LANDS END INC
Form 10-12B/A
January 10, 2014

As filed with the Securities and Exchange Commission on January 10, 2014

File No. 001-09769

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1

to

Form 10

GENERAL FORM FOR REGISTRATION OF SECURITIES

Pursuant to Section 12(b) or (g) of

the Securities Exchange Act of 1934

Lands End, Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**36-2512786**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
1 Lands End Lane Dodgeville, Wisconsin	**53595**
(Address of principal executive offices)	**(Zip Code)**

(608) 935-9341

(Registrant s telephone number, including area code)

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

Title of Each Class to be so Registered	**Name of Each Exchange on which Each Class is to be Registered**
Common Stock, par value $0.01 per share	**The NASDAQ Stock Market LLC**

Securities to be registered pursuant to Section 12(g) of the Act: None

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.

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

LANDS END, INC.

INFORMATION REQUIRED IN REGISTRATION STATEMENT

CROSS-REFERENCE SHEET BETWEEN INFORMATION STATEMENT

AND ITEMS OF FORM 10

Certain information required to be included herein is incorporated by reference to specifically identified portions of the body of the information statement filed herewith as Exhibit 99.1. None of the information contained in the information statement shall be incorporated by reference herein or deemed to be a part hereof unless such information is specifically incorporated by reference.

Item 1. *Business.*

The information required by this item is contained under the sections of the information statement entitled Information Statement Summary, Risk Factors, Cautionary Statement Concerning Forward-Looking Statements, Management s Discussion and Analysis of Financial Condition and Results of Operations, Business, Certain Relationships and Related Person Transactions Our Relationship with Sears Holdings Following the Spin-Off, and Where You Can Find More Information. Those sections are incorporated herein by reference.

Item 1A. *Risk Factors.*

The information required by this item is contained under the sections of the information statement entitled Risk Factors and Cautionary Statement Concerning Forward-Looking Statements. Those sections are incorporated herein by reference.

Item 2. *Financial Information.*

The information required by this item is contained under the sections of the information statement entitled Capitalization, Selected Historical Financial Data, and Management s Discussion and Analysis of Financial Condition and Results of Operations. Those sections are incorporated herein by reference.

Item 3. *Properties.*

The information required by this item is contained under the section of the information statement entitled Business Facilities and Store Locations. That section is incorporated herein by reference.

Item 4. *Security Ownership of Certain Beneficial Owners and Management.*

The information required by this item is contained under the section of the information statement entitled Security Ownership of Certain Beneficial Owners and Management. That section is incorporated herein by reference.

Item 5. *Directors and Executive Officers.*

The information required by this item is contained under the section of the information statement entitled Management. That section is incorporated herein by reference.

Item 6. *Executive Compensation.*

The information required by this item is contained under the sections of the information statement entitled Executive Compensation and Certain Relationships and Related Person Transactions. Those sections are incorporated herein by reference.

Item 7. ***Certain Relationships and Related Transactions, and Director Independence.***

The information required by this item is contained under the sections of the information statement entitled Management and Certain Relationships and Related Person Transactions. Those sections are incorporated herein by reference.

Item 8. ***Legal Proceedings.***

The information required by this item is contained under the section of the information statement entitled Business Legal Proceedings. That section is incorporated herein by reference.

Item 9. ***Market Price of, and Dividends on, the Registrant s Common Equity and Related Stockholder Matters.***

The information required by this item is contained under the sections of the information statement entitled Dividend Policy, Capitalization, The Spin-Off, Executive Compensation and Description of Our Capital Stock. Those sectio are incorporated herein by reference.

Item 10. ***Recent Sales of Unregistered Securities.***

The information required by this item is contained under the sections of the information statement entitled Management s Discussion and Analysis of Financial Condition and Results of Operations and Description of Our Capital Stock. Those sections are incorporated herein by reference.

Item 11. ***Description of Registrant s Securities to be Registered.***

The information required by this item is contained under the sections of the information statement entitled Dividend Policy, The Spin-Off, and Description of Our Capital Stock. Those sections are incorporated herein by reference.

Item 12. ***Indemnification of Directors and Officers.***

The information required by this item is contained under the section of the information statement entitled Description of Our Capital Stock Indemnification and Limitation of Liability of Directors and Officers. That section is incorporated herein by reference.

Item 13. ***Financial Statements and Supplementary Data.***

The information required by this item is contained under the section of the information statement entitled Index to Audited Financial Statements, Index to Unaudited Financial Statements and the financial statements referenced therein. That section is incorporated herein by reference.

Item 14. ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.***

Not applicable.

Item 15. ***Financial Statements and Exhibits.***

(a) Financial Statements

The information required by this item is contained under the section of the information statement entitled Index to Audited Financial Statements, Index to Unaudited Financial Statements and the financial statements referenced therein. That section is incorporated herein by reference.

(b) Exhibits

See below.

