, 2007. The decrease in net sales is primarily due to a decrease in comparable store sales of 14.0% for the three months ended November 1, 2008, as compared to a 4.8% decrease for the three months ended November 3, 2007. The decrease in comparable store sales for the three months ended November 1, 2008 reflects the impact of a shift in a key promotional event from the third quarter into the fourth quarter of fiscal year 2008. In the prior year, this promotional event occurred during the third quarter. The comparable store sales decrease was partially offset by an increase in non-comparable store sales, driven by net sales from new store openings not yet included in comparable store sales. In the comparable store base, average dollar sales per transaction decreased by 3.9%, and the number of transactions per average store decreased by 10.6%, as compared to the same period last year.

**Gross Profit.** Gross profit decreased by \$19.2 million to \$62.9 million, or 25.3% of net sales, for the three months ended November 1, 2008, as compared to \$82.1 million, or 29.7% of net sales, for the three months ended November 3, 2007. The 440 basis point decrease in gross profit as a percentage of net sales during the three months ended November 1, 2008 is primarily the result of a 410 basis point increase in buying and occupancy costs as a percentage of net sales due to the impact of negative comparable store sales combined with an increase in real estate

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costs related to new and remodeled stores. In addition, merchandise margins decreased by 30 basis points during the three months ended November 1, 2008.

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*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased by \$2.3 million to \$76.1 million, or 30.6% of net sales, for the three months ended November 1, 2008, as compared to \$73.8 million, or 26.7% of net sales, for the three months ended November 3, 2007. This increase in selling, general and administrative expenses as a percentage of net sales is primarily a result of the decrease in comparable store sales, partially offset by the impact of the Company's ongoing cost savings initiatives. In addition, the Company recorded a \$2.5 million charge during the three months ended November 1, 2008 related to management changes that occurred during the quarter. On an average store basis, selling, general and administrative expenses declined by 2.9% during the three months ended November 1, 2008, as compared to the three months ended November 3, 2007, reflecting improved cost controls.

*Operating (Loss) Income.* For the reasons discussed above, operating loss for the three months ended November 1, 2008 was \$13.1 million, or 5.3% of net sales, as compared to operating income of \$8.4 million, or 3.0% of net sales, for the three months ended November 3, 2007.

*Interest Expense, Net.* Net interest expense decreased to \$0.2 million for the three months ended November 1, 2008, as compared to \$0.4 million for the three months ended November 3, 2007. The decrease in net interest expense for the three months ended November 1, 2008, as compared to the three months ended November 3, 2007, is primarily related to a decrease in borrowings and fluctuations in interest rates.

*(Benefit) Provision for Income Taxes.* The effective tax rates for the three months ended November 1, 2008 and November 3, 2007 were 40.2% and 33.2%, respectively. The change in the effective tax rate for the three months ended November 1, 2008, as compared to the three months ended November 3, 2007, is primarily due to the recognition of tax benefits during the three months ended November 3, 2007 related to the settlement of U.S. federal income taxes for the tax years 2003 through 2005.

*(Loss) Income from Continuing Operations.* For the reasons discussed above, loss from continuing operations for the three months ended November 1, 2008 was \$8.0 million, or 3.2% of net sales, as compared to income of \$5.3 million, or 1.9% of net sales, for the three months ended November 3, 2007.

*Income (Loss) from Discontinued Operations, Net of Taxes.* Income (loss) from discontinued operations, net of taxes represents the Company's discontinued JasmineSola business.

### ***Nine Months Ended November 1, 2008 Compared to Nine Months Ended November 3, 2007***

*Net Sales.* Net sales for the nine months ended November 1, 2008 decreased 2.5% to \$814.8 million, as compared to \$835.5 million for the nine months ended November 3, 2007. The decrease in net sales is primarily due to a decrease in comparable store sales of 7.6% for the nine months ended November 1, 2008, as compared to a 0.3% decrease for the nine months ended November 3, 2007. The comparable store sale decrease was partially offset by an increase in non-comparable store sales, driven by net sales from new store openings not yet included in comparable store sales. In the comparable store base, average dollar sales per transaction was flat, while the number of transactions per average store decreased by 7.5%, as compared to the same period last year.

