ARK RESTAURANTS CORP
Form 10-Q
August 12, 2014
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

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

For the quarterly period ended June 28, 2014

Commission file number 1-09453

ARK RESTAURANTS CORP.

(Exact name of registrant as specified in its charter)

New York	13-3156768
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

85 Fifth Avenue, New York, New York	10003
(Address of principal executive offices)	(Zip Code)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) during the preceding 12 months (or for shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes S No £

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files).

Yes S No £

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

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

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes £ No S

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

Class	Outstanding shares at August 6, 2014
(Common stock, $.01 par value)	3,371,508

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

On one or more occasions, we may make statements in this Quarterly Report on Form 10-Q regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements, other than statements of historical facts, included or incorporated by reference herein relating to management’s current expectations of future financial performance, continued growth and changes in economic conditions or capital markets are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended.

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

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter or subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in “Item 1A Risk Factors” in Part I of our Annual Report on Form 10-K for the fiscal year ended September 28, 2013 as may be updated by the information contained under the caption “Item 1A. Risk Factors” in Part II of this Quarterly Report on Form 10-Q.

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

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

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

Part I. Financial Information

Item 1. Consolidated Condensed Financial Statements

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED BALANCE SHEETS

(In Thousands, Except Per Share Amounts)

	June 28, 2014 (Unaudited)	September 28, 2013 (see Note 1)
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents (includes $607 at June 28, 2014 and $637 at September 28, 2013 related to VIEs)	$ 6,738	$ 8,748
Accounts receivable (includes $326 at June 28, 2014 and $317 at September 28, 2013 related to VIEs)	1,982	2,712
Employee receivables	442	346
Inventories (includes $19 at June 28, 2014 and $16 at September 28, 2013 related to VIEs)	1,871	1,579
Prepaid expenses and other current assets (includes $175 at June 28, 2014 and $176 at September 28, 2013 related to VIEs)	1,701	1,605
Current portion of note receivable	102	226
Total current assets	12,836	15,216
FIXED ASSETS - Net (includes $65 at June 28, 2014 and $89 at September 28, 2013 related to VIEs)	29,347	25,017
NOTE RECEIVABLE, LESS CURRENT PORTION	292	774
INTANGIBLE ASSETS - Net	9	13
GOODWILL	6,813	4,813
TRADEMARKS	1,221	721
DEFERRED INCOME TAXES	4,957	4,806
OTHER ASSETS (includes $71 at June 28, 2014 and September 28, 2013 related to VIEs)	7,367	5,098
TOTAL ASSETS	$ 62,842	$ 56,458
LIABILITIES AND EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade (includes $52 at June 28, 2014 and $70 at September 28, 2013 related to VIEs)	$ 2,769	$ 2,758
Accrued expenses and other current liabilities (includes $139 at June 28, 2014 and $140 at September 28, 2013 related VIEs)	9,680	9,275
Accrued income taxes	249	—
Dividend payable	829	814
Current portion of notes payable	2,059	2,063
Total current liabilities	15,586	14,910
	4,318	4,606

OPERATING LEASE DEFERRED CREDIT (includes $69 at June 28, 2014 related to VIEs)		
NOTES PAYABLE, LESS CURRENT PORTION	5,793	1,594
TOTAL LIABILITIES	25,697	21,110
COMMITMENTS AND CONTINGENCIES		
EQUITY:		
Common stock, par value $.01 per share - authorized, 10,000 shares; issued, 4,720 shares at June 28, 2014 and 4,610 shares at September 28, 2013; outstanding, 3,364 shares at June 28, 2014 and 3,254 shares at September 28, 2013	47	46
Additional paid-in capital	24,712	22,978
Retained earnings	23,117	22,950
	47,876	45,974
Less treasury stock, at cost, of 1,356 shares at June 28, 2014 and September 28, 2013	(13,220)	(13,220)
Total Ark Restaurants Corp. shareholders’ equity	34,656	32,754
NON-CONTROLLING INTERESTS	2,489	2,594
TOTAL EQUITY	37,145	35,348
TOTAL LIABILITIES AND EQUITY	$ 62,842	$ 56,458

See notes to consolidated condensed financial statements.