The following documents are filed as exhibits hereto:

Exhibit Number	**Exhibit Description**
2.1	Form of Separation and Distribution Agreement by and between Sears Holdings Corporation and Lands End, Inc.*
3.1	Form of Amended and Restated Certificate of Incorporation of Lands End, Inc.*
3.2	Form of Amended and Restated Bylaws of Lands End, Inc.*
10.1	Form of Transition Services Agreement by and between Sears Holdings Management Corporation and Lands End, Inc.*
10.2	Form of Tax Sharing Agreement by and between Sears Holdings Corporation and Lands End, Inc.*
10.3	Form of Master Lease Agreement by and between Sears, Roebuck and Co. and Lands End, Inc.*
10.4	Form of Master Sublease Agreement by and between Sears, Roebuck and Co. and Lands End, Inc.*
10.5	Form of Lands End Shops at Sears Retail Operations Agreement by and between Sears, Roebuck and Co. and Lands End, Inc.*
10.6	Form of Shop Your Way[SM] Retail Establishment Agreement by and between Sears Holdings Management Corporation and Lands End, Inc.*
10.7	Form of Financial Services Agreement by and between Sears Holdings Management Corporation and Lands End, Inc.*
10.8	Form of Buying Agency Agreement by and between Sears Holdings Global Sourcing, Ltd. and Lands End, Inc.*
10.9	Letter from Sears Holdings Corporation to Edgar Huber relating to employment, dated July 18, 2011.**
10.10	Executive Severance Agreement dated and effective as of July 18, 2011 between Sears Holdings Corporation and its affiliates and subsidiaries and Edgar Huber.**
10.11	Letter from Lands End, Inc. to Michael Rosera relating to employment, dated June 27, 2012.**
10.12	Executive Severance Agreement dated and effective as of July 2, 2012 between Sears Holdings Corporation and its affiliates and subsidiaries and Michael Rosera.**
21.1	Subsidiaries of Lands End, Inc.**
99.1	Information Statement of Lands End, Inc., preliminary and subject to completion, dated January 10, 2014.**
99.2	Form of Notice of Internet Availability of Information Statement Materials.*

*   To be filed by amendment.
** Filed herewith.
Confidential treatment requested as to certain terms in this agreement; these terms have been omitted from this filing and filed separately with the Securities and Exchange Commission.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

LANDS END, INC.

By: /s/ Edgar O. Huber
Name: Edgar O. Huber
Title: Chief Executive Officer

Date: January 10, 2014

28, 2005 through February 28, 2008; (3) a balloon payment of $2,770,000 at maturity on August 28, 2008; (4) semi-annual interest payments on June 30 and December 31 which commenced on December 31, 2003; and (5) the Company's right to call after August 1, 2005 at 105% of par plus accrued but unpaid interest. The net cash proceeds from the financing were $2.9 million, after payment of related fees and expenses and repayment of all outstanding equipment and subordinated debt. In connection with the issuance of the August 2003 promissory notes, the Company negotiated a settlement with its former primary equipment lender and received a $757,000 cash discount by prepaying $2,204,800 of the outstanding balance on August 29, 2003. The transaction costs, including commissions, professional fees and other costs, totaled $815,000, and are being amortized over the five-year term of the notes. The issuance of the two million warrants from the August 2003 refinancing resulted in the Company recording an increase to shareholders' equity of $1.87 million; a $1.61 million debt discount; and an increase to deferred debt costs of $257,000 for the warrants related to the broker commissions. The Company is amortizing as interest expense the debt discount and deferred debt costs over the five-year term of the notes. The $1.61 million debt discount is a non-cash discount related to the issuance of the warrants and does not reduce the amount of cash payments required to be made by the Company for the outstanding balance of $6.925 million owed at March 31, 2004. On December 31, 2003, the Company paid its first semi-annual interest payment on the August 2003 promissory notes on a prorated basis totaling $224,000. 9 NOTES TO CONDENSED UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS JANUARY 2002 CONVERSION OF SUBORDINATED DEBT In January 2002, certain holders of the convertible subordinated promissory notes converted an aggregate of $2.617 million to unregistered shares of the Company's common stock at a conversion price of $1.24 per share, for a total of 2,110,322 shares of common stock. The holders of the remaining $283,600 of convertible subordinated promissory notes issued by the Company who did not convert their notes in January 2002 waived any conversion price adjustment. SUBORDINATED PROMISSORY NOTES On December 23, 2002, the Company issued a $150,000 short-term promissory note to an affiliated shareholder. The note was due on January 31, 2003, with interest at 5% over the prime interest rate. On January 21, 2003 the Company and the holder of the note substituted the note for a $150,000 subordinated promissory note due on January 31, 2005, bearing interest at an annual rate of 9%. On January 21, 2003, the Company issued $300,000 of subordinated promissory notes to a director and an affiliated shareholder. The notes were due on January 31, 2005 and bore interest at an annual rate of 9%. On May 12, 2003, the Company issued $300,000 of subordinated promissory notes to a director and an affiliated shareholder. The notes bore interest at an annual rate of 14% and were payable on demand. The Company repaid $235,500 of these notes with the proceeds of the May 20, 2003 private placement issuance of subordinated promissory notes and common stock purchase warrants. On May 20, 2003, the Company issued $235,500 of subordinated promissory notes to officers, directors, an affiliated shareholder and certain unaffiliated shareholders. The notes were due on November 19, 2003 and bore interest at an annual rate of 14%. The Company also issued warrants to purchase 82,425 shares of common stock exercisable at $0.86 per share in connection with the notes. The warrants issued are exercisable for a period of three (3) years from September 30, 2003. REPAID DEBT SECURITIES The Company repaid all of the outstanding subordinated convertible and non-convertible promissory notes in September 2003 with the proceeds of the August 2003 refinancing. WARRANTS EXERCISED In April 2004, certain note holders of the