*Gross Profit.* Gross profit decreased \$5.0 million to \$235.3 million, or 28.9% of net sales, for the nine months ended November 1, 2008, as compared to \$240.3 million, or 28.8% of net sales, for the nine months ended November 3, 2007. Gross profit as a percentage of net sales during the nine months ended November 1, 2008 increased by 10 basis points as compared to the nine months ended November 3, 2007. This is the result of a 220 basis point improvement in merchandise margin, resulting

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primarily from a decrease in markdowns. The improvement during the first half of 2008 reflects the success of the Company's strategy to improve margin through disciplined inventory control and targeted, well-planned promotions. This improvement was largely offset by a 210 basis point increase in buying and occupancy costs as a percentage of net sales due to the impact of negative comparable store sales, combined with an increase in real estate costs related to new and remodeled stores.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased by \$8.2 million to \$222.6 million, or 27.3% of net sales, for the nine months ended November 1, 2008, as compared to \$214.3 million, or 25.7% of net sales, for the nine months ended November 3, 2007. The increase in selling, general and administrative expenses as a percentage of net sales is primarily a result of the decrease in comparable store sales, partially offset by the impact of the Company's ongoing cost savings initiatives. On an average store basis, selling, general and administrative expenses declined by 2.7% during the nine months ended November 1, 2008, as compared to the nine months ended November 3, 2007.

*Operating Income.* For the reasons discussed above, operating income decreased \$13.2 million to \$12.7 million, or 1.6% of net sales, for the nine months ended November 1, 2008, as compared to \$25.9 million, or 3.1% of net sales, for the nine months ended November 3, 2007.

*Interest Expense, Net.* Net interest expense decreased to \$0.4 million for the nine months ended November 1, 2008, as compared to \$0.9 million for the nine months ended November 3, 2007. The decrease in net interest expense for the nine months ended November 1, 2008, as compared to the nine months ended November 3, 2007, is primarily related to a decrease in borrowings and fluctuations in interest rates

*Provision for Income Taxes.* The effective tax rates for the nine months ended November 1, 2008 and November 3, 2007 were 40.2% and 38.0%, respectively. The change in the effective tax rate for the nine months ended November 1, 2008, as compared to the nine months ended November 3, 2007, is primarily due to the recognition of tax benefits during the nine months ended November 3, 2007 related to the settlement of U.S. federal income taxes for the tax years 2003 through 2005.

*Income from Continuing Operations.* For the reasons discussed above, income from continuing operations decreased \$8.2 million to \$7.3 million, or 0.9% of net sales, for the nine months ended November 1, 2008, as compared to \$15.5 million, or 1.9% of net sales, for the nine months ended November 3, 2007.

*Income (Loss) from Discontinued Operations, Net of Taxes.* Income (loss) from discontinued operations, net of taxes represents the Company's discontinued JasmineSola business.

**Non-GAAP Financial Measure**

The Company has provided a non-GAAP financial measure to adjust (loss) income from continuing operations for the three and nine months ended November 1, 2008 and November 3, 2007. This information reflects, on a non-GAAP adjusted basis, the Company's (loss) income from continuing operations before interest expense, net; (benefit) provision for income taxes; and depreciation and amortization ("EBITDA"). The calculation for EBITDA is provided to enhance the user's understanding of the Company's operating results. EBITDA is provided because management believes it is an important measure of financial performance commonly used to determine the value of companies and to define standards for borrowing from institutional lenders. The non-GAAP financial information should be considered in addition to, not as an alternative to, (loss) income from continuing operations, as an indicator of the Company's operating performance, and cash flows from operating activities of continuing operations, as a measure of the Company's liquidity, as determined in

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accordance with accounting principles generally accepted in the United States. The Company may calculate EBITDA differently than other companies.

