

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

AMCON DISTRIBUTING CO  
Form 10-K/A  
January 26, 2004

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-K/A  
(Amendment No. 1)

/X/ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED September 26, 2003

// TRANSITION REPORT PURSUANT TO SECTION 13 OF 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM to

Commission File Number 0-24708

AMCON Distributing Company

(Exact name of Registrant as specified in its charter)

Delaware

47-0702918

(State or other jurisdiction  
of incorporation or organization)

(I.R.S. Employer  
Identification No.)

7405 Irvington Road, Omaha NE 68122

(Address of principal executive offices)

Registrant's telephone number, including area code: (402) 331-3727

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

Title of each class	Name of each exchange on which registered
None	None

Securities registered pursuant to Section 12(g) of the Act:  
Common Stock, \$.01 Par Value

(Title of class)

Indicate by check mark whether the Registrant (1) has filed all reports  
required to be filed by Section 13 of 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 X No

Indicate by check mark if disclosure of delinquent filers pursuant to Item  
405 of Regulation S-K is not contained herein, and will not be contained, to  
the best of Registrants' knowledge, in definitive proxy or information  
statements incorporated by reference in Part III of this Annual Report on  
Form 10-K or any other amendment to this Form 10-K. /X/

Indicate by check mark whether the registrant is an accelerated filer (as  
defined in Rule 12b-2 of the Exchange Act). Yes No X

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

The aggregate market value of equity securities held by non-affiliates of the Registrant on March 28, 2003 was approximately \$6.8 million.

As of December 12, 2003 there were 3,168,954 shares of common stock outstanding.

### - Documents Incorporated by Reference -

-----

Portions of the Company's 2003 Annual Report to Shareholders are incorporated herein by reference into Parts I, II and IV.

### - Explanatory Note -

-----

AMCON Distributing Company ("AMCON" or the "Company") is amending its annual report on Form 10-K for the year ended September 26, 2003 ("Form 10-K") to include the information required by Part III of the Form 10-K. The Company filed its Form 10-K on December 24, 2003 and incorporated many sections of Part III by reference to the Company's Proxy Statement. On January 20, 2004, the Company announced a reverse stock split which requires the filing of a preliminary proxy statement with the Securities and Exchange Commission. The preliminary proxy statement was filed on January 20, 2004, but the minimum 10 day waiting period will prevent the Company from filing its definitive proxy statement within the applicable time frame allowed for incorporating by reference information into the Company's Form 10-K. Therefore, the Company is filing this amended Form 10-K/A to include such information and to remove references to the proxy statement. In addition, the Company is deleting Item 4A and moving the previously reported information to Item 10. Except as so indicated, the Company has made no other changes to its Annual Report on Form 10-K for the year ended September 26, 2003.

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

AMCON DISTRIBUTING COMPANY  
-----  
2003 FORM 10-K/A ANNUAL REPORT  
-----

Table of Contents  
-----

	Page
	----
PART III	
Item 10. Directors and Executive Officers of the Registrant.....	3
Item 11. Executive Compensation.....	5
Item 12. Security Ownership of Certain Beneficial Owners and Management.....	8
Item 13. Certain Relationships and Related Transactions. ....	11
Item 14. Principal Accountant Fees and Services.....	12
PART IV	
Item 15. Exhibits, Financial Statement Schedules and Reports on Form 8-K .....	12

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

### THE BOARD OF DIRECTORS

The table below sets forth certain information regarding the directors of the Company. The Board of Directors has determined that Messrs. Mayer, Bentele, Pestotnik, Peterson and Loyack are independent directors of the Company under the new listing standards adopted by the American Stock Exchange. All members of the Board of Directors have held their positions with the companies (or their predecessors) set forth under "Principal Occupation" for at least five years, unless otherwise indicated.