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

(In Thousands, Except Per Share Amounts)

	13 Weeks Ended		39 Weeks Ended	
	June 28, 2014	June 29, 2013	June 28, 2014	June 29, 2013
REVENUES:				
Food and beverage sales	$38,746	$36,153	$101,183	$95,970
Other revenue	364	320	1,103	929
Total revenues	39,110	36,473	102,286	96,899
COSTS AND EXPENSES:				
Food and beverage cost of sales	10,738	8,959	26,965	24,142
Payroll expenses	11,952	10,805	32,989	31,767
Occupancy expenses	4,360	4,442	12,915	13,063
Other operating costs and expenses	4,989	4,400	13,518	12,797
General and administrative expenses	2,567	2,398	7,790	7,564
Depreciation and amortization	1,130	1,082	3,384	3,179
Total costs and expenses	35,736	32,086	97,561	92,512
OPERATING INCOME	3,374	4,387	4,725	4,387
OTHER (INCOME) EXPENSE:				
Interest expense	102	24	161	33
Interest income	(7)	—	(20)	—
Other income, net	(121)	(38)	(302)	(210)
Total other income, net	(26)	(14)	(161)	(177)
INCOME BEFORE PROVISION FOR INCOME TAXES	3,400	4,401	4,886	4,564
Provision for income taxes	702	1,112	1,183	1,168
CONSOLIDATED NET INCOME	2,698	3,289	3,703	3,396
Net income attributable to non-controlling interests	(459)	(660)	(1,076)	(1,024)
NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.	$2,239	$2,629	$2,627	$2,372
NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE:				
Basic	$0.68	$0.81	$0.80	$0.73
Diluted	$0.65	$0.77	$0.77	$0.71
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:				
Basic	3,293	3,245	3,270	3,245
Diluted	3,429	3,396	3,413	3,362

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF CHANGES IN EQUITY (Unaudited)
FOR THE 39 WEEKS ENDED JUNE 28, 2014 AND JUNE 29, 2013

(In Thousands)

	Common Stock		**Additional Paid-In**	**Retained**	**Treasury**	**Total Ark Restaurants Corp. Shareholders'**	**Non-controlling**	**Total**
	Shares	Amount	Capital	Earnings	Stock	Equity	Interests	Equity
BALANCE - September 29, 2012	4,601	$ 46	$ 23,410	$ 22,372	$ (13,220)	$ 32,608	$ 4,179	$ 36,787
Net income	—	—	—	2,372	—	2,372	1,024	3,396
Purchase of member interests in subsidiary	—	—	(2,685)	—	—	(2,685)	(280)	(2,965)
Tax benefit of purchase of member interests in subsidiary	—	—	1,020	—	—	1,020	—	1,020
Elimination of non-controlling interest in discontinued operation	—	—	691	—	—	691	(691)	—
Stock-based compensation	—	—	238	—	—	238	—	238
Distributions to non-controlling interests	—	—	—	—	—	—	(1,471)	(1,471)
Payment of dividends - $0.75 per share	—	—	—	(2,434)	—	(2,434)	—	(2,434)
BALANCE - June 29, 2013	4,601	$ 46	$ 22,674	$ 22,310	$ (13,220)	$ 31,810	$ 2,761	$ 34,571
BALANCE - September 28, 2013	4,610	$ 46	$ 22,978	$ 22,950	$ (13,220)	$ 32,754	$ 2,594	$ 35,348
Net income	—	—		2,627	—	2,627	1,076	3,703
Exercise of stock options	110	1	1,445	—	—	1,446	—	1,446
Tax benefit on exercise of stock options	—	—	45	—	—	45	—	45
Stock-based compensation	—	—	244	—	—	244	—	244
Distributions to non-controlling interests	—	—	—	—	—	—	(1,181)	(1,181)
Accrued and paid dividends - $0.75 per share	—	—	—	(2,460)	—	(2,460)	—	(2,460)
BALANCE - June 28, 2014	4,720	$ 47	$ 24,712	$ 23,117	$ (13,220)	$ 34,656	$ 2,489	$ 37,145

See notes to consolidated condensed financial statements.

