CME GROUP INC.
Form DEFA14A
April 23, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant x Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

¨ Definitive Proxy Statement

x Definitive Additional Materials

¨ Soliciting Material Pursuant to §240.14a-12

CME GROUP INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x No fee required

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(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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¨ Fee paid previously with preliminary materials.

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

The following information was distributed or made available on after April 23, 2013 by the Class B-1 nominee, Paul J. Heffernan:

Paul J. Heffernan

141 West Jackson Street Suite 3200

Chicago, IL. 60604

Dear Class B-1 Members,

My name is Paul J. Heffernan and I am seeking your support for CME Group Class B-1 Director. I have been a trader, order-filler, and market maker for over thirty years on the CME floor. I believe this experience has helped me gain a keen understanding of what a fair and equitable market looks like.

The exchange was founded with the intent to provide transparent and efficient markets along with the principal of my word is my bond. Honesty, integrity, and information were the staples that built liquidity and open interest. I believe these are the true measures of a healthy market. The exchange was a service-based business. The service was and still should be to provide liquidity, risk management tools and information for commercial activity.

While the duty of a Board member is to support and enhance shareholder value, this must not be done at the expense of the integrity and the longevity of the organization. Every trader knows that being wrong is not the problem, staying wrong is.

Technology has had a tremendous impact on our markets. This very same technology can enable the exchange to ensure a level playing field for all participants. As you know, there continues to be significant focus among the regulators relating to perceived risks, level playing field considerations and potential market abuses associated with predatory algorithmic trading and high frequency trading. My focus as a Board member of CME Group will include making efforts to ensure equitable and fair markets for all participants and educating the trading community regarding the available protections and risk controls designed to detect and prevent erroneous or potentially wrongful activity.

It may appear to some that volume is the key to a healthy market. I contend that liquidity and open interest are the paramount components to a healthy market. Therefore, I believe incentive programs should be designed to ensure the viability of our products and the marketplace. As a Board member, I would like to work with the Product & Services Team to review CME Group s market making programs and philosophy to ensure that they are designed to meet these goals.

As volume and open interest continue to erode, we need more than a flashlight to shed light on the root cause of this disturbing trend. Now is not the time for status quo. We used to be the exchange of ideas. I am here to be a voice of real dialogue on all fronts. The CME Group Board needs a new voice. I am that voice.

Yours In Trading,

Paul J. Heffernan

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As of September 25, 2015, there were 881,997 shares available for grant under the Company's 2011 Omnibus Equity Incentive Plan.

Note 10 Related Parties

The Company leases two warehouse facilities from related parties. These facilities are 100% owned by entities controlled by certain of the Company's current and former directors and officers and current stockholders and are deemed to be affiliates of those individuals. Expenses related to these facilities totaled $233 and $384, respectively, during the thirteen weeks ended September 25, 2015 and September 26, 2014 and $1,147 and $1,152, respectively, during the thirty-nine weeks ended September 25, 2015 and September 26, 2014. One of the facilities is a distribution facility leased by Chefs' Warehouse Mid-Atlantic, LLC for which the Company recently extended the lease expiration date to September 30, 2019. The other facility is a distribution facility which one of the Company's subsidiaries, Dairyland, subleases from TCW Leasing Co., LLC ("TCW"), an entity controlled by the Company's founders. TCW leases the distribution center from the New York City Industrial Development Agency. In connection with this sublease arrangement and TCW's obligations to its mortgage lender, Dairyland and two of the Company's other subsidiaries initially were required to act as guarantors of TCW's mortgage obligation on the distribution center. The mortgage payoff date is December 2029 and the potential obligation under this guarantee totaled $8,862 at September 25, 2015. By agreement dated July 1, 2005, the lender released all three of the Company's subsidiaries from their guaranty obligations, provided the sublease between Dairyland and TCW remains in full force and effect. The Company and its subsidiaries were in full compliance with that requirement. In addition, TCW is in the process of refinancing its mortgage with another lender, with the result that the Company and its subsidiaries will be unconditionally and fully released from any guaranty of TCW's mortgage loan.

Each of Christopher Pappas, John Pappas and Dean Facatselis (the brother-in-law of Messrs. Pappas) owns 8.33% of a New York City-based restaurant customer of the Company and its subsidiaries that purchased approximately $27 and $27, respectively, of products from the Company during the thirteen weeks ended September 25, 2015 and September 26, 2014 and approximately $86 and $112, respectively, of products during the thirty-nine weeks ended September 25, 2015 and September 26, 2014. Messrs. Pappas and Facatselis have no other interest in the restaurant other than these equity interests and are not involved in the day-to-day operation or management of this restaurant.

An entity owned 50% by John Couri, a director of the Company, and of which Messrs. C. Pappas and S. Hanson (also directors of the Company) previously held ownership interests owns an interest in an aircraft that the Company uses for business purposes in the course of its operations. Mr. Couri paid for his ownership interest in the aircraft himself and bears his share of all operating, personnel and maintenance costs associated with the operation of this aircraft. The Company made payments of $27 and $47, respectively for the thirteen weeks ended September 25, 2015 and September 26, 2014, and $158 and $137, respectively, for the thirty-nine weeks ended September 25, 2015 and September 26, 2014, for the use of such aircraft. All payments, except $3 and $16, respectively, for the thirteen and thirty-nine weeks ended September 26, 2014, were made directly to an entity that manages the aircraft in which Mr. Couri has a *de minimis* indirect ownership interest.

With the acquisition of Del Monte, the Company acquired two warehouse facilities that the Company leases from certain prior owners of Del Monte. Three of the owners are current employees, one of whom, John DeBenedetti, serves on the Company’s board of directors. The first property is located in American Canyon, CA and is owned by TJ Management Co. LLC, an entity owned 50% by John DeBenedetti and 50% by Theresa Lincoln, John DeBenedetti’s sister. The Company paid rent on this facility totaling $52 and $104, respectively for the thirteen and thirty-nine weeks ended September 25, 2015. The second property is located in West Sacramento, CA and is owned by David DeBenedetti and Victoria DeBenedetti, the parents of John DeBenedetti. The Company paid rent on this facility totaling $56 and $111, respectively, for the thirteen and thirty-nine weeks ended September 25, 2015. John DeBenedetti, Theresa Lincoln and Victoria DeBenedetti are employees of a subsidiary of the Company.