Name -----	Age ---	Principal Occupation -----	Director Since -----	Term To Expire -----
NOMINEES				
William F. Wright	61	Chairman and Principal Executive Officer of the Company	1986	2004
William R. Hoppner	53	Attorney/1/	1994	2004
Stanley Mayer	58	Consultant/2/	2002	2004
DIRECTORS CONTINUING IN OFFICE				
J. Tony Howard	59	President of Nebraska Distributing Company	1986	2005
Allen D. Petersen	62	Chairman of Draupnir LLC/3/	1993	2005
Raymond F. Bentele	67	Retired, Former Chairman, President and Chief Executive Officer Mallinckrodt, Inc./4/	2002	2005
Kathleen M. Evans	56	President of the Company	1986	2006
Timothy R. Pestotnik	43	Attorney, Partner in the law firm Luce, Forward, Hamilton & Scripps, LLP	1998	2006
John R. Loyack	40	Senior Vice President and Chief Financial Officer of PNM Resources, Inc./5/	2003	2006

-----  
/1/ Mr. Hoppner is engaged in the private practice of law. Most recently, from 1999 to 2003, he served in an Of Counsel position to the law firm Rehm and Bennett, P.C. From 1997 through 1998, Mr. Hoppner pursued a political career during which he resigned from our Board of Directors.

/2/ Since 2002, Mr. Mayer has been a consultant to various companies regarding financial and strategic planning matters. Mr. Mayer served as Chief Financial Officer for Donruss Playoff, Inc. from 2001 to 2002 and as Vice President of Southern Union Company from 1998 through 2001.

/3/ Mr. Petersen became Chairman of Draupnir LLC in June 2002. For over 10 years prior to that time, Mr. Petersen was Chairman and Chief Executive Officer of American Tool Companies, Inc. Mr. Petersen is also a director of Gold Banc Corporation, Inc., a public bank holding company.

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

/4/ Mr. Bentele served as President and Chief Executive Officer of Mallincredit, Inc. from 1981 until his retirement in 1992. He currently serves as a director of Kellwood Company, IMC Global, Inc. and Leggett & Platt, Inc.

/5/ Prior to serving in his current position, Mr. Loyack served as Vice President and Chief Accounting Officer at PNM Resources and Director of Financial Accounting and Reporting for Union Pacific Corporation. Mr. Loyack was appointed to the Board of Directors in September 2003.

The Board of Directors has established and assigned certain responsibilities to an Audit Committee. The members of the Audit Committee are Timothy R. Pestotnik (chairman), John R. Loyack and Stanley Mayer. The Board of Directors has determined that all members of the Audit Committee are independent directors under the rules of the Securities and Exchange Commission and under the new listing standards adopted by the American Stock Exchange. In addition, the Board of Directors has determined that Mr. Loyack and Mr. Mayer qualify as "audit committee financial experts" under the rules of the Securities and Exchange Commission.

### EXECUTIVE OFFICERS OF THE COMPANY

The Company's day-to-day affairs are managed by its executive officers, who are appointed by the Board of Directors for terms of one year. The Company has entered into employment agreements with Mr. Wright and Ms. Evans each with a term expiring on December 31, 2004. These executive officers are as follows:

Name	Age	Position
----	---	-----
William F. Wright	61	Chairman of the Board, Director
Kathleen M. Evans	56	President, Director
Eric J. Hinkfent	42	President of CNF and HFA
Michael D. James	42	Secretary, Treasurer and Chief Financial Officer

WILLIAM F. WRIGHT has served as the Chairman and Chief Executive Officer of AMCON Corporation (the former parent of AMCON) since 1976 and as Chairman of the Company since 1981. From 1968 to 1984, Mr. Wright practiced corporate and securities law in Lincoln, Nebraska. Mr. Wright is a graduate of the University of Nebraska and Duke University School of Law and is a certified public accountant.

KATHLEEN M. EVANS became President of the Company in February 1991. Prior to that time she served as Vice President of AMCON Corporation from 1985 to 1991. From 1978 until 1985, Ms. Evans acted in various capacities with AMCON Corporation and its operating subsidiaries.

ERIC J. HINKEFENT has served as President of both Chamberlin Natural Foods, Inc. and Health Food Associates, Inc. since October 2001. Prior to that time he served as President of Health Food Associates, Inc. beginning in 1993. He has also served on the board of The Healthy Edge, Inc. from 1999 through 2003. Mr. Hinkfent is a graduate of Oklahoma State University.

MICHAEL D. JAMES became Treasurer and Chief Financial Officer of the Company in June 1994. In November 1997, he assumed the responsibilities of Secretary

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

of the Company. He is a certified public accountant and is responsible for all financial and reporting functions within the Company. Prior to joining AMCON, Mr. James practiced accounting for ten years with the firm of PricewaterhouseCoopers LLP, serving as the senior tax manager of the Omaha, Nebraska office from 1992 until 1994. Mr. James is a graduate of Kansas State University.

### SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's directors and executive officers, and certain persons who own more than ten percent of the Company's Common Stock, to file with the Securities and Exchange Commission (the "SEC") reports of their ownership of Company Common Stock. Officers, directors and greater-than-ten-percent shareowners are required by SEC regulation to furnish the Company with copies of such Section 16(a) reports they file. Based solely upon review of the copies of such reports received by the Company and written representations from each such person who did not file an annual report with the SEC (Form 5) that no other reports were required, the Company believes that there was compliance for the fiscal year ended 2003 with all Section 16(a) filing requirements applicable to the Company officers, directors and greater-than-ten-percent beneficial owners.

### CODE OF ETHICS

The Company has adopted a Code of Ethics that applies to the Chairman, President, Chief Financial Officer and Controller, as required by Section 406 of the Sarbanes Oxley Act of 2002. A copy of the Code of Ethics was attached as Exhibit 14.1 to the Company's Form 10-K filed on December 24, 2003.

### ITEM 11. EXECUTIVE COMPENSATION

#### COMPENSATION OF DIRECTORS

Prior to January 1, 2003, directors who were not employees of the Company were paid an annual fee of \$20,000, plus \$500 for each board meeting (including committee meetings) attended in person or by teleconference.

Beginning January 1, 2003, directors who are not employees of the Company are paid according to the following annual scale with no payment of meeting fees:

Audit Committee - Chair	\$40,000
Audit Committee - Member	\$35,000
Nominating Committee - Chair	\$35,000
All Other Outside Directors	\$30,000

In addition, all directors are reimbursed for out-of-pocket expenses related to attending board and committee meetings. Non-employee directors are eligible to receive awards of nonqualified stock options which entitle them to purchase shares of our common stock at an exercise price equal to the fair market value of the stock on the date of grant. Option grants to non-employee directors are not issued under the Company's 1994 Stock Option Plan. Such option grants are recommended on an annual basis by the Compensation

Committee, subject to approval by the Board of Directors. These stock options also have varying vesting schedules ranging up to five years and expire ten years after the date of grant. During fiscal year 2003, stock options to purchase 5,000 shares of common stock were granted to Mr. Loyack at an exercise price of \$4.71 per share.

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

### COMPENSATION OF EXECUTIVE OFFICERS

The following table sets forth information regarding the annual and long-term compensation awarded to, earned by or paid by the Company and its subsidiaries to the Company's Chairman and the other three highest paid executive officers of the Company ("Named Officers") for services rendered during fiscal years 2003, 2002, and 2001. No other executive officers of the Company earned salary and bonus in fiscal year 2003 in excess of the disclosure threshold established by federal securities laws.

Summary Compensation Table

(a)	(b)	Annual Compensation			Long-Term Compensation		
		(c)	(d)	(e)	(f)	(g)	(h)
Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Other Annual Compensation (\$) /1/	Restricted Stock Award(s) (\$)	Securities Underlying Options/SARs (\$)	LTIP Payouts (\$) /2/
William F. Wright, Chairman	2003	409,450	102,400	63,645	-	-	-
	2002	393,700	40,000	-	-	-	-
	2001	378,560	113,568	-	-	-	-
Kathleen M. Evans, President	2003	321,710	160,900	-	-	-	-
	2002	309,340	155,000	-	-	-	-
	2001	297,440	90,000	-	-	-	-
Michael D. James, Secretary, Treasurer and Chief Financial Officer	2003	162,500	40,000	-	-	-	-
	2002	155,000	25,000	-	-	-	-
	2001	145,000	25,000	-	-	-	-
Eric J. Hinkefent, President of Health Food Associates, Inc. and Chamberlin Natural Foods, Inc.	2003	125,000	-	-	-	-	-
	2002	102,700	16,000	-	-	-	-
	2001	100,000	-	-	-	-	-

/1/ Amount for fiscal 2003 consists of (i) the value of split dollar life insurance of \$39,645 and (ii) auto allowance of \$24,000 for Mr. Wright. No disclosure is required in this column for any other named executive officer pursuant to applicable Securities and Exchange Commission regulations, as the aggregate value of items covered by this column does not exceed the lesser of \$50,000 or 10% of the total annual salary and bonus shown for each respective executive officer named.

