TOOTSIE ROLL INDUSTRIES INC
Form 10-K
March 01, 2011
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2010

OR

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

For the transition period from to

Commission file number 1-1361

TOOTSIE ROLL INDUSTRIES, INC.

(Exact name of Registrant as specified in its charter)

Virginia	**22-1318955**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

7401 South Cicero Avenue, Chicago, Illinois 60629

(Address of principal executive offices) (Zip Code)

Registrant s Telephone Number: **(773) 838-3400**

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

Title of each class	Name of each exchange on which registered
Common Stock Par Value $.69-4/9 Per Share	**New York Stock Exchange**

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

Class B Common Stock Par Value $.69-4/9 Per Share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No x

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

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 registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. x

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

Large Accelerated Filer x	Accelerated Filer o
Non-accelerated Filer o	Smaller Reporting Company o

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

As of February 22, 2011, there were outstanding 36,024,024 shares of Common Stock par value $.69-4/9 per share, and 20,439,280 shares of Class B Common Stock par value $.69-4/9 per share.

As of June 30, 2010, the aggregate market value of the Common Stock (based upon the closing price of the stock on the New York Stock Exchange on such date) held by non-affiliates was approximately $460,116,000. Class B Common Stock is not traded on any exchange, is restricted as to transfer or other disposition, but is convertible into Common Stock on a share-for-share basis. Upon such conversion, the resulting shares of Common Stock are freely transferable and publicly traded. Assuming all 20,439,280 shares of outstanding Class B Common Stock were converted into Common Stock, the aggregate market value of Common Stock held by non-affiliates on June 30, 2010 (based upon the closing price of the stock on the New York Stock Exchange on such date) would have been approximately $546,729,000. Determination of stock ownership by non-affiliates was made solely for the purpose of this requirement, and the Registrant is not bound by these determinations for any other purpose.

DOCUMENTS INCORPORATED BY REFERENCE

1. Portions of the Company s Annual Report to Shareholders for the year ended December 31, 2010 (the 2010 Report) are incorporated by reference in Parts I and II of this report and filed as an exhibit to this report.

2. Portions of the Company s Definitive Proxy Statement for the Company s Annual Meeting of Shareholders (the 2011 Proxy Statement) scheduled to be held on May 2, 2011 are incorporated by reference in Part III of this report.

Table of Contents

TABLE OF CONTENTS

Table of Contents

Forward-Looking Information

From time to time, in the Company s statements and written reports, including this report, the Company discusses its expectations regarding future performance by making certain forward-looking statements. Forward-looking statements can be identified by the use of words such as anticipated, believe, expect, intend, estimate, project, and other words of similar meaning in connection with a discussion of future operat financial performance and are subject to certain factors, risks, trends and uncertainties that could cause actual results and achievements to differ materially from those expressed in the forward-looking statements. These forward-looking statements are based on currently available competitive, financial and economic data and management s views and assumptions regarding future events. Such forward-looking statements are inherently uncertain, and actual results may differ materially from those expressed or implied herein. Consequently, the Company wishes to caution readers not to place undue reliance on any forward-looking statements. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, factors, among others, which could cause future results to differ materially from the forward-looking statements, expectations and assumptions expressed or implied herein include those set forth in the subsection entitled Risk Factors in Management s Discussion and Analysis of Financial Condition and Results of Operations on Pages 12 and 13 of the 2010 Report, which subsection is incorporated herein by reference. In addition, the Company s results may be affected by general factors, such as economic conditions, political developments, currency exchange rates, interest and inflation rates, accounting standards, taxes, and laws and regulations affecting the Company in markets where it competes and those factors described in Item 1A Risk Factors and elsewhere in this Annual Report on Form 10-K and in other Company filings with the Securities and Exchange Commission.

PART I

ITEM 1. Business.

Tootsie Roll Industries, Inc. and its consolidated subsidiaries (the Company) have been engaged in the manufacture and sale of confectionery products for over 100 years. This is the only industry segment in which the Company operates and is its only line of business. The majority of the Company s products are sold under the registered trademarks TOOTSIE ROLL, TOOTSIE ROLL POPS, CHILD S PLAY, CARAMEL APPLE POPS, CHARMS, BLOW-POP, BLUE RAZZ, ZIP-A-DEE POPS, CELLA S, MASON DOTS, MASON CROWS, JUNIOR MINT, CHARLESTON CHEW, SUGAR DADDY, SUGAR BABIES, ANDES, FLUFFY STUFF, DUBBLE BUBBLE, RAZZLES, CRY BABY and NIK-L-NIP.