John DeBenedetti and Theresa Lincoln, indirectly through TJ Investments, LLC, own a 16.67% ownership interest in Old World Provisions, which supplies products to the Company following the Del Monte acquisition. During the thirteen and thirty-nine weeks ended September 25, 2015 the Company purchased approximately $249 and $482, respectively, of products from Old World Provisions. Neither Mr. J. DeBenedetti nor Ms. Lincoln is involved in the day-to-day management of Old World Provisions and the terms provided by Old World Provision were determined in the ordinary course of business and are materially consistent with those of other customers with similar volumes and purchasing patterns.

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ITEM 2. MANAGEMENTS DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) is provided as a supplement to the accompanying condensed consolidated financial statements and footnotes to help provide an understanding of our financial condition, changes in our financial condition and results of operations. The following discussion should be read in conjunction with information included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission (“SEC”) on March 11, 2015. Unless otherwise indicated, the terms Company, Chefs’ Warehouse, we, us and our refer to The Chefs’ Warehouse, Inc. and its subsidiaries. All dollar amounts are in thousands.

OVERVIEW

We are a premier distributor of specialty foods in eight of the leading culinary markets in the United States. We offer more than 33,700 SKUs, ranging from high-quality specialty foods and ingredients to basic ingredients and staples and center-of-the-plate proteins. We serve more than 24,500 customer locations, primarily located in our 14 geographic markets across the United States and Canada, and the majority of our customers are independent restaurants and fine dining establishments. As a result of our acquisition of certain of the assets of Allen Brothers, we also sell certain of our center-of-the-plate products directly to consumers.

We believe several key differentiating factors of our business model have enabled us to execute our strategy consistently and profitably across our expanding customer base. These factors consist of a portfolio of distinctive and hard-to-find specialty food products, an extensive selection of center-of-the-plate proteins, a highly trained and motivated sales force, strong sourcing capabilities, a fully integrated warehouse management system, a highly sophisticated distribution and logistics platform and a focused, seasoned management team.

In recent years, our sales to existing and new customers have increased through the continued growth in demand for specialty food products in general; increased market share driven by our large percentage of sophisticated and experienced sales professionals, our high-quality customer service and our extensive breadth and depth of product offerings, including, as a result of our acquisitions of Michael’s Finer Meats in August 2012, Allen Brothers in December 2013 and Del Monte in April 2015, meat, seafood and other center-of-the-plate products, and, as a result of our acquisition of Qzina Specialty Foods North America in May 2013, gourmet chocolate, pastries and dessert; the acquisition of other specialty food distributors; the expansion of our existing distribution centers; the construction of new distribution centers; and the import and sale of our proprietary brands. Through these efforts, we believe that we have been able to expand our customer base, enhance and diversify our product selections, broaden our geographic penetration and increase our market share.

RECENT ACQUISITIONS

On April 6, 2015, we acquired substantially all the equity interests of Del Monte Capitol Meat Co. and substantially all the assets of certain of its affiliated companies (collectively, “Del Monte”) for an initial purchase price of approximately $185,333, including the initial net working capital adjustment. Founded in 1926, Del Monte supplies high quality, USDA inspected beef, pork, lamb, veal, poultry and seafood products to Northern California. The funding of the acquisition consisted of the following:

$123,893 in cash, which was funded with cash-on-hand, borrowings under the revolving credit facility portion of our senior secured credit facilities and the issuance of $25,000 of additional senior secured notes to entities affiliated with The Prudential Insurance Company of America that bear interest at 5.80% per annum due on October 17, 2020;

approximately 1.1 million shares of our common stock (valued at $22.17 per share); and

$36,750 in convertible subordinated notes issued to certain entities affiliated with Del Monte with a six-year maturity bearing interest at 2.50% with a conversion price of $29.70 per share.

In addition, we have agreed to pay additional contingent consideration of up to $24,500 upon the successful achievement of Adjusted EBITDA targets for the Del Monte entities and improvements in certain operating metrics for our existing protein business and the business of any protein companies subsequently acquired by the Company over the six years following the closing. The final amount of the purchase price for Del Monte is subject to certain customary post-closing adjustments and finalization of our purchase accounting adjustments.

On October 24, 2014, we acquired substantially all the assets of Euro Gourmet Inc. (“Euro Gourmet”), a wholesale specialty distributor based in Beltsville, Maryland. Founded in 1999, Euro Gourmet was a supplier of imported and domestic products. Euro Gourmet supplied more than 3,000 products to some of the finest restaurants, bakeries, patisseries, chocolatiers, hotels and cruise lines along the U.S. East Coast. The total purchase price for Euro Gourmet was approximately $2,063 at closing (subject to a $250 earn-out agreement which was subsequently not achieved) and was funded with cash from operations.

Our Growth Strategies and Outlook

We continue to invest in our people, facilities and technology in an effort to achieve the following objectives and maintain our premier position within the specialty foodservice distribution market:

- sales and service territory expansion;
- operational excellence and high customer service levels;
- expanded purchasing programs and improved buying power;
- product innovation and new product category introduction;
- operational efficiencies through system enhancements; and
- operating expense reduction through the centralization of general and administrative functions.

Our growth has allowed us to improve upon our organization’s infrastructure, open new distribution facilities and pursue selective acquisitions. Over the last several years, we have increased our distribution capacity to approximately 1 million square feet in 21 distribution facilities at September 25, 2015. From the second half of fiscal 2013 through the first nine months of 2015, we have invested significantly in infrastructure and management.

Key Factors Affecting Our Performance

Due to our focus on menu-driven independent restaurants, fine dining establishments, country clubs, hotels, caterers, culinary schools, bakeries, patisseries, chocolatiers, cruise lines, casinos and specialty food stores, our results of operations are materially impacted by the success of the food-away-from-home industry in the United States and Canada, which is materially impacted by general economic conditions, weather, discretionary spending levels and consumer confidence. When economic conditions deteriorate, our customers businesses are negatively impacted as fewer people eat away-from-home and those who do spend less money. As economic conditions begin to improve, our customers’ businesses historically have likewise improved, which contributes to improvements in our business. Likewise, the direct to consumer business of our Allen Brothers subsidiary is significantly dependent on consumers’ discretionary spending habits, and weakness or uncertainty in the economy could lead to consumers buying less from Allen Brothers.

Food costs also significantly impact our results of operations. Food price inflation, like that which we have experienced in 2014 and 2015, may increase the dollar value of our sales because many of our products are sold at our cost plus a percentage markup. When we experience deflation, the dollar value of our sales may fall despite our unit sales remaining constant or growing. For those of our products that we price on a fixed fee-per-case basis, our gross profit margins may be negatively affected in an inflationary environment, even though our gross revenues may be positively impacted. While we cannot predict whether inflation will continue at current levels, prolonged periods of inflation leading to cost increases above levels that we are able to pass along to our customers, either overall or in certain product categories, may have a negative impact on us and our customers, as elevated food costs can reduce consumer spending in the food-away-from-home market, and may negatively impact our sales, gross margins and earnings.