May 20, 2003 and August 2003 debt issuances exercised 69,500 warrants for $68,520, in which 62,500 warrants were related to the $1.00 warrants issued in conjunction with the August 2003 refinancing and 7,000 warrants related to the $0.86 warrants issued in the May 20, 2003 debt issuance. The $68,520 will increase cash and shareholders' equity in the fiscal fourth quarter of 2004. (7) RELATED PARTY TRANSACTIONS As previously reported in the Company's 2003 Form 10-K, beginning July 2002, the Company suspended further payments of salary to Stanley H. Streicher, the Company's former chairman, under his November 7, 2000, employment agreement because of an unpaid note receivable. As of December 31, 2003, the Company had set off all the remaining outstanding balance due. Additionally, Mr. Streicher's November 7, 2000 employment contract expired on October 31, 2003 and was not extended or renewed. Each of the: (a) convertible subordinated promissory notes which were converted in January 2002; (b) December 23, 2002 short-term promissory note; (c) January 21, 2003 subordinated promissory notes; and (d) May 12, 2003 promissory notes were issued to a director or other affiliates of the Company. In addition, a portion of the May 20, 2003 subordinated promissory notes and related warrants were issued to officers, directors and other affiliates of the Company. These notes are more fully described in Note 6. 10 NOTES TO CONDENSED UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS (8) RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS FASB Staff Position 150-3, "Effective Date, Disclosures, and Transition for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests under FASB Statement No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity," (FSP 150-3) defers the effective date for certain mandatorily redeemable financial instruments issued by a non-SEC registrant from fiscal periods beginning after December 15, 2003 to fiscal periods beginning after December 15, 2004 and defers indefinitely for those entities the classification, measurement, and disclosure provisions of Statement 150 for other mandatorily redeemable financial instruments. The FSP also defers the effective date of Statement 150 for certain mandatorily redeemable noncontrolling interests of all entities. FSP 150-3 is not expected to have a significant impact upon the Company. 11 ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS This report, including but not limited to this Item 2 and the footnotes to the financial statements found in Section F, contains "forward looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These statements concern expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. Statements preceded by, followed by, or that include the words "believes," "expects," "anticipates," or similar expressions are generally considered to be forward-looking statements. The forward-looking statements include the following: o the Company's beliefs regarding its position in the mobile fueling industry o the Company's strategies, plans and objectives and expectations concerning its future operations, cash flow, margins, revenue, profitability, liquidity and capital resources o the Company's efforts to improve operational, financial and management controls, reporting systems and procedures The forward-looking statements reflect the Company's current view about future events and are subject to risks, uncertainties and assumptions. The Company's actual results could differ materially from those anticipated in the forward-looking statements as a result of certain factors, including those set forth under the caption "Certain Factors Affecting Future Operating Results," included in the Company's filing on Form 10-K for the fiscal year ended June 30, 2003, and in this Form 10-Q. Among the factors that could prevent the Company from achieving its goals, and cause the assumptions underlying the forward-looking statements and the actual results to differ materially from those expressed in or implied by those forward-looking statements are the following: o future net losses o adverse consequences relating to the Company's outstanding debt o the Company's ability to pay interest and principal on its bank line of credit, August 2003 promissory notes and pay its accounts payable and other liabilities when due o the Company's ability to comply with financial covenants contained in its $10 million bank line of credit o the Company's ability to obtain, if necessary, waivers of covenant violations of its debt agreements o significant provisions for bad debts on the Company's accounts receivable o fluctuations in demand for the Company's mobile fueling services resulting from changed economic conditions o the Company's ability to acquire sufficient trade credit from fuel suppliers and other vendors o competitive pricing for the Company's services at acceptable net margins 12 OVERVIEW The Company's mobile fueling services business continues to be largely dependent on the number of gallons of fuel delivered and the net margin per gallon achieved ("net margin" defined as gross profit plus depreciation included in cost of sales divided by gallons delivered). Since June 30, 2003, the Company has added, on an annualized basis, approximately 8.0 million gallons of net new business, which would, if sustained, result in an expected 55.0