The Company s products are marketed in a variety of packages designed to be suitable for display and sale in different types of retail outlets. They are distributed through approximately 100 candy and grocery brokers and by the Company itself to approximately 15,000 customers throughout the United States. These customers include wholesale distributors of candy and groceries, supermarkets, variety stores, dollar stores, chain grocers, drug chains, discount chains, cooperative grocery associations, warehouse and membership club stores, vending machine operators, the U. S. military and fund-raising charitable organizations.

The Company s principal markets are in the United States, Canada and Mexico. The majority of production from the Company s Canadian plants is sold in the United States. The majority of production from the Company s Mexican plant is sold in Mexico.

The domestic confectionery business is highly competitive. The Company competes primarily with other manufacturers of bar candy, bagged candy and bubble gum of the type sold in the above mentioned stores. Although accurate statistics are not available, the Company believes it is among the ten largest domestic manufacturers in this field. In the markets in which the Company competes, the main forms of competition comprise brand recognition as well as a fair price for our products at various retail price points.

The Company did not have a material backlog of firm orders at the end of the calendar years 2010 or 2009.

The Company was adversely affected by significantly higher input costs, including approximately $16,600 of ingredient unit cost increases in 2010 compared to 2009; however, packaging material unit costs favorably decreased by approximately $800 in 2010. The Company generally experienced significant cost increases in sugar, cocoa, edible oils and dairy inputs, however, the Company experienced favorable declines in corn syrup. Given recent trends in the commodities markets, the Company is anticipating even higher ingredient costs in 2011.

Table of Contents

The Company has historically hedged certain of its future sugar, corn syrup and soybean oil needs with derivatives at such times that it believes that the forward markets are favorable. The Company s decision to hedge its major ingredient requirements is dependent on our evaluation of forward commodities markets and comparison to vendor quotations, if available, and/or historical costs. The Company has historically hedged with derivatives these major commodities and ingredients before the commencement of the next calendar year to better ascertain the need for product pricing changes or product weight decline (indirect price change) adjustments to its product sales portfolio and better manage ingredient costs. The Company will generally purchase forward derivative contracts (i.e. long position) in selected future months that correspond to the Company s estimated procurement and usage needs of the respective commodity in the respective forward periods.

From time to time, the Company also changes the size of certain of its products, which are usually sold at standard prices, to reflect significant changes in raw material costs.

The Company does not hold any material patents, licenses, franchises or concessions. The Company s major trademarks are registered in the United States and in many other countries. Continued trademark protection is of material importance to the Company s business as a whole.

Although the Company does develop new products, including product line extensions for existing brands, the Company does not expend material amounts of money on research or development activities.

The Company s compliance with federal, state and local regulations which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, has not had a material effect on the capital expenditures, earnings or competitive position of the Company nor does the Company anticipate any such material effects from presently enacted or adopted regulations.

The Company employs approximately 2,200 persons.

The Company has found that its sales normally maintain a consistent level throughout the year except for a substantial upsurge in the third quarter which reflects sales associated with Halloween. In anticipation of this high sales period, the Company generally begins its Halloween inventory build-up in the second quarter of each year. The Company historically offers extended credit terms for sales made under Halloween sales programs. Each year, after Halloween receivables have been collected, the Company invests such funds in various marketable securities.

Revenues from Wal-Mart Stores, Inc. aggregated approximately 21.4%, 22.9%, and 23.5% of net product sales during the years ended December 31, 2010, 2009 and 2008, respectively. Although no other customer other than Wal-Mart Stores, Inc. accounted for more than 10% of net sales, the loss of one or more significant customers could have a material adverse effect on the Company s business.

For a summary of sales and long-lived assets of the Company by geographic area see Note 9 of the Notes to Consolidated Financial Statements on Page 23 of the 2010 Report and on Page 4 of the 2010 Report under the section entitled International. Note 9 and the aforesaid section are incorporated herein by reference.

Information regarding the Company s annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments to these reports, will be made available, free of charge, upon written request to Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, Illinois 60629, Attention: Barry Bowen, Treasurer and Assistant Secretary. The Company does not make such reports available on its website at www.tootsie.com because it believes that they are readily available from the Securities Exchange Commission at www.sec.gov, and because the Company provides them free of charge upon request. Interested parties, including shareholders, may communicate to the Board of Directors or any individual director in writing, by regular mail, addressed to the Board of Directors or an individual director, in care of Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, Illinois 60629, Attention: Ellen R. Gordon, President. If an interested party wishes to communicate directly with the Company s non-employee directors, it should be noted on the cover of the communication.

Table of Contents

ITEM 1A. Risk Factors.