Given our wide selection of product categories, as well as the continuous introduction of new products, we can experience shifts in product sales mix that have an impact on net sales and gross profit margins. This mix shift is most significantly impacted by the introduction of new categories of products in markets that we have more recently entered, the shift in product mix resulting from acquisitions, as well as the continued growth in item penetration on higher velocity items such as dairy products.

The foodservice distribution industry is fragmented but consolidating, and we have supplemented our internal growth through selective strategic acquisitions. We believe that the consolidation trends in the foodservice distribution industry will continue to present acquisition opportunities for us, which may allow us to grow our business at a faster pace than we would otherwise be able to grow the business organically.

RESULTS OF OPERATIONS

The following table presents, for the periods indicated, certain income and expense items expressed as a percentage of net sales:

	Thirteen Weeks Ended				Thirty-nine Weeks Ended			
	September 25, 2015		September 26, 2014		September 25, 2015		September 26, 2014	
Net sales	100.0	%	100.0	%	100.0	%	100.0	%
Cost of sales	74.6	%	75.6	%	74.6	%	75.5	%
Gross profit	25.4	%	24.4	%	25.4	%	24.5	%
Operating expenses	20.8	%	20.0	%	22.0	%	21.0	%
Operating income	4.6	%	4.4	%	3.4	%	3.5	%
Other expense:								
Interest expense and gain (loss) on sale of assets	1.4	%	0.9	%	1.2	%	1.0	%
Total other expense	1.4	%	0.9	%	1.2	%	1.0	%
Income before income tax expense	3.2	%	3.5	%	2.2	%	2.5	%
Provision for income taxes	1.3	%	1.4	%	0.9	%	1.0	%
Net income	1.9	%	2.1	%	1.3	%	1.5	%

Management evaluates the results of operations and cash flows using a variety of key performance indicators, including net sales compared to prior periods and internal forecasts, costs of our products and results of our cost-control initiatives, and use of operating cash. These indicators are discussed throughout the Results of Operations and Liquidity and Capital Resources sections of this MD&A.

Thirteen Weeks Ended September 25, 2015 Compared to Thirteen Weeks Ended September 26, 2014

Net Sales

Our net sales for the thirteen weeks ended September 25, 2015 increased approximately 33.4%, or $69,446, to $277,516 from $208,070 for the thirteen weeks ended September 26, 2014. The increase in net sales was primarily the result of the acquisition of Del Monte and, to a lesser extent, the acquisition of Euro Gourmet, as well as organic sales growth. These acquisitions contributed approximately $59,287, or 28.5%, to net sales growth for the quarter. Organic growth contributed the remaining approximately $10,159, or 4.9%, of total net sales growth. Inflation was approximately 1.9% during the thirteen weeks ended September 25, 2015, driven largely by certain protein and chocolate categories offset in part by deflation in the cheese, dairy and seafood categories.

Gross Profit

Gross profit increased approximately 38.9%, or $19,767, to $70,460 for the thirteen weeks ended September 25, 2015, from $50,693 for the thirteen weeks ended September 26, 2014. Gross profit margin increased approximately 103 basis points to 25.4% from 24.4% for the second quarter of 2015. The increase was due primarily to increased margins in both our core specialty and protein businesses. The improvement in protein margins was largely driven by improvements in the operating performance of our Allen Brothers subsidiary.

Operating Expenses

Total operating expenses increased by approximately 38.3%, or $15,947, to $57,607 for the thirteen weeks ended September 25, 2015 from $41,660 for the thirteen weeks ended September 26, 2014. As a percentage of net sales, operating expenses were 20.8% in the second quarter of 2015 compared to 20.0% in the second quarter of 2014. The increase in our operating expense ratio is largely attributable to incremental amortization expense related to the Company's acquisition of Del Monte and the prior year recognition of a $1,477 gain on settlement with the sellers of Michael's Finer Meats, which the Company acquired in 2012. In addition, increased occupancy costs, insurance and bad debt expense, offset in part by reduced fuel and freight costs, contributed to the increase in operating expense ratio compared to the thirteen weeks ended September 26, 2014.

Operating Income

Operating income increased by approximately 42.3%, or $3,820, to $12,853 for the thirteen weeks ended September 25, 2015 from $9,033 for the thirteen weeks ended September 26, 2014. As a percentage of net sales, operating income increased to 4.6% for the thirteen weeks ended September 25, 2015 from 4.4% for the thirteen weeks ended September 26, 2014. The increase in operating income as a percentage of net sales was driven by higher gross margins as discussed above partially offset by higher operating expenses.

Interest Expense

Total interest expense increased $2,006 to $3,902 for the thirteen weeks ended September 25, 2015 from $1,896 for the thirteen weeks ended September 26, 2014. This increase can be attributed to higher levels of debt related to the financing of our acquisitions.

Provision for Income Taxes

For the thirteen weeks ended September 25, 2015, we recorded an effective income tax rate of 41.6%. For the thirteen weeks ended September 26, 2014, our effective income tax rate was 41.0%.

Net Income

Reflecting the factors described above, net income increased $1,017 to $5,224 for the thirteen weeks ended September 25, 2015, compared to net income of $4,207 for the thirteen weeks ended September 26, 2014.

Thirty-nine Weeks Ended September 25, 2015 Compared to Thirty-nine Weeks Ended September 26, 2014

Net Sales

Our net sales for the thirty-nine weeks ended September 25, 2015 increased approximately 24.8%, or $150,877, to $759,274 from $608,397 for the thirty-nine weeks ended September 26, 2014. The increase in net sales was primarily the result of the acquisition of Del Monte and, to a lesser extent, the acquisition of Euro Gourmet, as well as organic sales growth. These acquisitions contributed approximately $117,055, or 19.2%, to net sales growth for the thirty-nine week period. Organic growth contributed the remaining approximately $33,822, or 5.6%, of total net sales growth. We estimate that severe weather in the Northeast and mid-Atlantic during the first quarter of 2015 negatively impacted net sales by approximately $2,000 to $3,000. In addition, net sales in the first quarter of 2014 were also negatively affected by weather by approximately $2,000. Inflation for the thirty-nine weeks ended September 25, 2015 was approximately 3.0%.

Gross Profit

Gross profit increased approximately 29.1%, or $43,445, to $192,608 for the thirty-nine weeks ended September 25, 2015, from $149,163 for the thirty-nine weeks ended September 26, 2014. Gross profit margin increased approximately 85 basis points to 25.4% from 24.5% for the thirty-nine week period ended September 25, 2015. This increase in gross profit margin was due primarily to increased profit margins in our core specialty business and improved operating performance in our Allen Brothers subsidiary, which experienced significant cost pressure in 2014.