**Reconciliation of (Loss) Income from Continuing Operations to EBITDA**

	Three months ended November 1, 2008		Three months ended November 3, 2007		Nine months ended November 1, 2008		Nine months ended November 3, 2007	
	As a % of net sales	Amounts in thousands	As a % of net sales	Amounts in thousands	As a % of net sales	Amounts in thousands	As a % of net sales	Amounts in thousands
(Loss) income from continuing operations	(3.2)%	\$ (7,992)	1.9%	\$ 5,291	0.9%	\$ 7,341	1.9%	\$ 15,504
Add back:								
Interest expense, net	0.1%	232	0.2%	437	0.1%	412	0.1%	917
(Benefit) provision for income taxes	(2.2)%	(5,372)	0.9%	2,630	0.6%	4,935	1.1%	9,495
Depreciation and amortization	4.4%	10,887	3.6%	9,887	3.9%	32,130	3.4%	28,337
EBITDA	(0.9)%	\$ (2,245)	6.6%	\$ 18,245	5.5%	\$ 44,818	6.5%	\$ 54,253

**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 facilities, if needed. The Company is in compliance with all debt covenants as of November 1, 2008.

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

	November 1, 2008	February 2, 2008	November 3, 2007
	(Amounts in thousands)		
Cash and cash equivalents (including cash at discontinued operations of \$0, \$223 and \$609, respectively)	\$ 41,152	\$ 73,957	\$ 15,509
Working capital	\$ 87,173	\$ 84,479	\$ 82,575

	Nine months ended November 1, 2008	Nine months ended November 3, 2007
	(Amounts in thousands)	
Net cash provided by operating activities of continuing operations	\$ 15,362	\$ 7,807
Net cash used in investing activities of continuing operations	\$ (40,029)	\$ (55,977)
Net cash used in financing activities of continuing operations	\$ (2,016)	\$ (186)
Net cash used in discontinued operations	\$ (6,122)	\$ (4,199)

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Net decrease in cash and cash equivalents	\$	(32,805)	\$	(52,555)
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**Operating Activities of Continuing Operations**

Net cash provided by operating activities of continuing operations was \$15.4 million for the nine months ended November 1, 2008, as compared to \$7.8 million for the nine months ended November 3, 2007. The increase in net cash provided by operating activities for the nine months ended November 1, 2008, as compared to the nine months ended November 3, 2007, is primarily related to changes in accounts receivable, income taxes receivable, inventory, accrued expenses, and income taxes payable, partially offset by a decrease in income from continuing operations, and changes in prepaid expenses, accounts payable, deferred rent, and other assets and liabilities.

**Investing Activities of Continuing Operations**

Net cash used in investing activities of continuing operations was \$40.0 million for the nine months ended November 1, 2008, as compared to \$56.0 million for the nine months ended November 3, 2007. These amounts primarily reflect capital expenditures related to the construction of new stores, the remodeling of existing stores and non-store capital projects, which principally represent information technology enhancements including, among other projects, a new POS system being implemented across the chain and the upgrade of the Company's existing merchandise planning system. The Company completed the implementation of the new POS system during the third quarter and expects to complete the upgrade of its merchandise planning system during fiscal year 2009.

The Company opened 25 new stores and completed 13 remodels in the nine months ended November 1, 2008, as compared to opening 37 new stores and 23 remodels in the nine months ended November 3, 2007. The Company currently plans to have opened 25 stores, closed 15 stores and remodeled 14 stores in fiscal year 2008, ending the fiscal year with 588 stores and approximately 3.3 million selling square feet in operation.

The Company anticipates that the current economic downturn may continue into the foreseeable future and in response, for the fiscal year ending January 30, 2010 ("fiscal year 2009"), the Company plans to focus on improving the productivity of its existing locations and be extremely selective in the opening of new stores. The Company currently expects fiscal year 2009 capital expenditures to be approximately \$15.0 million, as compared to the current fiscal year 2008 capital expenditure forecast of \$50.0 million.