/2/ The Company does not have a long-term incentive plan as defined in Item 402 of Regulation S-K under the Securities Exchange Act of 1933, as amended.

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

6

/3/ These amounts for fiscal year 2003 consist of (i) contributions to the Company's Profit Sharing Plan of \$8,000, \$8,000, \$7,379 and \$5,103 for Mr. Wright, Ms. Evans, Mr. James and Mr. Hinkfent, respectively, and (ii) the values of term life insurance of \$1,095 and \$907 for Mr. Wright and Ms. Evans, respectively.

OPTIONS/SAR GRANTS IN LAST FISCAL YEAR

No options were granted during fiscal year 2003 to the Named Officers listed in the Summary Compensation Table.

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

The following table sets forth certain information concerning options exercised during fiscal year 2003, the number of unexercised options and the value of unexercised options at the end of fiscal year 2003 for the Named Officers listed in the Summary Compensation Table.

(a) Name	(b) Shares Acquired on Exercise (#)	(c) Value Realized (\$)	(d) Number of Securities Underlying Unexercised Options/SARs at Fiscal Year End(#)  Exercisable/ Unexercisable	(e) Value of Unexercised In-the-Money Options/SARs at Fiscal Year End(\$)/1/  Exercisable/ Unexercisable
William F. Wright	-0-	-0-	6,600 / 0	0 / 0
Kathleen M. Evans	-0-	-0-	38,500 / 0	\$68,850 / 0
Michael D. James	2,200	\$3,250	15,680 / 4,120	\$16,065 / 0
Eric J. Hinkfent	-0-	-0-	4,400 / 1,100	0 / 0

/1/ Based on the difference between the closing sale price of the Company's common stock on September 26, 2003 and the exercise price of the options.

LONG-TERM INCENTIVE PLANS AND OTHER MATTERS

The Company does not maintain a long-term incentive plan or pension plan (as defined in Item 402 of SEC Regulation S-K) for the Named Officers and has not repriced any options or SARs for any Named Officer during the last fiscal year.

EMPLOYMENT AGREEMENTS

The Company has entered into employment agreements with William F. Wright, the Chairman of the Board, and Kathleen M. Evans, President of the Company. Each such agreement has a term expiring on December 31, 2004 and is automatically extended each December 31 for one additional year unless either the Company or the executive delivers a notice of non-extension at least 90

days prior to the scheduled automatic renewal date. Each agreement provides for the payment of a base salary in each year during the term thereof and provides that the executive shall be eligible to receive a bonus based upon performance in an amount determined by the Compensation Committee.

The Company has entered into an employment agreement with Eric J. Hinkefent, the President of Health Food Associates, Inc. and Chamberlin Natural Foods, Inc. The agreement has a term expiring on September 30, 2004 and is automatically extended each September 30 for one additional year unless either the Company or the Mr. Hinkefent delivers a notice of non-extension at least 90 days prior to the scheduled automatic renewal date. The agreement provides for a base salary in each year of the term thereof and provides that Mr. Hinkefent shall be eligible to receive a bonus of up to a maximum of 75% of his base salary based upon performance as determined by the Compensation Committee.

If an employment agreement terminates due to an executive's disability or death, the executive or his or her personal representative are entitled to receive the executive's base salary for a period of six months following the termination. If an employment agreement is terminated for reasons other than serious misconduct (as defined in the agreements), the terminated executive is entitled to receive a severance package equal to such executive's current base salary plus his or her previous year's bonus. Each executive is also be eligible to participate in the Company's 1994 Stock Option Plan and in other employee benefit plans maintained by the Company, including health and life insurance plans. Each agreement contains provisions under which the executive has agreed to maintain the confidentiality of information concerning the Company and its affairs and a covenant not to compete with the Company for a period of one year after such executive's employment with the Company terminates.

#### COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION.

There were no compensation committee interlocks and no insider participation in compensation decisions during fiscal 2003 that are required to be reported under the rules and regulations of the Securities Exchange Act of 1934.

#### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

##### OWNERSHIP OF OUR COMMON STOCK BY OUR DIRECTORS AND OFFICERS AND OTHER PRINCIPAL STOCKHOLDERS

The following table sets forth, as of the Record Date, the shares of common stock beneficially owned by each director, each nominee for director, each of the executive officers named in the Summary Compensation Table in this proxy statement, and all present executive officers and directors as a group. The shares beneficially owned by our executive officers and directors, excluding options, account for approximately 44.6% of the total shares outstanding on the Record Date and entitled to vote at the Annual Meeting. We believe that all of these shares will be voted "FOR" each of the proposals set forth in this proxy statement. In addition to outstanding shares, executive officers and directors are deemed to beneficially own shares that they may acquire by exercising vested stock options or options that will vest within 60 days of the Record Date. While these additional shares are included in the following table, none of these additional shares are eligible to vote at the Annual

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

Meeting even if the options were to be exercised prior to the date of the Annual Meeting since the Record Date has already passed. The following table also sets forth the beneficial ownership by each other person believed by us to beneficially own 5% or more of our outstanding common stock as of the Record Date.

Name -----	Number of Shares Beneficially Owned -----	Percent of Class /1/ -----
William F. Wright, Director, Chairman of the Board	783,758 /2/	24.68
Kathleen M. Evans, Director, President	185,036 /3/	5.77
Michael D. James, Chief Financial Officer, Secretary and Treasurer	19,180 /4/	*
Eric J. Hinkfent, President of Health Food Associates, Inc. and Chamberlin Natural Foods, Inc.	4,400 /5/	*
J. Tony Howard, Director	177,446 /6/	5.55
Allen D. Petersen, Director	259,238 /7/	8.13
Timothy R. Pestotnik, Director	240,298 /8/	7.56
William R. Hoppner, Director	101,265 /9/	3.19
Stanley Mayer, Director	5,000 /10/	*
Raymond F. Bentele, Director	5,000 /11/	*
John R. Loyack, Director	5,000 /12/	*
All executive officers and directors as a group (11 persons)	1,558,523	47.04
OTHER PRINCIPAL STOCKHOLDERS -----		
Wendy M. Wright /13/	253,252	7.99
Ane Patterson Shields /14/ -----	160,784	5.07

\* Less than 1% of class.

/1/ Unless otherwise noted, each director and executive officer owned his or her shares directly and has sole voting and investment power over his or her shares.

/2/ Includes 61,750 shares of common stock held by AMCON Corporation, over which Mr. Wright has voting and dispositive powers. Also includes options to purchase 6,600 shares of common stock at an exercise price of \$9.00 per share which may be exercised currently.

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

/3/ Includes options to purchase 38,500 shares of common stock at an average exercise price of \$3.41 per share which may be exercised currently.

9

/4/ Includes options to purchase 15,880 shares of common stock at an average exercise price of \$5.14 per share which may be exercised currently. Mr. James also holds unvested options to acquire 3,920 shares of common stock at an average exercise price of \$6.49 per share.

/5/ Consists of options to purchase 4,400 shares of common stock at an exercise price of \$7.61 per share which may be exercised currently. Mr. Hinkefent also holds unvested options to acquire 1,100 shares of common stock at an exercise price of \$7.61 per share.

/6/ Includes options to purchase 29,700 shares of common stock at an average exercise price of \$3.68 per share which may be exercised currently.

/7/ Includes 227,098 shares of common stock held by the Lifeboat Foundation, over which Mr. Petersen shares voting power as a director and 13,440 shares held by the 2003 Allen D. Petersen Irrevocable Trust, over which Mr. Petersen has sole voting power as sole trustee. Also includes options to purchase 18,700 shares of common stock at an average exercise price of \$4.30 per share which may be exercised currently.

/8/ Includes 227,098 shares of common stock held by the Lifeboat Foundation, over which Mr. Pestotnik shares voting power as a director, and options to purchase 7,700 shares of common stock at an average exercise price of \$6.72 per share which may be exercised currently.

/9/ Includes options to purchase 7,700 shares of common stock at an average exercise price of \$6.72 per share which may be exercised currently.

/10/ Consists of options to purchase 5,000 shares of common stock at an exercise price of \$4.48 per share which may be exercised currently.

/11/ Consists of options to purchase 5,000 shares of common stock at an exercise price of \$4.50 per share which may be exercised currently.

/12/ Consists of options to purchase 5,000 shares of common stock at an exercise price of \$4.71 per share which may be exercised currently.

/13/ 12660 Carmel County Rd. #83, San Diego, CA 92130.

/14/ 3055 St. Thomas Drive, Missoula, Montana 59803.