Operating Expenses

Total operating expenses increased by approximately 30.9%, or $39,457, to $167,281 for the thirty-nine weeks ended September 25, 2015 from $127,824 for the thirty-nine weeks ended September 26, 2014. As a percentage of net sales, operating expenses were 22.0% in the first thirty-nine weeks of 2015 compared to 21.0% in the first thirty-nine weeks of 2014. The increase in our operating expense ratio is primarily attributable to $4,300 of transaction costs and $3,244 of amortization expense and non-cash accretion of contingent consideration related to the Company’s acquisition of Del Monte, as well as increased labor costs, investments in management and IT infrastructure, and higher insurance and bad debt expense, offset in part by reduced fuel and freight delivery costs.

Operating Income

Operating income increased by approximately 18.7%, or $3,988, to $25,327 for the thirty-nine weeks ended September 25, 2015 from $21,339 for the thirty-nine weeks ended September 26, 2014. As a percentage of net sales, operating income decreased to 3.4% for the thirty-nine weeks ended September 25, 2015 from 3.5% for the thirty-nine weeks ended September 26, 2014. The decrease in operating income as a percentage of net sales was driven by higher operating expenses, offset in part by higher gross profit margin as discussed above.

Total Other Expense

Total other expense increased $2,915 to $8,972 for the thirty-nine weeks ended September 25, 2015 from $6,057 for the thirty-nine weeks ended September 26, 2014. This increase can be attributed to increased interest expense due to higher levels of debt related to the financing of our acquisitions, offset in part by a $349 gain on the sale of one of our owned properties.

Provision for Income Taxes

For the thirty-nine weeks ended September 25, 2015, we recorded an effective income tax rate of 41.6%. For the thirty-nine weeks ended September 26, 2014, our effective income tax rate was 41.0%.

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Net Income

Reflecting the factors described above, net income increased $538 to $9,554 for the thirty-nine weeks ended September 25, 2015, compared to net income of $9,016 for the thirty-nine weeks ended September 26, 2014.

Product Category Sales Mix

The sales mix for the principal product categories for thirteen and thirty-nine weeks ended September 25, 2015 and September 26, 2014 is as follows (dollars in thousands):

	Thirteen Weeks Ended				Thirty-Nine Weeks Ended			
	September 25, 2015		September 26, 2014		September 25, 2015		September 26, 2014	
Center of the Plate	$137,532	50 %	$75,394	36 %	$346,822	46 %	$219,183	36 %
Dry Goods	45,633	16 %	43,104	21 %	135,186	18 %	124,560	20 %
Pastry	35,248	13 %	34,250	17 %	108,599	14 %	108,114	18 %
Cheese	22,455	8 %	21,333	10 %	65,421	8 %	60,803	10 %
Oils and Vinegar	15,061	5 %	14,691	7 %	43,609	6 %	42,481	7 %
Dairy	17,136	6 %	15,100	7 %	46,778	6 %	41,247	7 %
Kitchen Supplies	4,451	2 %	4,198	2 %	12,859	2 %	12,009	2 %
Total	$277,516	100.0%	$208,070	100.0%	$759,274	100.0%	$608,397	100.0%

LIQUIDITY AND CAPITAL RESOURCES

We finance our day-to-day operations and growth primarily with cash flows from operations, borrowings under our senior secured credit facilities, operating leases, trade payables and bank indebtedness.

Senior Secured Credit Facilities

On April 25, 2012, Dairyland USA Corporation, The Chefs' Warehouse Mid-Atlantic, LLC, Bel Canto Foods, LLC, The Chefs' Warehouse West Coast, LLC, The Chefs' Warehouse of Florida, LLC (each a "Borrower" and collectively, the "Borrowers"), the Company and Chefs' Warehouse Parent, LLC (together with the Company, the "Guarantors") entered into a senior secured credit facility (the “Credit Agreement”) with the lenders from time to time party thereto, JPMorgan Chase Bank, N.A. (“Chase”), as administrative agent, and the other parties thereto. On August 29, 2012, Michaels Finer Meats Holdings, LLC and Michaels Finer Meats, LLC were each added as a Guarantor under the Credit Agreement. On January 24, 2013, The Chefs’ Warehouse Midwest, LLC was added as a Guarantor under the Credit Agreement.

On April 17, 2013, the Borrowers, the Guarantors and the lenders a party thereto entered into an Amendment and Restatement Agreement to amend and restate the Credit Agreement (the “Amended and Restated Credit Agreement”). The Amended and Restated Credit Agreement provides for a senior secured term loan facility (the “Term Loan Facility”) in the aggregate amount of up to $36,000 (the loans thereunder, the “Term Loans”) and a senior secured revolving loan facility (the “Revolving Credit Facility” and, together with the Term Loan Facility, the “Credit Facilities”) of up to an aggregate amount of $140,000 (the loans thereunder, the “Revolving Credit Loans”), of which up to $5,000 is available for letters of credit and up to $3,000 is available for short-term borrowings on a swingline basis. Unutilized commitments under the Revolving Credit Facility portion of the Amended and Restated Credit Agreement are subject to a per annum fee of from 0.35% to 0.45% based on the Leverage Ratio (as defined below). A fronting fee of 0.25% per annum is payable on the face amount of each letter of credit issued under the Credit Facilities. On May 31, 2013, Qzina Specialty Foods North America (USA), Inc., QZ Acquisition (USA), Inc., The Chefs’ Warehouse Pastry Division, Inc., Qzina Specialty Foods (Ambassador), Inc., Qzina Specialty Foods, Inc. (WA), and Qzina Specialty Foods, Inc. (FL) were added as Guarantors under the Amended and Restated Credit Agreement. On October 18, 2013, CW LV Real Estate LLC was added as a Guarantor under the Amended and Restated Credit Agreement. On January 10, 2014, Allen Brothers 1893, LLC and The Great Steakhouse Steaks, LLC were added as Guarantors under the Amended and Restated Credit Agreement. On May 6, 2015, Del Monte Capitol Meat Company, LLC and Del Monte Captiol Meat Holdings, LLC were added as Guarantors under the Amended and Restated Credit Agreement.

The final maturity of the Term Loans is April 25, 2017. Subject to adjustment for prepayments, we are required to make quarterly principal payments of $1,500 on the Term Loans on June 30, September 30, December 31 and March 31, with the remaining balance due upon maturity.