Significant factors that could impact the Company s financial condition or results of operations include, without limitation, the following:

Table of Contents

- **Risk of changes in the price and availability of raw materials** - The packaging materials and several of the principal ingredients used by the Company are subject to price volatility. Although the Company engages in commodity hedging transactions and seeks to leverage the high volume of its annual purchases, the Company may experience price increases in these raw materials that it may not be able to offset, which could have an adverse impact on the Company s results of operations and financial condition. In addition, although the Company has historically been able to procure sufficient supplies of raw materials, market conditions could change such that adequate supplies might not be available.

- **Risk of changes in product performance and competition -** The Company competes with other well-established manufacturers of confectionery products. A failure of new or existing products to be favorably received, a failure to retain preferred shelf space at retail or a failure to sufficiently counter aggressive competitive actions could have an adverse impact on the Company s results of operations and financial condition.

- **Risk of discounting and other competitive actions -** Discounting and other competitive actions may make it more difficult for the Company to maintain its operating margins.

- **Risk of dependence on large customers** The Company s largest customer, Wal-Mart Stores, Inc., accounted for approximately 21.4% of net product sales in 2010, and other large, national chains are also material to the Company s sales. The loss of Wal-Mart or one or more other large customers, or a material decrease in purchases by one or more large customers, could result in decreased sales and adversely impact the Company s results of operations and financial condition.

- **Risk of changes in consumer preferences and tastes -** Failure to adequately anticipate and react to changing demographics, consumer trends, consumer health concerns and product preferences could have an adverse impact on the Company s results of operations and financial condition.

- **Risk of economic conditions on consumer purchases** The Company s sales are impacted by consumer spending levels and impulse purchases which are affected by general macroeconomic conditions, consumer confidence, employment levels, availability of consumer credit and interest rates on that credit, consumer debt levels, energy costs and other factors. Volatility in food and energy costs, a sustained global recession, rising unemployment, and declines in personal spending could adversely impact the Company s revenues, profitability and financial condition.

- **Risk s related to environmental matters** The Company s operations are not particularly impactful on the environment, but increased government regulation such as cap and trade or other such legislation could adversely impact the Company s profitability.

- **Risk of economic conditions on customers and suppliers** - Short and long-term lenders have reportedly been cautious in providing financing to companies. As a result, our customers and our suppliers could face difficulty in securing debt financing. This could result in reduced liquidity for our customers and our suppliers. If current credit market conditions continue or worsen, the Company could experience an increase in bad debt expense resulting in reduced cash flows.

- **Risk of new governmental laws and regulations -** Governmental laws and regulations, including food and drug laws, laws related to advertising and marketing practices, accounting standards, taxation requirements, competition laws, employment laws and environmental laws, both in and outside the U.S. are subject to change over time, which could adversely impact the Company s results of operations and ability to compete in domestic or foreign marketplaces.

- **Risk of labor stoppages -** To the extent the Company experiences any material labor stoppages, such disputes or strikes could negatively affect shipments from suppliers or shipments of finished product.

Table of Contents

- **Risk of impairment of goodwill or indefinite-lived intangible assets** In accordance with authoritative guidance, goodwill and indefinite-lived intangible assets are not amortized but are subject to an impairment evaluation annually or more frequently upon the occurrence of a triggering event, and other long-lived assets are likewise tested for impairment upon the occurrence of a triggering event. During 2009 the Company recorded pre-tax charges of $14,000,000 related to the impairment of certain trademarks. Although no such impairment was recorded in 2010, a further write-down of other of the Company s intangible or other indefinite-lived assets could materially and adversely impact its results of operations.

- **Risk of the cost of energy increasing -** Energy costs could continue to rise, which would result in higher distribution, freight and other operating costs. The Company may not be able to offset these cost increases, which could have an adverse impact on the Company s results of operations and financial condition.

- **Risk of a product recall -** Issues related to the quality and safety of the Company s products could result in a voluntary or involuntary large-scale product recall**.** Negative publicity associated with this type of situation, including a product recall relating to product contamination or product tampering, whether valid or not, could negatively impact demand for our products. Costs associated with these potential actions, including a product recall and related litigation or fines, and marketing costs relating to the re-launch of such products or brands, could negatively affect our operating results.

- **Risk of operational interruptions relating to computer software failures, including the implementation of new enterprise resource planning and supply chain systems -** The Company is reliant on computer software programs to operate its business and is currently in the process of implementing new business software systems to improve its operational efficiency. In addition to the underlying risk posed by any software corruption, implementation of these new computer software systems adds further risk, including the potential disruption of supply chain planning and activities relating to sales demand forecasts, materials procurement, production planning, and customer shipments, all of which could negatively impact sales and profits.