- 5 -

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

(In Thousands)

	39 Weeks Ended	
	June 28, 2014	June 29, 2013
CASH FLOWS FROM OPERATING ACTIVITIES:		
Consolidated net income	$3,703	$3,396
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Loss on closure of restaurants	—	256
Deferred income taxes	(151)	365
Stock-based compensation	244	238
Depreciation and amortization	3,384	3,179
Operating lease deferred credit	(288)	(261)
Changes in operating assets and liabilities:		
Accounts receivable	730	987
Inventories	(82)	(97)
Prepaid, refundable and accrued income taxes	653	512
Prepaid expenses and other current assets	(500)	130
Other assets	(305)	(39)
Accounts payable - trade	11	(404)
Accrued expenses and other liabilities	405	(368)
Net cash provided by operating activities	7,804	7,894
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(2,710)	(2,980)
Loans and advances made to employees	(238)	(105)
Payments received on employee receivables	142	94
Payments received on note receivable	606	—
Proceeds from sales of investment securities	—	75
Purchase of member interests in subsidiary	—	(2,965)
Purchase of member interest in New Meadowlands Racetrack LLC	(464)	(4,200)
Loan made to Meadowlands Newmark LLC	(1,500)	—
Purchase of The Rustic Inn	(1,710)	—
Net cash used in investing activities	(5,874)	(10,081)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of note payable	—	3,000
Principal payments on notes payable	(1,805)	(1,042)
Dividends paid	(2,445)	(2,434)
Proceeds from issuance of stock upon exercise of stock options	1,446	—
Excess tax benefits related to stock-based compensation	45	—
Distributions to non-controlling interests	(1,181)	(1,471)
Net cash used in financing activities	(3,940)	(1,947)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(2,010)	(4,134)
CASH AND CASH EQUIVALENTS, Beginning of period	8,748	8,705

CASH AND CASH EQUIVALENTS, End of period	$6,738	$4,571
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the period for:		
Interest	$161	$33
Income taxes	$637	$360
Non-cash investing activity:		
Tax benefit of purchase of member interests in subsidiary	$—	$1,020
Liquidation of non-controlling interests in discontinued operation	$—	$691
Non-cash financing activity:		
Note payable in connection with purchase of The Rustic Inn	$6,000	$—
Accrued dividend	$829	$—

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

June 28, 2014

(Unaudited)

1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The consolidated condensed balance sheet as of September 28, 2013, which has been derived from audited financial statements included in the Form 10-K, and the unaudited interim consolidated condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) for interim financial information and pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. All adjustments that, in the opinion of management are necessary for a fair presentation for the periods presented, have been reflected as required by Regulation S-X, Rule 10-01. Such adjustments are of a normal, recurring nature. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company’s annual report on Form 10-K for the year ended September 28, 2013. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year or any other interim period.

PRINCIPLES OF CONSOLIDATION — The consolidated condensed interim financial statements include the accounts of Ark Restaurants Corp. and all of its wholly-owned subsidiaries, partnerships and other entities in which it has a controlling interest, collectively herein referred to as the “Company”. Also included in the consolidated condensed interim financial statements are certain variable interest entities (“VIEs”). All significant intercompany balances and transactions have been eliminated in consolidation.

SEASONALITY — The Company has substantial fixed costs that do not decline proportionally with sales. The first and second fiscal quarters, which include the winter months, usually reflect lower customer traffic than in the third and fourth fiscal quarters. In addition, sales in the third and fourth fiscal quarters can be adversely affected by inclement weather due to the significant amount of outdoor seating at the Company’s restaurants.

FAIR VALUE OF FINANCIAL INSTRUMENTS — The carrying amount of cash and cash equivalents, receivables, accounts payable and accrued expenses approximate fair value due to the immediate or short-term maturity of these financial instruments. The fair values of notes receivable and payable are determined using current applicable rates for similar instruments as of the balance sheet date and approximate the carrying value of such debt.

CASH AND CASH EQUIVALENTS — Cash and cash equivalents include cash on hand, deposits with banks and highly liquid investments generally with original maturities of three months or less. Outstanding checks in excess of account balances, typically vendor payments, payroll and other contractual obligations disbursed after the last day of a reporting period are reported as a current liability in the accompanying consolidated condensed balance sheets.

CONCENTRATIONS OF CREDIT RISK — Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company reduces credit risk by placing its cash and cash equivalents with major financial institutions with high credit ratings. At times, such amounts may exceed Federally insured limits. The concentration of credit risk with respect to accounts receivable is generally limited due to the short payment terms extended by the Company and the number of customers comprising the Company’s customer base.