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Borrowings under the Revolving Credit Facility portion of the Amended and Restated Credit Agreement have been used, and are expected to be used, for capital expenditures, permitted acquisitions, working capital and general corporate purposes of the Borrowers. The commitments under the Revolving Credit Facility expire on April 25, 2017 and any Revolving Credit Loans then outstanding will be payable in full at that time. As of September 25, 2015, we had $40,605 of availability under the Revolving Credit Facility portion of the Amended and Restated Credit Agreement.

Prior to consummation of our acquisition of Del Monte, borrowings under the Amended and Restated Credit Agreement bore interest at our option of either (i) the alternate base rate (representing the greatest of (1) Chases prime rate, (2) the federal funds effective rate for overnight borrowings plus 1/2 of 1.00% and (3) the adjusted LIBO rate for one month plus 2.50%) plus in each case an applicable margin of from 1.75% to 2.25%, based on the Leverage Ratio (as defined below), or (ii) in the case of Eurodollar Borrowings (as defined in the Amended and Restated Credit Agreement), the adjusted LIBO rate plus an applicable margin of from 2.75% to 3.25%, based on the Leverage Ratio. The LIBO rate is the rate for Eurodollar deposits for a period equal to one, three or six months (as selected by the applicable Borrower) appearing on Reuters Screen LIBOR01 Page (or any successor or substitute page on such screen), at approximately 11:00 a.m. London time, two business days prior to the commencement of the applicable interest period.

The Amended and Restated Credit Agreement initially contained financial covenants that required (i) the ratio of our consolidated EBITDA (as defined in the Amended and Restated Credit Agreement) minus the unfinanced portion of capital expenditures to our consolidated Fixed Charges (as defined in the Amended and Restated Credit Agreement) on a trailing twelve month basis as of the end of each of our fiscal quarters to not be less than (A) 1.15 to 1.00 for the period from the effective date of the Amended and Restated Credit Agreement through June 30, 2014 and (B) 1.25 to 1.00 for the quarterly period ending September 30, 2014 and thereafter and (ii) the ratio of our consolidated Total Indebtedness (as defined in the Amended and Restated Credit Agreement) to our consolidated EBITDA (the Leverage Ratio) for the then-trailing twelve months to not be greater than (A) 4.00 to 1.00 for any fiscal quarter ending in the period from the effective date of the Amended and Restated Credit Agreement through December 31, 2013, (B) 3.75 to 1.00 for any fiscal quarter ending in the period from March 31, 2014 through December 31, 2014 and (C) 3.50 to 1.00 for any fiscal quarter ending March 31, 2015 and thereafter. As a result of the amendments to the Amended and Restated Credit Agreement we entered into in fiscal 2014 and fiscal 2015 (including in connection with our acquisition of Del Monte), the Amended and Restated Credit Agreement currently includes financial covenants that require (i) the ratio of our consolidated EBITDA (as defined in the Amended and Restated Credit Agreement) to our consolidated Fixed Charges (as defined in the Amended and Restated Credit Agreement) on a trailing twelve month basis as of the end of each of our fiscal quarters to not be less than (A) 1.15 to 1.00 for the period from the effective date of the Amended and Restated Credit Agreement through June 30, 2014, (B) 1.50 to 1.00 for the quarterly period ending December 31, 2014 through December 31, 2015 and (C) 1.75 to 1.00 for the quarterly period ending March 31, 2016 and thereafter, (ii) the ratio of our consolidated Total Indebtedness (as defined in the Amended and Restated Credit Agreement) to our consolidated EBITDA (the Total Leverage Ratio) for the then-trailing twelve months to not be greater than (A) 5.00 to 1.00 for any fiscal quarter ending in the period from March 31, 2015 through September 30, 2015, (B) 4.50 to 1.00 for the fiscal quarter ending in the period from October 1, 2015 through December 31, 2015, (C) 4.25 to 1.00 for any fiscal quarter ending March 31, 2016 through September 30, 2016 and (D) 3.75 to 1.00 for any fiscal quarter ending September 30, 2016 and thereafter, and (iii) the ratio of our consolidated Total Indebtedness (other than Subordinated Indebtedness) (each as defined in the Amended and Restated Credit Agreement) to our consolidated EBITDA (the "Senior Secured Leverage Ratio") for the then-trailing twelve months to not be greater than (A) 4.50 to 1.00 for any fiscal quarter ending in the period from March 31, 2015 through September 30, 2015, (B) 4.00 to 1.00 for the fiscal quarter ending in the period from October 1, 2015 through December 31, 2015, (C) 3.75 to 1.00 for any fiscal quarter ending March 31, 2016 through September 30, 2016 and (D) 3.25 to 1.00 for any fiscal quarter ending September 30, 2016 and thereafter.

During fiscal 2014 we entered into various amendments to the Amended and Restated Credit Agreement to effect the following changes: (i) permit one of our subsidiaries to incur up to $15,000 of permitted indebtedness and associated liens to obtain construction and permit mortgage financing for a new warehouse facility in Las Vegas, NV, (ii) increase the basket for additional indebtedness that is not otherwise permitted by the terms of the Amended and Restated Credit Agreement from $5,000 to $10,000, (iii) eliminate our requirement to achieve a certain minimum Fixed Charge Coverage Ratio (as defined in the Amended and Restated Credit Agreement) as of September 30, 2014 and to amend the Fixed Charge Coverage Ratio definition (A) to account for the significant investments we have made, and expect to continue to make, in our business to support our growth and (B) to eliminate the deduction of the unfinanced portion of Capital Expenditures (as defined in the Amended and Restated Credit Agreement) from the calculation of EBITDA utilized to calculate the Fixed Charge Coverage Ratio, (iv) permit a sale-leaseback transaction involving our Las Vegas distribution facility that is currently under construction, (v) increase the amount of assets that the loan parties may sell in any twelve month period in transactions not otherwise permitted from $1,000 to $5,000, (vi) adjust certain financial covenants and the periods during which the loan parties must comply with such covenants, and (vii) set a maximum permitted amount of Capital Expenditures that may be made or incurred by the loan parties in future fiscal years.

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In January 2015, we entered into an amendment to the Amended and Restated Credit Agreement that became effective upon consummation of the Del Monte transaction to, among other things, (i) replace the definition of Leverage Ratio with definitions of Total Leverage Ratio and Senior Secured Leverage Ratio and establish limits on the amount of leverage and senior secured leverage that the loan parties may incur, which limits decrease through September 30, 2016, (ii) modify the applicable rate for borrowings under the Amended and Restated Credit Agreement to provide for an increased interest rate when the loan parties Total Leverage Ratio is equal to, or greater than, 4.25 to 1.00, (iii) permit the acquisition of Del Monte and the related issuance of our common stock and up to $38,250 of subordinated debt pursuant thereto, and payment of the earn-out consideration in connection with the acquisition of Del Monte so long as the loan parties are not in default under the Amended and Restated Credit Agreement, and (iv) create an expansion option whereby Borrowers may increase the borrowings available under the Amended and Restated Credit Agreement in increments of at least $10,000, such that the aggregate increases do not exceed $60,000. We entered into a corresponding amendment to the Note Purchase and Guarantee Agreement that became effective upon consummation of the Del Monte transaction to effect similar changes to the Note Purchase and Guarantee Agreement, with the exception of providing for the possibility of increased borrowings.