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 of Continuing Operations**

Net cash used in financing activities of continuing operations was \$2.0 million for the nine months ended November 1, 2008, as compared to \$0.2 million for the nine months ended November 3, 2007. Net cash used in financing activities of continuing operations for the nine months ended November 1, 2008 consists of quarterly payments against the Company's outstanding term loan totaling \$4.5 million, partially offset by \$2.5 million of proceeds from the exercise of stock options and the related tax benefit to the Company. Net cash used in financing activities of continuing operations for the nine months ended November 3, 2007 primarily consists of quarterly payments against the Company's outstanding term loan totaling \$4.5 million offset by \$4.7 million of proceeds from the exercise of stock options and the related tax benefit to the Company.

**Discontinued Operations Cash Flows**

Net cash used in discontinued operations was \$6.1 million for the nine months ended November 1, 2008, as compared to \$4.2 million for the nine months ended November 3, 2007. Net cash used in discontinued operations for the nine months ended November 1, 2008 consisted primarily of lease

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termination payments and the payment of other exit related liabilities. Net cash used in discontinued operations for the nine months ended November 3, 2007 consisted primarily of cash flows from the operations of the discontinued JasmineSola business.

**Long-Term Debt and Credit Facilities**

The Company's credit facilities currently consist of a term loan, of which \$21.0 million was outstanding at November 1, 2008, and a \$90.0 million revolving credit facility (which includes a sub-facility available for issuance of letters of credit of up to \$75.0 million), both having a maturity date of March 17, 2012.

As of November 1, 2008, the Company had availability under its revolving credit facility of \$74.6 million, net of letters of credit outstanding of \$7.3 million, as compared to availability of \$75.3 million, net of letters of credit outstanding of \$6.9 million, as of November 3, 2007.

The revolving loans under the credit facilities bear interest, at the Company's option, either at a floating rate equal to the Eurodollar rate plus a margin of between 1.00% and 1.25% per year, depending upon the Company's financial performance, or the Prime rate. The Company pays the lenders under the revolving credit facility a monthly fee on outstanding commercial letters of credit at a rate of 0.625% per year and on standby letters of credit at a rate of between 1.00% and 1.25% per year, depending upon the Company's financial performance, plus a monthly fee on a proportion of the unused commitments under that facility at a rate of 0.20% per year. The term loan bears interest at a floating rate equal to the Eurodollar rate plus 2.50% per year. If any default were to exist under the revolving credit facility and for so long as such default were to continue, at the option of the agent or lenders, the monthly fee on outstanding standby letters of credit may increase to 3.25% per year, interest on the revolving loans may increase to 3.25% per year above the Eurodollar rate for Eurodollar rate loans and 2.00% per year above the Prime rate for all Prime rate loans, and interest on the term loan may increase to the Eurodollar rate plus 4.50% per year.

The Company's credit facilities contain certain covenants, including restrictions on the Company's ability to pay dividends on its common stock, 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. The terms of the Company's credit facilities also subject it to certain maintenance covenants, which were amended on December 9, 2008. The amendment removed the maximum leverage ratio of 2.75 to 1.00 and limited the application of the minimum fixed charge coverage ratio of 1.00 to 1.00, such that the Company is only subject to the minimum fixed charge coverage ratio if borrowing availability under its revolving credit facility plus qualified cash falls below specified minimum levels. Prior to the existing term loan being repaid in full, the Company will only be subject to the minimum fixed charge coverage ratio in the event that borrowing availability under its revolving credit facility plus qualified cash falls below \$30.0 million (\$20.0 million during March and November). Should the Company fully repay its existing term loan, the Company will only be subject to the minimum fixed charge coverage ratio in the event that borrowing availability under its revolving credit facility falls below \$12.5 million. In addition, the Company is required at all times to maintain minimum borrowing availability under its credit facility of \$10.0 million. The Company is currently in compliance with the financial covenants referred to above.