million gallons delivered for the year ending June 30, 2004, a 16% increase over the 47.5 million gallons delivered in the fiscal year 2003. For the nine months ended March 31, 2004, the net margin per gallon was 9.3 cents per gallon compared to 11.5 cents per gallon in fiscal 2003. The Company attributes the lower net margin per gallon this year to two factors: (1) a lower average service charge per gallon; and (2) higher direct operating costs (including personnel training and equipment relocation expense) arising from the Company's expansion in existing markets and into new markets. The lower average service charge per gallon was originally caused by aggressive price-cutting by a financially distressed competitor, which has since discontinued business, but the effect on market prices persists today. Management believes that this residual effect lingers because of steadily rising fuel prices, which have put pressure on mobile fueling customers to control costs by resisting service fee increases. The Company continues to believe, however, that pricing for mobile fueling services will increase and should stabilize at more sustainable levels. In the third quarter of the 2004 fiscal year, the Company's operating loss and net loss both decreased from the same period in the prior year by over $150,000 and nearly $40,000, respectively. For the nine-month period ended March 31, 2004 compared to March 31, 2003 operating income improved by $939,000 and net loss decreased by $615,000. This improvement was principally due to the $757,000 gain on extinguishment of debt and higher volumes delivered during the nine-month period. Earnings before interest, taxes, depreciation and amortization ("EBITDA") also improved, increasing by over $135,000 and $875,000 in the three and nine-month periods compared to a year ago (see EBITDA table in Results of Operations section). The Company's increased EBITDA reflects the improvement in cash flow being generated from the Company's business operations before debt service payments and capital expenditures. EBITDA is a key indicator used by management and the financial community to gauge the Company's financial performance utilizing its capital resources. The Company has 30 trucks available for service to support its continuing expansion program in presently served and new markets, and is in a position to add significant new business volumes, generating continued EBITDA improvement with limited capital expenditures. The Company's financial condition is stable and, after its August 2003 refinancing transaction, has improved in several ways. This refinancing which provided $5.8 million in net proceeds and lowered debt service requirements over the next two years, better matches the Company's anticipated cash flow and debt obligations, while providing support for the planned growth of its business. Cash availability under the Company's $10 million bank line of credit also increased. The Company believes that it will meet its income and cash flow objectives by delivering increased fuel volumes in both existing and new markets and generating higher net margins through improved operating efficiencies, including those resulting from absorbing fixed overhead costs in a growing revenue stream. Labor costs are a primary consideration by existing and prospective customers in the use of mobile fueling services and the Company anticipates an increase in the demand for its services as these labor costs continue to escalate. In January 2004, new federal safety rules became effective reducing the hours truck drivers can be on duty, including time spent fueling their trucks or equipment. The Company believes that these mandated changes should increase the use of mobile fueling services. Fleet operators may decide to use their drivers' time more cost effectively by delivering their product or services rather than using labor to fuel vehicles. During April 2004, the Company expanded its operations in North Carolina and commenced service in the State of Maryland. The Company now conducts business in seven states from 17 operating locations. 13 GENERAL The Company generates substantially all of its revenue from providing mobile fueling and fuel management services. Revenue is comprised principally of delivery service charges and the related sale of diesel fuel and gasoline. Cost of sales is comprised principally of direct operating expenses and the cost of fuel. Included in both revenue and cost of sales are federal and state fuel taxes, which are collected by the Company from its customers, when required, and remitted to the appropriate taxing authorities. The Company provides mobile fueling and fuel management services at a negotiated rate for the services plus the cost of fuel based on market prices. Revenue levels vary depending on the upward or downward movement of fuel prices in each market. In the absence of dramatic fuel price changes that affect customers' actual demand for fuel or materially affect the fuel usage costs of the Company's own fuel delivery trucks, the Company's gross profit on sales is not materially affected by fuel price fluctuations because the Company generally passes all fuel price changes to its customers and charges for its own services on a flat per gallon basis. For the three and nine months ended March 31, 2004, market prices for fuel were higher than for the three and nine months ended March 31, 2003, and delivered volumes increased in the nine-month period due primarily to the addition of new accounts. As a result, revenues increased for the three and nine months ended March 31, 2004, as compared to the three and nine months ended March 31, 2003. In the mobile fueling business, the majority of deliveries are made at night on workdays, Monday through Friday, to coincide