Upon effectiveness of the January 2015 amendment described above, which occurred with the consummation of our acquisition of Del Monte, borrowings under the Amended and Restated Credit Agreement bear interest at our option of either (i) the alternate base rate (representing the greatest of (1) Chases prime rate, (2) the federal funds effective rate for overnight borrowings plus 1/2 of 1.00% and (3) the adjusted LIBO rate for one month plus 2.50%) plus in each case an applicable margin of from 1.75% to 2.50%, based on the Total Leverage Ratio (as defined above), or (ii) in the case of Eurodollar Borrowings (as defined in the Amended and Restated Credit Agreement), the adjusted LIBO rate plus an applicable margin of from 2.75% to 3.50%, based on the Total Leverage Ratio.

On July 1, 2015, the Company entered into Amendment No. 6 to the Amended and Restated Credit Agreement. Amendment No. 6 amends the Amended and Restated Credit Agreement to, upon the Company’s election by irrevocable written notice on each date on which the aggregate consideration paid during any two consecutive fiscal quarters for permitted acquisitions consummated on or after July 1, 2015, but not later than June 30, 2016, exceeds $25,000, increase the maximum permitted Total Leverage Ratio (as defined in the Amended and Restated Credit Agreement) and Senior Secured Leverage Ratio (as defined in the Amended and Restated Credit Agreement) for a four consecutive fiscal quarter period beginning with the fiscal quarter during which the relevant acquisition occurs by (i) in the case of the first two fiscal quarters, an additional 0.50:1.00 and (ii) in the case of the last two fiscal quarters, an additional 0.25:1.00; provided, however, that in no case shall the Total Leverage Ratio exceed 5.00:1.00 or the Senior Secured Leverage Ratio exceed 4.50:1.00 (collectively, the “Financial Covenants Adjustment”).

On August 26, 2015, the Company entered into Amendment No. 7 to the Amended and Restated Credit Agreement, which increased the capacity for Letter of Credit exposure from $5,000 to $10,000.

New Markets Tax Credit Loan

On April 26, 2012, Dairyland HP LLC (“DHP”), an indirectly wholly-owned subsidiary of ours, entered into a financing arrangement under the New Markets Tax Credit (“NMTC”) program under the Internal Revenue Code of 1986, as amended, pursuant to which Commercial Lending II LLC (“CLII”), a community development entity and a subsidiary of Chase, provided to DHP an $11,000 construction loan (the “NMTC Loan”) to help fund DHPs expansion and build-out of our Bronx, New York facility and the rail shed located at that facility, which construction is required under the facility lease agreement. Borrowings under the NMTC Loan are secured by a first priority secured lien on DHPs leasehold interest in our Bronx, New York facility, including all improvements made on the premises, as well as, among other things, a lien on all fixtures incorporated into the project improvements.

Under the NMTC Loan, DHP is obligated to pay CLII (i) monthly interest payments on the principal balance then outstanding and (ii) the entire unpaid principal balance then due and owing on April 26, 2017. So long as DHP is not in default, interest accrues on borrowings at 1.00% per annum. We may prepay the NMTC Loan, in whole or in part, in $100 increments.

For more information regarding the NMTC Loan, see Note 10 to the consolidated financial statements appearing in our Annual Report on Form 10-K.

Senior Secured Notes

On April 17, 2013, the Borrowers issued $100,000 principal amount of 5.90% Guaranteed Senior Secured Notes due 2023 (the “Notes”). The Notes are guaranteed by the Guarantors including Michaels Finer Meats, LLC, Michaels Finer Meats Holdings, LLC and The Chefs’ Warehouse Midwest, LLC (collectively, the “Notes Guarantors”). The Notes, which rank pari passu with the Borrowers and Notes Guarantors obligations under the Credit Facilities, were issued to The Prudential Insurance Company of America and certain of its affiliates (collectively, the “Prudential Entities”) pursuant to a note purchase and guarantee agreement dated as of April 17, 2013 (the “Note Purchase and Guarantee Agreement”) among the Borrowers, the Notes Guarantors and the Prudential Entities. The net proceeds from the issuance of the Notes were used to repay then-outstanding borrowings under the Revolving Credit Facility. On May 31, 2013, Qzina Specialty Foods North America (USA), Inc., QZ Acquisition (USA), Inc., The Chefs’ Warehouse Pastry Division, Inc., Qzina Specialty Foods (Ambassador), Inc., Qzina Specialty Foods, Inc. (WA), and Qzina Specialty Foods, Inc. (FL) were added as Notes Guarantors. On October 18, 2013, CW LV Real Estate LLC was added as a Notes Guarantor. On January 10, 2014, Allen Brothers 1893, LLC and The Great Steakhouse Steaks, LLC were added as Notes Guarantors. On May 6, 2015, Del Monte Capitol Meat Company, LLC and Del Monte Captiol Meat Holdings, LLC were added as Guarantors under the Note Purchase and Guarantee Agreement.

The Notes must be repaid in two equal installments, the first $50,000 of which is due April 17, 2018 and the second $50,000 of which is due at maturity on April 17, 2023. Moreover, the Borrowers may prepay the Notes in amounts not less than $1,000 at 100% of the principal amount of the Notes repaid plus the applicable Make-Whole Amount (as defined in the Note Purchase and Guarantee Agreement).

The Note Purchase and Guarantee Agreement contains financial covenants related to leverage and fixed charges that are substantially the same as the corresponding provisions in the Amended and Restated Credit Agreement, as amended.

On April 6, 2015, we issued $25,000 principal amount of 5.80% Series B Guaranteed Senior Secured Notes due October 17, 2020 to help fund our acquisition of Del Monte. The notes, which rank pari passu with the Borrowers and Notes Guarantors obligations under the Credit Facilities, were issued to the Prudential Entities pursuant to a Supplemental Note Purchase and Guarantee Agreement and Amendment Agreement dated as of April 6, 2015 among the Borrowers, the Notes Guarantors and the Prudential Entities, supplementing and amending that certain Note Purchase and Guarantee Agreement dated as of April 17, 2013 (as amended by the subsequent amendments thereto). In connection with the issuance of these notes, we entered into an amendment to our Amended and Restated Credit Agreement to permit the issuance of the notes.