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 facilities. In addition, New York & Company, Inc. and certain of its subsidiaries have fully and unconditionally guaranteed the credit facilities, and such guarantees are joint and several.



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**Critical Accounting Policies**

The preparation of financial statements in conformity with generally accepted accounting principles in the United States requires management to make estimates and assumptions that impact the amounts reported on the Company's consolidated financial statements and related notes. On an ongoing basis, management evaluates its estimates and judgments, including those related to inventories, long-lived assets, goodwill and other intangible assets. Management bases its estimates and judgments on historical experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ materially from these judgments. Management believes the following estimates and assumptions are most significant to reporting the Company's results of operations and financial position.

*Inventory Valuation.* Inventories are principally valued at the lower of average cost or market, on a weighted average cost basis, using the retail method. The Company records a charge to cost of goods sold, buying and occupancy costs for all inventory on-hand when a permanent retail price reduction is reflected in its stores. In addition, management makes estimates and judgments regarding, among other things, initial markup, markdowns, future demand and market conditions, all of which significantly impact the ending inventory valuation. If actual future demand or market conditions are different than those projected by management, future period merchandise margin rates may be unfavorably or favorably affected. Other significant estimates related to inventory include shrink and obsolete and excess inventory which are also based on historical results and management's operating projections.

*Impairment of Long-Lived Assets.* The Company evaluates long-lived assets in accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"). Long-lived assets are evaluated for recoverability in accordance with SFAS No. 144 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. 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. An impairment loss could have a material adverse impact on the Company's financial condition and results of operations. The Company's evaluation for the nine months ended November 1, 2008 resulted in no material asset impairment charge.

*Goodwill and Other Intangible Assets.* SFAS No. 142, "Goodwill and Other Intangible Assets," prohibits the amortization of goodwill and intangible assets with indefinite lives. The Company's intangible assets consist of the New York & Company trademarks and historically the JasmineSola trademarks and goodwill associated with the acquisition of JasmineSola on July 19, 2005, which were initially valued at \$14.8 million, \$17.2 million and \$11.1 million, respectively. The trademarks were initially valued using the "relief from royalty method" and were determined to have indefinite lives by an independent appraiser. Goodwill represents the excess of the purchase price over the fair value of the net assets acquired.

The Company tests for impairment of goodwill and other intangible assets at least annually in the fourth quarter, or more frequently if events or circumstances indicate that the asset may be impaired, by comparing the fair value with the carrying amount for each individual asset. Goodwill impairment is determined using a two-step process. The first step of the goodwill impairment test is to identify a potential impairment by comparing the fair value of a reporting unit with its carrying amount, including the goodwill assigned to the reporting unit. The estimate of fair value of a reporting unit is determined using a discounted cash flow model. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is not deemed to be impaired and the second step of the impairment test is not performed. If the carrying amount of a reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of impairment loss, if any. The

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second step of the goodwill impairment test compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds the implied fair value of that goodwill, an impairment loss is recognized in an amount equal to that excess. The implied fair value of goodwill is determined in the same manner as the amount of goodwill recognized in a business combination. In other words, the fair value of the reporting unit is allocated to all of the assets and liabilities of that unit (including any unrecognized intangible assets) as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the purchase price paid to acquire the reporting unit.

The impairment test for other intangible assets not subject to amortization consists of a comparison of the fair value of the intangible asset with its carrying value. The estimates of fair value of intangible assets not subject to amortization, specifically trademarks, are determined using the "relief from royalty method." If the carrying value of the intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to that excess.

The calculation of estimated fair values used in the evaluation of goodwill and other intangible assets requires estimates of future cash flows, growth rates, discount rates and other variables, that are based on historical experience, knowledge, and market data. If actual experience differs materially from management's estimates or if changes in strategic direction occur, an impairment charge may be required. Management's estimates may be affected by factors such as those outlined in the section of this report entitled Management's Discussion and Analysis of Financial Condition and Results of Operations Special Note Regarding Forward-Looking Statements and Risk Factors. An impairment loss could have a material adverse impact on the Company's results of operations. In connection with the decision to exit the JasmineSola business, during the third quarter of fiscal year 2007, the Company recorded non-cash impairment charges of \$17.2 million and \$11.1 million related to the JasmineSola trademarks and goodwill, respectively.