with customers' fuel service requirements. The number of workdays in any given month will impact the financial performance of the Company. In addition, a downturn in customer demand generally takes place on and/or in conjunction with national holidays, resulting in decreased volumes of fuel delivered. This downturn may be offset during the fiscal year by emergency mobile fueling services and fuel deliveries to certain customers resulting from impending or actual severe weather and other events, including hurricanes, tropical storms, ice and snow storms, forest fires and earthquakes. The Company believes that significant opportunities exist to increase the size of its mobile fueling and fuel management services business and the volumes of fuel sold and delivered in conjunction with it. The Company`s marketing and sales function responsibility is to grow the Company's business. However, this growth is dependent upon a number of business and economic factors, including the success of the Company's sales and marketing and other business strategies; the availability in new and existing markets of sufficient acceptable margin mobile fuel service business; the availability of qualified personnel to provide the level of service required by customers; acceptable cash flow from operating activities; the availability of sufficient debt or equity capital to meet the Company's financing requirements; and changes in market conditions in the related transportation or petroleum industries, some of which factors are beyond the Company's control. CAPITAL RESOURCES AND LIQUIDITY At March 31, 2004 and June 30, 2003, the Company had a total of cash and cash availability on its bank line of credit of $3,512,000 and $390,000, respectively. The increase in the Company's cash and cash availability was principally due to the August 2003 refinancing which resulted in net proceeds of $2.9 million. In August 2003, the Company raised $6.925 million from the issuance of five-year 10% promissory notes (the "August 2003 refinancing" and the "August 2003 promissory notes") and 2,008,250 five-year warrants to purchase the Company's common stock at $1.00 per share (the "August 2003 warrants"). The August 2003 promissory notes are collateralized by a first priority security interest in the Company's specialized fueling truck fleet and related equipment and by the patents on its proprietary fuel management system. The resulting liquidity impact of this financing transaction was the repayment of all outstanding equipment and subordinated debt; the generation of $2.9 million of additional working capital for business expansion; and a $2.8 million improvement in cash flow resulting from a moratorium of principal payments during the first two years of the five-year term of the August 2003 promissory notes. 14 The August 2003 refinancing significantly strengthened the Company's financial position, enabling it to achieve a stronger balance sheet and improve cash flow resulting from the two-year principal moratorium on principal payments under the August 2003 promissory notes. The Company believes that this transaction enhances its business credibility with present and prospective customers, fuel suppliers, trade creditors, other lenders and the investment community, and its ability to compete in its business sector. During the quarter ended September 30, 2003, the Company recorded a pre-tax gain of $757,000 from the prepayment of the outstanding balance owed to its former principal equipment lender and an increase in shareholders' equity of $1.87 million for the value of the 2,008,250 warrants issued in connection with the August 2003 refinancing. In April 2004, 62,500 of these warrants were exercised and resulted in a $62,500 increase in cash and shareholders' equity, respectively. The Company's debt agreements contain covenants establishing certain financial requirements and operating restrictions. The Company's failure to comply with any covenant or material obligation contained in these debt agreements, absent a waiver or forbearance from the lenders, would result in an event of default which could accelerate debt repayment terms under the debt agreements. Due to cross-default provisions contained in its debt agreements, an event of default under one agreement could accelerate repayment terms under the other agreements, which would have a material adverse effect on the Company's liquidity and capital resources. The Company's mobile fueling business requires it to utilize considerable working capital for fuel, labor and equipment costs prior to receiving payments from customers. The fuel purchased by the Company for resale to customers generally must be paid for in 10-15 days of purchase, with labor costs and taxes paid bi-weekly and equipment related costs generally paid within 30 days. The Company invoices customers both daily and weekly and generally collects its accounts within 30 to 45 days. The days sales outstanding at March 31, 2004 and June 30, 2003 was 30 days. The Company's material financial commitments, other than fuel purchases, payroll and general expenses, relate primarily to maintaining its bank line of credit and servicing its August 2003 promissory notes. The Company is required to make semi-annual interest payments of 10% per annum on its August 2003 promissory notes which began December 31, 2003; and beginning August 28, 2005, is required to make six $692,500 semi-annual principal payments, with a balloon payment due August 28, 2008 of $2,770,000. The Company's liquidity and ability to meet its financial obligations is dependent on, among other things, the Company's ability to generate cash flow from operating activities; obtain or maintain sufficient trade credit from vendors; maintain compliance with its debt covenants; and/or