On July 1, 2015, the Company entered into Amendment No. 6 to the Note Purchase and Guarantee Agreement. Amendment No. 6 permits the Financial Covenants Adjustment and provides for an increase in the applicable rate of the Notes by 0.25% during the period of the Financial Covenants Adjustment.

Convertible Subordinated Notes

On April 6, 2015, we acquired Del Monte for an initial aggregate purchase price of approximately $185,332, which included $123,893 in cash, $24,689 in common stock and $36,750 in convertible subordinated notes. In addition, we agreed to pay additional contingent consideration of up to $24,500 based upon the successful achievement of Adjusted EBITDA targets for the six years following closing. The final purchase price is subject to certain customary post-closing adjustments and finalization of our purchase accounting adjustments.

On April 6, 2015, the Company issued $36,750 principal amount of convertible subordinated notes with a six-year maturity bearing interest at 2.5% and a conversion price of $29.70 per share (the “Convertible Subordinated Notes”) to certain of the Del Monte entities. The holders of the Convertible Subordinated Notes may, in certain instances beginning one year after issuance, redeem the Convertible Subordinated Notes for cash or shares of the Company’s common stock. Moreover, the Company may pay the outstanding principal amount due and owing under the Convertible Subordinated Notes at maturity in either cash or shares of the Company’s common stock. The Convertible

Subordinated Notes, which are subordinate to the Company's and its subsidiaries' senior debt, are convertible into shares of the Company's common stock by the holders at any time at a conversion price of $29.70.

Liquidity

We believe our capital expenditures, excluding cash paid for acquisitions, for fiscal 2015 will be approximately $21,000. The significant decrease in projected capital expenditures in fiscal 2015 as compared to fiscal 2014 is the result of the completion of the renovation and expansion of our new Bronx, NY and Las Vegas, NV distribution facilities, and the projected completion of the implementation of our ERP system. Recurring capital expenditures will be financed with cash generated from operations and borrowings under our Revolving Credit Facility. Our planned capital projects will provide both new and expanded facilities and improvements to our technology that we believe will produce increased efficiency and the capacity to continue to support the growth of our customer base. Future investments and acquisitions will be financed through either internally generated cash flow, borrowings under our senior secured credit facilities in place at the time of the potential investment or acquisition or through the issuance of equity or debt securities, including, but not limited to, longer-term, fixed-rate debt securities and shares of our common stock.

In July 2015, we closed on a sale-leaseback transaction of our new Las Vegas, NV distribution facility. The property was sold for $14,645, which approximated its cost. The related on-going lease will be accounted for as an operating lease.

Net cash provided by operations was $16,745 for thirty-nine weeks ended September 25, 2015, an increase of $16,117 from the $628 provided by operations for thirty-nine weeks ended September 26, 2014. The primary reasons for the increase in net cash provided by operations were an increase in non-cash charges of $7,187 and decrease in cash used for working capital of $8,250. The increase in non-cash charges was primarily from increased stock compensation expense of $1,837, increased depreciation and amortization expense of $4,338 and increased bad debt expense of $1,259. The decrease in cash used for working capital is primarily due to a decrease in cash used for receivables of $9,188, an increase in cash provided by payables of $3,820, offset by a decrease in cash provided by prepaids and other assets of $4,589.

Net cash used in investing activities was $126,891 for thirty-nine weeks ended September 25, 2015, an increase of $111,566 from the net cash used in investing activities of $15,325 for the thirty-nine weeks ended September 26, 2014. The increase in net cash used was primarily due to the acquisition of Del Monte in the second quarter of 2015 and higher capital expenditures through the thirty-nine weeks ended September 25, 2015, offset in part by proceeds from the sale-leaseback on our Las Vegas, NV distribution facility.

Net cash provided by financing activities was $108,541 for the thirty-nine weeks ended September 25, 2015, an increase of $108,660 from the $119 used by financing activities for the thirty-nine weeks ended September 26, 2014. This increase was primarily due to the senior notes issued and funds drawn on our revolver which were used to fund the Del Monte acquisition.

Seasonality

Excluding our direct-to-consumer business, we generally do not experience any material seasonality. However, our sales and operating results may vary from quarter to quarter due to factors such as changes in our operating expenses, management's ability to execute our operating and growth strategies, personnel changes, demand for our products, supply shortages, weather patterns and general economic conditions.

Our direct-to-consumer business is subject to seasonal fluctuations, with direct-to-consumer center-of-the-plate protein sales typically higher during the holiday season in our fourth quarter; accordingly, a disproportionate amount of operating cash flows from this portion of our business is generated by our direct-to-consumer business in the fourth quarter of our fiscal year. Despite a significant portion of these sales occurring in the fourth quarter, there are operating expenses, principally advertising and promotional expenses, throughout the year.

Inflation

Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including food and other raw materials, labor, energy and other supplies and services. Substantial increases in costs and expenses could impact our operating results to the extent that such increases cannot be passed along to our customers. The impact of inflation on food, labor, energy and occupancy costs can significantly affect the profitability of our operations.

Off-Balance Sheet Arrangements

As of September 25, 2015, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K.

Critical Accounting Policies and Estimates

The preparation of the Company's condensed consolidated financial statements requires it to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. The SEC has defined critical accounting policies as those that are both most important to the portrayal of the Company's financial condition and results and require its most difficult, complex or subjective judgments or estimates. Based on this definition, we believe our critical accounting policies include the following: (i) determining the allowance for doubtful accounts, (ii) inventory valuation, with regard to determining the reserve for excess and obsolete inventory, (iii) valuing goodwill and intangible assets, (iv) vendor rebates and other promotional incentives, (v) self-insurance reserves, (vi) accounting for income taxes and (vii) contingent earn-out liabilities. For all financial statement periods presented, there have been no material modifications to the application of these critical accounting policies.

Allowance for Doubtful Accounts

We analyze customer creditworthiness, accounts receivable balances, payment history, payment terms and historical bad debt levels when evaluating the adequacy of our allowance for doubtful accounts. In instances where a reserve has been recorded for a particular customer, future sales to the customer are either conducted using cash-on-delivery terms or the account is closely monitored so that agreed-upon payments are received prior to orders being released. A failure to pay results in held or cancelled orders. Our accounts receivable balance was $117,336 and $96,896, net of the allowance for doubtful accounts of $5,675 and $4,675, as of September 25, 2015 and December 26, 2014, respectively.