For the 39-week period ended June 28, 2014, the Company made purchases from one vendor that accounted for approximately 11% of total purchases. For the 39-week period ended June 29, 2013, the Company made purchases from two vendors that accounted for approximately 22% of total purchases. For the 13-week periods ended June 28, 2014 and June 29, 2013, the Company made purchases from one vendor that accounted for approximately 11% and 12%, respectively, of total purchases.

SEGMENT REPORTING — As of June 28, 2014, the Company owned and operated 20 restaurants and bars, 21 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customers and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance.

RECLASSIFICATIONS — Certain reclassifications of prior period balances have been made to conform to the current period presentation. Such amounts did not impact results of operations, cash flows or earnings per share.

NEW ACCOUNTING STANDARDS NOT YET ADOPTED — In April 2014, the FASB issued new accounting guidance that changes the definition of a discontinued operation to include only those disposals of components of an entity that represent a strategic shift that has (or will have) a major effect on an entity's operations and financial results. This guidance is effective for fiscal years ending after December 15, 2014 and is required to be applied prospectively. Early adoption is permitted for disposals that have not been reported in financial statements previously issued. The Company is evaluating the impact of the adoption of this guidance on its financial condition, results of operations or cash flows.

In May 2014, the FASB issued updated accounting guidance that provides a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. Additionally, this guidance expands related disclosure requirements. The pronouncement is effective for annual and interim reporting periods beginning after December 15, 2016. Early application is not permitted. This update permits the use of either the retrospective or cumulative effect transition method. The Company is evaluating the impact of the adoption of this guidance on its financial condition, results of operations or cash flows as well as the expected adoption method.

In June 2014, the FASB issued guidance which clarifies the recognition of stock-based compensation over the required service period, if it is probable that the performance condition will be achieved. This guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2015 and should be applied prospectively. The adoption of this guidance is not expected to have a significant impact on the Company's consolidated financial condition or results of operations.

2. VARIABLE INTEREST ENTITIES

The Company consolidates any variable interest entities in which it holds a variable interest and is the primary beneficiary. Generally, a variable interest entity, or VIE, is an entity with one or more of the following characteristics: (a) the total equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support; (b) as a group the holders of the equity investment at risk lack (i) the ability to make decisions about an entity's activities through voting or similar rights, (ii) the obligation to absorb the expected losses of the entity, or (iii) the right to receive the expected residual returns of the entity; or (c) the equity investors have voting rights that are not proportional to their economic interests and substantially all of the entity's activities either involve, or are conducted on behalf of, an investor that has disproportionately few voting rights. The primary beneficiary of a VIE is generally the entity that has (a) the power to direct the activities of the VIE that most significantly impact the VIE's economic performance, and (b) the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE.

The Company has determined that it is the primary beneficiary of three VIEs and, accordingly, consolidates the financial results of these entities. Following are the required disclosures associated with the Company's consolidated VIEs:

	June 28, 2014	September 28, 2013
	(in thousands)	
Cash and cash equivalents	$607	$ 637
Accounts receivable	326	317
Inventories	19	16
Prepaid expenses and other current assets	175	176
Due from Ark Restaurants Corp. and affiliates (1)	84	157
Fixed assets – net	65	89
Other assets	71	71
Total assets	$1,347	$ 1,463
Accounts payable – trade	$52	$ 70
Accrued expenses and other current liabilities	139	140
Operating lease deferred credit	69	—
Total liabilities	260	210
Equity of variable interest entities	1,087	1,253
Total liabilities and equity	$1,347	$ 1,463

(1) Amounts Due from Ark Restaurants Corp. and affiliates are eliminated upon consolidation.

The liabilities recognized as a result of consolidating these VIEs do not represent additional claims on our general assets; rather, they represent claims against the specific assets of the consolidated VIEs. Conversely, assets recognized as a result of consolidating these VIEs do not represent additional assets that could be used to satisfy claims against our general assets.

3. RECENT RESTAURANT EXPANSION

On November 28, 2012, a subsidiary of the Company entered into an agreement to design and lease a restaurant at the Tropicana Hotel and Casino in Atlantic City, NJ. The cost to construct this restaurant was approximately $1,750,000. The initial term of the lease for this facility expires June 7, 2023 and h