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

EQUITY COMPENSATION PLAN INFORMATION

The following equity compensation plan information summarizes plans and securities approved and not approved by security holders as of September 26, 2003:

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securi remaining availa for future issua under equity compen plans (excluding sec reflected in colum
Equity compensation plans approved by security holders/1/	231,050	\$ 5.22	246,780
Equity compensation plans not approved by security holders/2/	83,800	\$ 4.55	-
Total.....	314,850	\$5.04	246,780

/1/ The Company's 1994 Stock Option Plan allows for the issuance of up to 550,000 shares of common stock. As of December 19, 2003, 246,780 shares of common stock were available for issuance under the Company's 1994 Stock Option Plan.

/2/ Represents stock options to purchase 78,800 shares of common stock issued to non-employee directors as described in "Compensation of Directors" and stock options to purchase 5,000 shares of common stock issued to an employee pursuant to an individual compensation arrangement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

William F. Wright, Kathleen M. Evans, J. Tony Howard and Allen D. Petersen are officers, directors or stockholders of AMCON Corporation which is engaged in the beer distribution business in eastern Nebraska through a wholly owned subsidiary. AMCON Corporation provides the Company with offices and administrative services and the Company reimburses AMCON Corporation for a proportionate share of the costs of these offices and services based upon our respective usages. The Company paid AMCON Corporation \$60,000 during fiscal 2003 under this arrangement. In fiscal 2004, the Company will pay AMCON Corporation \$66,000 under this arrangement. The Company believes the terms on which AMCON Corporation supplies these offices and services to the Company are no less favorable than would otherwise be available from unaffiliated parties.

The Company has an agreement with William R. Hoppner, one of our directors, for consulting services in connection with our retail health food operations. During fiscal 2003, the Company paid Mr. Hoppner \$90,000 for his services

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

under this agreement, plus reimbursement for his out-of-pocket expenses. Mr. Hoppner is currently providing consulting services to the Company on a month-by-month basis and receives a fee of \$7,500 per month.

11

### ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The following fees were paid to D&T by the Company for professional services for fiscal 2003 and 2002, respectively.

**AUDIT FEES.** D&T billed the Company a total \$168,000 and \$110,000 in fiscal 2003 and 2002, respectively, for professional services rendered for the audit of the Company's annual financial statements for those fiscal years and to review the Company's interim financial statements included in its Quarterly Reports on Form 10-Q filed with the SEC during those years.

**AUDIT-RELATED FEES.** D&T billed the Company \$16,090 and \$16,000 in fiscal 2003 and 2002, respectively, for audit-related services. Audit-related services generally include fees for the audits of the Company's employee benefit plans and fees incurred in connection with business acquisitions and compliance with the Sarbanes-Oxley Act and related regulatory matters.

**TAX FEES.** In fiscal 2003 and 2002, D&T billed the Company \$41,786 and \$26,660, respectively, for tax services. Tax services consisted primarily of preparation of tax returns and general advice relating to tax issues and compliance.

**ALL OTHER FEES.** D&T billed the Company \$64,595 and \$0 in fiscal 2003 and 2002, respectively, for services rendered to the Company, other than the services described under the above captions. These services consisted primarily of advice relating to internal control documentation, review of valuation reports and audit workpaper review by other accountants.

The Audit Committee approved all services provided by D&T during fiscal year 2003 and has determined that the provision of these services did not adversely affect D&T's independence. It is currently the policy of the Audit Committee to review and approve all services provided by D&T to the Company.

### PART IV

### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

#### (a) (3) Exhibits

- 31.1 Certification by William F. Wright, Chairman and Principal Executive Officer, furnished pursuant to section 302 of the Sarbanes-Oxley Act
- 31.2 Certification by Michael D. James, Vice President and Chief Financial Officer, furnished pursuant to section 302 of the Sarbanes-Oxley Act
- 32.1 Certification by William F. Wright, Chairman and Principal Executive Officer, furnished pursuant to section 906 of the Sarbanes-Oxley Act
- 32.2 Certification by Michael D. James, Vice President and Chief Financial Officer, furnished pursuant to section 906 of the Sarbanes-Oxley Act

SIGNATURES

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Act of 1934, the Registrant, AMCON Distributing Company, a Delaware corporation, has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Omaha, State of Nebraska, on the 26th day of January, 2004.

AMCON DISTRIBUTING COMPANY

By: /s/ William F. Wright

-----  
William F. Wright, Chairman