- **Risk of production interruptions** The majority of the Company s products are manufactured in a single production facility on specialized equipment. In the event of a disaster at a specific plant location it would be difficult to transfer production to other facilities in a timely manner, which could result in loss of market share for the affected products.

- **Risk related to international operations** To the extent there is political or social unrest, civil war, terrorism or significant economic instability in the countries in which the Company operates, the results of the Company s business in such countries could be adversely impacted. Currency exchange rate fluctuations between the U.S. dollar and foreign currencies could have an adverse impact on the Company s results of operations and financial condition.

- **Risk related to investments in marketable securities and equity method investment** The Company invests its surplus cash in a diversified portfolio of highly rated marketable securities, generally with maturities of generally up to three years. The Company also holds a 50% interest in two foreign companies which are accounted for using the equity method. Changes in the financial markets can affect the carrying value of such instruments and could materially and adversely impact its results of operations.

• **The Company is a controlled company due to the common stock holdings of the Gordon family** The Gordon family s share ownership represents a majority of the combined voting power of all classes of the Company s common stock as of December 31, 2010. As a result, the Gordon family has the power to elect the Company s directors and approve actions requiring the approval of the shareholders of the Company.

The factors identified above are believed to be significant factors, but not necessarily all of the significant factors, that could impact our business. Unpredictable or unknown factors could also have material effects on the Company.

Additional significant factors that may affect the Company s operations, performance and business results include the risks and uncertainties listed from time to time in filings with the Securities and Exchange Commission and the risk factors or uncertainties listed herein or listed in any document incorporated by reference herein.

ITEM 1B. Unresolved Staff Comments.

None.

Table of Contents

ITEM 2. Properties.

The Company owns its principal plant and offices which are located in Chicago, Illinois in a building consisting of approximately 2,225,000 square feet which is utilized for offices, manufacturing and warehousing. In addition to owning the principal plant and warehousing facilities mentioned above, the Company leases manufacturing and warehousing facilities at a second location in Chicago which comprises 138,000 square feet. The lease is renewable by the Company every five years through June, 2011; the Company expects to renew this lease prior to termination. The Company also periodically leases additional warehousing space at this second location as needed on a month-to-month basis.

The Company s other principal manufacturing facilities, all of which are owned, are:

Location	**Square Feet (a)**
Covington, Tennessee	685,000
Cambridge, Massachusetts	142,000
Delavan, Wisconsin	162,000
Concord, Ontario, Canada	280,500(b)
Hazelton, Pennsylvania	240,000(c)
Mexico City, Mexico	90,000

(a) Square footage is approximate and includes production, warehousing and office space.

(b) Two facilities; a third owned facility, comprising 225,000 square feet of warehousing space, and which is excluded from the reported totals above, is leased to a third party.

(c) Warehousing only.

The Company owns substantially all of the production machinery and equipment located in its plants. The Company also holds four commercial real estate properties for investment which were acquired with the proceeds from a sale of surplus real estate in 2005.

ITEM 3. Legal Proceedings.

There are no material pending legal proceedings known to the Company to which the Company or any of its subsidiaries is a party or of which any of their property is the subject, and no penalties have been imposed by the Internal Revenue Service on the Company.

ADDITIONAL ITEM. Executive Officers of the Registrant.

See the information on Executive Officers set forth in the table in Part III, Item 10, Page 9 of this report, which is incorporated herein by reference.

Table of Contents

PART II

ITEM 5. Market for Registrant s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

The Company s Common Stock is traded on the New York Stock Exchange. The Company s Class B Common Stock is subject to restrictions on transferability. The Class B Common Stock is convertible at the option of the holder into shares of Common Stock on a share-for-share basis. As of February 23, 2011, there were approximately 4,100 and 1,500 registered holders of record of Common and Class B Common Stock, respectively. In addition, the Company estimates that as of February 23, 2011 there were 18,000 and 5,000 beneficial holders of Common and Class B Common Stock, respectively. For information on the market price of, and dividends paid with respect to, the Company s Common Stock, see the section entitled 2010-2009 Quarterly Summary of Tootsie Roll Industries, Inc. Stock Price and Dividends Per Share which appears on Page 28 of the 2010 Report. This section is incorporated herein by reference and filed as an exhibit to this report.

The following table sets forth information about the shares of Common Stock the Company purchased on the open market during the fiscal quarter ended December 31, 2010:

Issuer Purchases of Equity Securities

Period	**Total Number of Shares Purchased**	**Average Price Paid per Share**	**Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs**	**Maximum Number (or Approximate Dollar Value) of Shares that May Yet be Purchased Under the Plans or Programs**