raise any required additional capital through the issuance of debt or equity securities or additional borrowings. The Company believes that cash flow from operations; the additional working capital from the August 2003 refinancing and the two-year principal payment moratorium on the August 2003 promissory notes will satisfy its anticipated liquidity requirements for the foreseeable future. However, it may seek additional sources of financing if a cash flow deficiency were to arise in the future. There is no assurance that additional financing would be available to the Company on acceptable terms, or at all. If the Company does not comply with the covenants in its debt agreements, or if adequate funds are not available to finance operations or to pay debt service obligations as they become due, the Company may be required to significantly alter its operations. $10 MILLION THREE-YEAR CREDIT FACILITY The Company has a three-year $10 million credit facility with a national financial institution, which permits the Company to borrow up to 85% of the total amount of eligible accounts receivable. Interest is payable monthly (5.75% at March 31, 2004) and outstanding borrowings under the line are secured by substantially all Company assets other than its truck fleet and related equipment. The maturity date of the line of credit is September 25, 2005. In addition, the credit facility may be extended by the mutual consent of the Company and the bank after September 25, 2005. 15 In August 2003, the Company and its bank line of credit lender amended the loan and security agreement for the credit facility in connection with the Company's August 2003 refinancing which (1) released the lender's lien on patents, patent rights and patent applications; (2) increased the unused line of credit fee by .50%; (3) revised the effective book net worth covenant to include the August 2003 promissory notes in its calculation; (4) established a covenant to maintain a minimum cumulative quarterly fixed charge coverage ratio as defined in the amended loan agreement; (5) established a covenant for the Company to maintain a minimum excess availability of $500,000; and (6) eliminated the loan prepayment fee. The Company utilized a portion of the proceeds of the August 2003 refinancing to pay down the bank line of credit. The proceeds that were used to pay down the outstanding line of credit balance are available to the Company for future working capital purposes. As of March 31, 2004 and June 30, 2003, the Company had outstanding borrowings of $4.9 and $4.4 million, respectively, under its $10 million bank lines of credit. Based on eligible receivables outstanding at March 31, 2004, the Company had $864,000 of cash availability on the bank line of credit, and was in compliance with all financial covenants required by the loan and security agreement. Management believes that the Company's bank line of credit should provide the working capital needed to maintain and grow its business and to accomplish its business plan. However, if additional financing is required, there can be no assurance that the Company will be able to obtain such financing from its present bank line of credit or another lender at acceptable terms, or at all. Further, since the Company's borrowings under its bank line of credit bear interest at variable interest rates and represent a large portion of the Company's outstanding debt, the Company's financial results could be materially affected by significant increases or decreases in interest rates. DEBT SECURITIES AUGUST 2003 PROMISSORY NOTES On August 29, 2003, the Company closed a $6.925 million offering to institutions and other accredited lenders consisting of five-year 10% promissory notes and five-year warrants to purchase a total 2,008,250 shares of the Company's common stock at $1.00 per share. The August 2003 promissory notes are collateralized by a first priority security interest in its specialized fueling truck fleet and related equipment and by patents on its proprietary fuel management system. The August 2003 promissory notes provide for (1) no principal payments until August 28, 2005; (2) six $692,500 semi-annual principal payments commencing on August 28, 2005 through February 28, 2008; (3) a balloon payment of $2,770,000 at maturity on August 28, 2008; (4) semi-annual interest payments on June 30 and December 31 which commenced on December 31, 2003; and (5) the Company's right to call after August 1, 2005 at 105% of par plus accrued but unpaid interest. The net cash proceeds from the financing were $2.9 million, after payment of related fees and expenses and repayment of all outstanding equipment and subordinated debt. In connection with the issuance of the August 2003 promissory notes, the Company negotiated a settlement with its former primary equipment lender and received a $757,000 cash discount by prepaying the $2,204,800 outstanding balance on August 29, 2003. The transaction costs, including commissions, professional fees and other costs, totaled $814,000, and are being amortized over the five-year term of the notes. The issuance of the two million warrants from the August 2003 refinancing resulted in the Company recording an increase to shareholders' equity of $1.87 million; a $1.61 million debt discount; and an increase to deferred debt costs of $257,000 for the warrants related to the broker commissions. The Company is amortizing as interest expense the debt discount and deferred debt costs over the five-year term of the notes. The $1.61 million debt discount is a non-cash discount related to the issuance of the warrants and does not reduce the amount of cash payments required to be made by the Company for the outstanding balance of $6.925 million owed at March 31, 2004. REPAID DEBT SECURITIES In