*Income Taxes.* Income taxes are calculated in accordance with SFAS No. 109, "Accounting for Income Taxes," which requires the use of the liability method. Deferred tax assets and liabilities are recognized based on the difference between the financial statement carrying amounts of assets and liabilities and their respective tax bases. Inherent in the measurement of deferred balances are certain judgments and interpretations of enacted tax laws and published guidance with respect to applicability to the Company's operations. Deferred tax assets are believed to be fully realizable as management expects future taxable income will be sufficient to recover the asset values and, as such, no related valuation allowance has been provided for. The Company adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" an interpretation of FASB Statement No. 109" in the first quarter of fiscal year 2007. This Interpretation prescribes a comprehensive model of how a company should recognize, measure, present and disclose in its financial statements uncertain tax positions that the company has taken or expects to take on a tax return. Under this Interpretation, the Company recognizes a tax benefit when a tax position is more-likely-than-not to be sustained upon examination, based solely on its technical merits. The Company measures the recognized tax benefit as the largest amount of tax benefit that has greater than a 50% likelihood of being realized upon the ultimate settlement with a taxing authority. The Company reverses a previously recognized tax benefit if it determines that the tax position no longer meets the more-likely-than-not threshold of being sustained. The Company accrues interest and penalties related to unrecognized tax benefits in income tax expense.

**Adoption of New Accounting Standards**

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 establishes a common definition for fair value to be applied to US GAAP guidance requiring the use of fair value, establishes a framework for measuring fair value, and expands the disclosure about such fair value measurements. The application of SFAS No. 157 as it relates to

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financial assets and financial liabilities is effective for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. On February 12, 2008, the FASB issued FSP FAS 157-2, "Effective Date of FASB Statement No. 157," which delays the effective date of SFAS No. 157 for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on at least an annual basis, to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years. The Company's adoption of SFAS No. 157 on February 3, 2008 for all financial assets and liabilities and any other assets and liabilities that are recognized or disclosed at fair value on a recurring basis did not impact the Company's consolidated financial statements. The provisions of SFAS No. 157 are to be applied prospectively as of the beginning of the fiscal year in which it is applied, with any transition adjustment recognized as a cumulative effect adjustment to the opening balance of retained earnings. The Company does not anticipate that the adoption of SFAS No. 157 for nonfinancial assets and liabilities measured at fair value on a non-recurring basis will have a material impact on its financial position and results of operations.

In September 2006, the FASB issued SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB statements No. 87, 88, 106, and 132(R)" ("SFAS No. 158"). SFAS No. 158 requires recognition of the overfunded or underfunded status of defined benefit postretirement plans as an asset or liability in the statement of financial position and requires companies to recognize changes in that funded status in comprehensive income (loss) in the year in which the changes occur. SFAS No. 158 also requires measurement of the funded status of a plan as of the date of the statement of financial position. SFAS No. 158 is effective for recognition of the funded status of benefit plans for fiscal years ending after December 15, 2006 and is effective for the measurement date provisions for fiscal years ending after December 15, 2008. The adoption of the recognition provisions of this Statement at February 3, 2007 did not have an impact on the Company's financial position and results of operations. The Company does not anticipate that the adoption of the measurement date provisions of this Statement will have a material impact on its financial position and results of operations.

In May 2008, the FASB issued SFAS No. 162, "The Hierarchy of Generally Accepted Accounting Principles" ("SFAS No. 162"). SFAS No. 162 is intended to improve financial reporting by identifying a consistent framework, or hierarchy, for selecting accounting principles to be used in preparing financial statements that are presented in conformity with US GAAP for non-governmental entities. SFAS No. 162 is effective on November 15, 2008, which is 60 days following the SEC's September 16, 2008 approval of the Public Company Accounting Oversight Board amendments to AU Section 411, the meaning of "Present Fairly in Conformity with GAAP." Any effect of applying the provisions of SFAS No. 162 is to be reported as a change in accounting principle in accordance with FASB Statement No. 154, "Accounting Changes and Error Corrections." The Company's adoption of SFAS No. 162 will not have a material impact on its financial position and results of operations.