September 2003, the Company repaid all of the outstanding subordinated convertible and non-convertible promissory notes with a portion of the proceeds of the August 2003 refinancing. 16 WARRANTS EXERCISED In April 2004, certain note holders of the May 20, 2003 and August 2003 debt issuances exercised 69,500 warrants for $68,520, of which 62,500 warrants were related to the $1.00 warrants issued in conjunction with the August 2003 refinancing and 7,000 warrants related to the $0.86 warrants issued in the May 20, 2003 debt issuance. The $68,520 will increase cash and shareholders' equity in the fourth quarter of fiscal 2004. INTEREST EXPENSE, NET SUMMARY As a result of the August 2003 refinancing, the Company's components of net interest expense has changed. The table below shows the net interest expense (in thousands) recorded for the three and nine-month periods: Three-Month Periods Ended Nine-Month Periods Ended March 31, March 31, 2004 2003 2004 2003 --------- --------- -------- -------- Stated Rate Interest Expense: ---------------------------- Bank line of credit $ 69 $ 107 $ 183 $ 312 Long term equipment debt 173 99 450 322 Subordinated debt -- 12 20 21 Other 3 -- 16 -- --------- --------- -------- -------- Total stated rate interest expense 245 218 669 655 Non-cash Interest Amortization: ------------------------------ Amortization of deferred debt costs 43 14 134 35 Amortization of debt discount 57 -- 165 -- --------- --------- -------- -------- Total amortization of interest expense 100 14 299 35 --------- --------- -------- -------- Total other interest expense (income) -- (3) 21 (25) --------- --------- -------- -------- Total interest expense, net $ 345 $ 229 $ 989 $ 665 ========= ========= ======== ======== The increase in the interest expense of $116,000 and $324,000 for the three and nine months ended March 31, 2004 compared to the three and nine months ended March 31, 2003, respectively, relates primarily to the higher non-cash interest amortization relating to the August 2003 refinancing as well as higher equipment debt outstanding in the three and nine-month periods ended March 31, 2004, offset by the lower average balance on the Company's bank line of credit for the three and nine months ended March 31, 2004 compared to the three and nine months ended March 31, 2003, respectively. 17 RESULTS OF OPERATIONS The following is a summary of the Company's selected condensed consolidated results of operations for the three and nine-month periods ending March 31, 2004 and 2003 (in 000s): Three-Month Periods Ended March 31, Nine-Month Periods Ended March 31, -- -- Increase (decrease) Increase (decrease) ------------------- --------------------- 2004 2003 Dollars Percent 2004 2003 Dollars Percent --------- --------- --------- --------- --------- --------- ---------- ---------- Total revenues $ 22,906 $ 19,469 $ 3,437 17.7 % $ 63,458 $ 53,834 $ 9,624 17.9 % Total cost of sales and services 21,930 18,580 3,350 18.0 % 60,586 50,808 9,778 19.2 % --------- --------- --------- --------- --------- --------- ---------- ---------- Gross profit 976 889 87 9.8 % 2,872 3,026 (154) (5.1)% Selling, general, and administrative expenses (1,096) (1,161) (65) (5.6)% (3,281) (3,617) (336) (9.3)% Gain on extinguishment of debt -- -- -- -- 757 -- 757 -- Interest expense, net (345) (229) 116 50.7 % (989) (665) 324 48.7 % Income tax expense -- -- -- -- -- -- -- -- --------- --------- --------- --------- --------- --------- ---------- ---------- Net loss $ (465) $ (501) $ (36) (7.2)% $ (641) $ (1,256) $ (615) (49.0)% ========= ========= ========= ========= ========= ========= ========== ========== Gallons Delivered 13,315 11,496 1,819 15.8 % 40,332 34,863 5,469 15.7 % ========= ========= ========= ========= ========= ========= ========== ========== COMPARISON OF THREE AND NINE MONTHS ENDED MARCH 31, 2004 TO MARCH 31, 2003 REVENUES Revenue increased $3.4 million and $9.6 million for the three and nine months ended March 31, 2004 compared to the three and nine months ended March 31, 2003. The increase in revenue resulted primarily from higher wholesale fuel prices and additional higher priced mobile fueling deliveries of 1.8 million and 5.5 million gallons during the respective three and nine month periods. The increase in volume during the respective three and nine month periods was primarily due to the net addition of new accounts. GROSS PROFIT Gross profit increased by $87,000 and decreased by $154,000 in the three and nine months ended March 31, 2004, respectively, compared to the three and nine months ended March 31, 2003. The variance in the three and nine-month periods resulted primarily from the additional revenues attributable to the increase in volume delivered in the current year of 1.8 million gallons and 5.5 million gallons, respectively, which was offset by decreases in the average service charge per gallon and increases in direct operating expenses relating to higher delivery costs for the new volume added during the periods. The decrease in the average service charge of fuel delivered for the nine months ended March 31, 2004 was $.023 per gallon, or $781,000. This decrease in the average service charge resulted from the Company lowering its service charges to many of its customers to counter aggressive discounting scheme undertaken by a former competitor which has since discontinued business. The Company's ability to recapture that decrease has been hampered by steadily rising fuel prices, which have fostered customer resistance to higher mobile fueling service fees The average net margin per delivered gallon of fuel decreased from 10.3 cents for the three months ended March 31, 2003 to 9.4 cents for the three months ended March 31, 2004 and from 11.5 cents for the nine months ended March 31, 2003 to 9.3 cents for the nine months ended March 31, 2004. The decrease in net margin per gallon resulted primarily from the decrease in average service charge per gallon and higher direct operating expenses related to the mobilization of more equipment and personnel to deliver the increased gallons. 18 SELLING, GENERAL AND ADMINISTRATIVE EXPENSE Selling, general and administrative expenses decreased $65,000 and $336,000 in the three and nine months ended March 31, 2004 compared to the three and nine months ended March 31, 2003, respectively. The decrease in these expenses in the three-month period resulted primarily from a $67,000 decrease in the provision for bad debts. The decrease in the nine month period was primarily due to a reduction of the provision for bad debts of $233,000 which was incurred in the prior year and related to the Company's billing system conversion; a reduction of professional fees of $54,000; and reductions in payroll expense of $91,000. INTEREST EXPENSE, NET Interest expense, net, increased $116,000 and $324,000 in the three and nine-month periods ended March 31, 2004, respectively, compared to the three and nine-month periods ended March 31, 2003. The increases were primarily due to the debt discount and deferred debt costs amortization of $86,000 and $264,000 during the respective three and nine month periods and additional interest on the outstanding long term equipment debt of $74,000 and $128,000 during the respective three and nine month periods and were partially offset by decreases in interest expense on the bank line of credit of $38,000 and $129,000 during the respective three and nine month periods. INCOME TAXES The Company recorded no income tax expense in the three and nine-month periods ended March 31, 2004 or March 31, 2003. The Company has $13.9 million in net operating loss carryforwards which may be available to offset future taxable income. EBITDA EBITDA increased $137,000 and $882,000 in the three and nine months ended March 31, 2004 compared to the three months ended March 31, 2003, respectively. The increase in EBITDA for the three-month period was primarily due to the increase in gross profit of $87,000 and the decrease in selling, general, and administrative expenses of $65,000. The increase in EBITDA for the nine-month period was primarily due to the gain on extinguishment of debt of $757,000 relating to the August 2003 refinancing, higher volumes delivered, and decreases in selling, general and administrative expenses of $336,000, which was offset by the decrease in gross profit of $154,000. Components of EBITDA for the three and nine months ended March 31, 2004 and 2003 are as follows: Three-months Ended Nine-months Ended ---------------------- ------------------------- March 31, March 31, March 31, March 31, 2004 2003 2004 2003 ---------- ---------- ----------- ------------ Net loss $ (465,000) $ (501,000) $ (641,000) $ (1,256,000) Add back: Interest expense 245,000 215,000 690,000 630,000 Non-cash interest expense 100,000 14,000 299,000 35,000 Depreciation and amortization expense: Cost of sales 283,000 297,000 853,000 933,000 Selling, general and administrative 48,000 49,000 145,000 122,000 ---------- ---------- ----------- ------------ EBITDA $ 211,000 $ 74,000 $ 1,346,000 $ 464,000 ========== ========== =========== ============ 19 ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK The Company's exposure to market risk is limited primarily to the fluctuating interest rates associated with variable rate debt outstanding to finance working capital needs and a portion of the Company's mobile fueling truck fleet. These debts bear interest at the United States prime interest rate plus a fixed markup and are subject to change based upon interest rate changes in the United States. The Company does not currently use, and has not historically used, derivative instruments to hedge against such market interest rate risk. Increases or decreases in market interest rates could have a material impact on the financial condition, results of operations and cash flows of the Company. In the absence of dramatic price changes that affect customers' actual demand for fuel or materially affect the fuel usage costs of the Company's own fuel delivery trucks, the Company's gross profit on sales is not directly affected by fuel price fluctuations because the Company generally passes all fuel price changes to its customers and charges for its own services on a flat per gallon basis. On the other hand, the Company believes that recent increases in fuel prices may be contributing to customer resistance to higher service fees. ITEM 4. CONTROLS AND PROCEDURES As of the end of the period reported on in this report, the Company has undertaken an evaluation under the supervision and with the participation of the Company's management, including our Chief Executive Office and Chief Financial Officer, of the effectiveness of the design and operation of disclosure controls and procedures pursuant to Rule 13a-15 of the Securities Exchange Act of 1934. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective, in all material respects, with respect to the recording, processing, summarizing and reporting, within the time periods specified in the SEC's rules and forms, of information required to be disclosed in the reports that are filed or submitted under the Exchange Act. There have been no significant changes in the Company's internal controls during the quarter ended March 31, 2004, or in other factors that could significantly affect internal controls subsequent to the date of the evaluation described above. 20 PART II. OTHER INFORMATION ITEM 1. LEGAL PROCEEDINGS None. ITEM 2. CHANGES IN SECURITIES None. ITEM 3. DEFAULTS UPON SENIOR SECURITIES None. ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS None. ITEM 5. OTHER INFORMATION None. ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K (A) EXHIBITS EXHIBIT NO. DESCRIPTION 31.1 Certificate of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 31.2 Certificate of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002) 32.1 Certificate of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of The Sarbanes-Oxley Act of 2002 (B) REPORTS ON FORM 8-K 1) The Company filed a report on Form 8-K under Item 12, Results of Operations and Financial Position, dated February 17, 2004 announcing the issuance of a press release on February 17, 2004, reporting operating results for the second quarter ended December 31, 2003. 21 SIGNATURES Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized. STREICHER MOBILE FUELING, INC. May 14, 2004 By: /S/ RICHARD E. GATHRIGHT ------------------------------------ Richard E. Gathright Chief Executive Officer and President By: /S/ MICHAEL S. SHORE ------------------------------------ Michael S. Shore Senior Vice President and Chief Financial Officer 22 EXHIBIT 31.1 CERTIFICATIONS I, Richard E. Gathright, certify that: 1. I have reviewed this quarterly report on Form 10-Q of Streicher Mobile Fueling, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report; 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report; 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have: (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared; (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end the period covered by this report based on such evaluation; and (c) Disclosed in this report any change in the registrant's internal controls over financial reporting that occurred during the registrant's third fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting. 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions): (a) All significant deficiencies and material weakness in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting. Date: May 14, 2004 /S/ RICHARD E. GATHRIGHT ------------------------------------ Richard E. Gathright President and Chief Executive Officer EXHIBIT 31.2 CERTIFICATIONS I, Michael S. Shore, certify that: 1. I have reviewed this quarterly report on Form 10-Q of Streicher Mobile Fueling, Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report; 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report; 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have: (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared; (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end the period covered by this report based on such evaluation; and (c) Disclosed in this report any change in the registrant's internal controls over financial reporting that occurred during the registrant's third fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting. 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions): (a) All significant deficiencies and material weakness in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting. Date: May 14, 2004 /S/ MICHAEL S. SHORE -- Michael S. Shore Senior Vice President and Chief Financial Officer EXHIBIT 32.1 CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 In connection with the Quarterly Report of Streicher Mobile Fueling, Inc. (the "Company") on Form 10-Q for the quarterly period ended March 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned hereby certifies, pursuant to 18 U.S.C. ss.1350, as adopted pursuant to ss. 906 of The Sarbanes-Oxley Act of 2002, that: (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company. A signed original of this written statement required by Section 906 has been provided to Streicher Mobile Fueling, Inc. and will be retained by Streicher Mobile Fueling, Inc. and furnished to the Securities and Exchange commission or its staff upon request. /S/ RICHARD E. GATHRIGHT -- Richard E. Gathright President and Chief Executive Officer May 14, 2004 /S/ MICHAEL S. SHORE -- Michael S. Shore Senior Vice President and Chief Financial Officer May 14, 2004