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**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 facilities carry 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 increase interest expenses by approximately \$0.3 million annually. 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 November 1, 2008, 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.

**ITEM 4T. CONTROLS AND PROCEDURES**

(a) Not Applicable.

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**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 8, 2008.

**ITEM 1A. RISK FACTORS**

In addition to the other information set forth in this report and the risk factor set forth below, you should carefully consider the factors discussed in Part I, "Item 1A. Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended February 2, 2008 as filed with the Securities and Exchange Commission on April 8, 2008, which could materially affect the Company's business, financial condition, financial results or future performance. Reference is made to "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations Special Note Regarding Forward-Looking Statements and Risk Factors" of this report which is incorporated herein by reference.

**Economic conditions may cause a decline in business and consumer spending which could adversely affect our business and financial performance.**

The Company's business is impacted by general economic conditions and their effect on consumer confidence and the level of consumer spending on the merchandise the Company offers, which have recently deteriorated significantly and may continue to do so for the foreseeable future. These economic factors include recessionary cycles, interest rates, economic growth, wage rates, unemployment levels, energy prices, availability of consumer credit, and consumer confidence, among others. The current downturn in the economy may continue to affect consumer purchases of the Company's merchandise and to adversely impact the Company's results of operations, liquidity and continued growth. In addition, the deteriorating economic conditions could negatively impact the Company's merchandise vendors and their ability to deliver products, which may adversely impact the Company's results of operations, liquidity and continued growth.

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

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**ITEM 5. OTHER INFORMATION**

(a) On December 9, 2008, the Company amended certain terms of the Second Amended and Restated Loan and Security Agreement by and among Lerner New York, Inc., Lernco, Inc., Jasmine Company, Inc., Wachovia Bank, National Association, as Agent for itself and the other Lender named therein (the "Loan Agreement"). The amendment removed the maximum leverage ratio of 2.75 to 1.00 and limited the application of the minimum fixed charge coverage ratio of 1.00 to 1.00, such that the Company is only subject to the minimum fixed charge coverage ratio if borrowing availability under its revolving credit facility plus qualified cash falls below specified minimum levels. Prior to the existing term loan being repaid in full, the Company will only be subject to the minimum fixed charge coverage

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ratio in the event that borrowing availability under its revolving credit facility plus qualified cash falls below \$30.0 million (\$20.0 million during March and November). Should the Company fully repay its existing term loan, the Company will only be subject to the minimum fixed charge coverage ratio in the event that borrowing availability under its revolving credit facility falls below \$12.5 million. In addition, the Company is required at all times to maintain minimum borrowing availability under its credit facility of \$10.0 million.

The amendment does not affect any of the interest rates, letter of credit fees, unused line fees or any other provisions of the Loan Agreement.

**ITEM 6. EXHIBITS**

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

- 10.1 Separation Agreement and General Release between New York & Company, Inc., Lerner New York, Inc. and Ronald W. Ristau, dated November 19, 2008.
- 10.2 Amendment No. 1 to Second Amended and Restated Loan and Security Agreement by and among Lerner New York, Inc., Lernco, Inc., Jasmine Company, Inc., Wachovia Bank, National Association, as Agent for itself and the other Lender named therein, dated as of December 9, 2008.
- 31.1 Certification by the Chairman and Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated December 11, 2008.
- 31.2 Certification by the Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated December 11, 2008.
- 32.1 Written Statement of the Chairman and Chief Executive Officer and the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated December 11, 2008.

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**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 G. TOAL

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By: Sheamus G. Toal  
Its: *Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)*  
Date: December 11, 2008  
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