Inventory Valuation

We maintain reserves for slow-moving and obsolete inventories. These reserves are primarily based upon inventory age plus specifically identified inventory items and overall economic conditions. A sudden and unexpected change in consumer preferences or change in overall economic conditions could result in a significant change in the reserve balance and could require a corresponding charge to earnings. We actively manage our inventory levels to minimize the risk of loss and have consistently achieved a relatively high level of inventory turnover.

Valuation of Goodwill and Intangible Assets

We are required to test goodwill for impairment at least annually and between annual tests if events occur or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. We have elected to perform our annual tests for indications of goodwill impairment during the fourth quarter of each fiscal year. We test for goodwill impairment at the reporting unit level, as we aggregate our component units into two reporting units, Protein and Specialty, based on a discounted cash flow approach. The goodwill impairment analysis is a two-step test. The first step, used to identify potential impairment, involves comparing our estimated fair value to our carrying value, including goodwill. If our estimated fair value exceeds our carrying value, goodwill is considered not to be impaired. If the carrying value exceeds estimated fair value, there is an indication of potential impairment and the second step is performed to measure the amount of impairment. If required, the second step involves calculating an implied fair value of our goodwill. The implied fair value of goodwill is determined in a manner similar to the amount of goodwill calculated in a business combination, by measuring the excess of the estimated fair value, as determined in the first step, over the aggregate estimated fair values of the individual assets, liabilities and identifiable intangibles as if we were being acquired in a business combination. If the implied fair value of our goodwill exceeds the carrying value of our goodwill, there is no impairment. If the carrying value of our goodwill exceeds the implied fair value of our goodwill, an impairment charge is recorded for the excess.

When analyzing whether to aggregate the business components into single reporting units, the Company considers whether each component has similar economic characteristics. The Company has evaluated the economic characteristics of its different geographic markets, including its recently acquired businesses, along with the similarity of the operations and margins, nature of the products, type of customer and methods of distribution of products and the regulatory environment in which the Company operates and concluded that the business components can be combined into two reporting units, Protein and Specialty.

In 2014, our annual assessment using a market capitalization approach indicated that we were not at risk of failing step one of the goodwill impairment test and no impairment of goodwill existed, as our fair value exceeded our carrying value. We have noted no indicators of impairment in the thirty-nine weeks ended September 25, 2015. Total goodwill as of September 25, 2015 and December 26, 2014 was $155,083 and $78,508, respectively.

Intangible assets with finite lives are tested for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Cash flows expected to be generated by the related assets are estimated over the assets useful lives based on updated projections. If the evaluation indicates that the carrying amount of the asset may not be recoverable, the potential impairment is measured based on a projected discounted cash flow model. There have been no events or changes in circumstances during 2015 or 2014 indicating that the carrying value of our finite-lived intangible assets are not recoverable. Total finite-lived intangible assets as of September 25, 2015 and December 26, 2014 were $134,976 and $50,485, respectively.

The assessment of the recoverability of goodwill and intangible assets will be impacted if estimated future cash flows are not achieved.

Vendor Rebates and Other Promotional Incentives

We participate in various rebate and promotional incentives with our suppliers, including volume and growth rebates, annual incentives and promotional programs. In accounting for vendor rebates, we follow the guidance in Accounting Standards Codification (ASC) 605-50 (Emerging Issues Task Force, or EITF, No. 02-16, *Accounting by a Customer (Including a Reseller) for Certain Consideration Received from a Vendor* and EITF No. 03-10, *Application of Issue No. 02-16 by Resellers to Sales Incentives Offered to Consumers by Manufacturers).*

We generally record consideration received under these incentives as a reduction of cost of sales; however, in certain circumstances, we record marketing-related consideration as a reduction of marketing costs incurred. We may receive consideration in the form of cash and/or invoice deductions.

We record consideration that we receive for volume and growth rebates and annual incentives as a reduction of cost of sales. We systematically and rationally allocate the consideration for those incentives to each of the underlying transactions that results in progress by us toward earning the incentives. If the incentives are not probable and reasonably estimable, we record the incentives as the underlying objectives or milestones are achieved. We record annual incentives when we earn them, generally over the agreement period. We record consideration received to promote and sell the suppliers products as a reduction of our costs, as the consideration is typically a reimbursement of costs incurred by us. If we receive consideration from the suppliers' in excess of our costs, we record any excess as a reduction of cost of sales.

Self-Insurance Reserves

Effective October 1, 2011, we began maintaining a partially self-insured group medical program. The program contains individual as well as aggregate stop loss thresholds. The amounts in excess of the self-insured levels are fully insured by third party insurers. Liabilities associated with this program are estimated in part by considering historical claims experience and medical cost trends. Projections of future loss expenses are inherently uncertain because of the random nature of insurance claims occurrences and could be significantly affected if future occurrences and claims differ from these assumptions and historical trends.

Effective August 1, 2012, we are self-insured for workers' compensation and automobile liability claims to deductibles or self-insured retentions of $350 for workers' compensation claims per occurrence and $250 for automobile liability claims per occurrence. The amounts in excess of our deductibles are fully insured by third party insurers. Liabilities associated with this program are estimated in part by considering historical claims experience and trends. Projections of future loss expenses are inherently uncertain because of the random nature of insurance claims occurrences and could be significantly affected if future occurrences and claims differ from these assumptions and historical trends.

Income Taxes

The determination of our provision for income taxes requires significant judgment, the use of estimates and the interpretation and application of complex tax laws. Our provision for income taxes primarily reflects a combination of income earned and taxed in the various U.S. federal and state jurisdictions as well as Canadian federal and provincial jurisdictions. Jurisdictional tax law changes, increases or decreases in permanent differences between book and tax items, accruals or adjustments of accruals for unrecognized tax benefits, and our change in the mix of earnings from these taxing jurisdictions all affect the overall effective tax rate.

Management has discussed the development and selection of these critical accounting policies with our Audit Committee, and the Audit Committee has reviewed the above disclosure. Our condensed consolidated financial statements contain other items that require estimation, but are not as critical as those discussed above. These other items include our calculations for bonus accruals, depreciation and amortization. Changes in estimates and assumptions used in these and other items could have an effect on our condensed consolidated financial statements.

Contingent Earn-out Liabilities

We account for contingent consideration relating to business combinations as a liability and an increase to goodwill at the date of the acquisition and continually re-measure the liability at each balance sheet date by recording changes in the fair value through our Consolidated Statements of Operations. We determine the fair value of contingent consideration based on future operating projections under various potential scenarios and weight the probability of these outcomes. The ultimate settlement of contingent earn-out liabilities relating to business combinations may be for amounts which are materially different from the amounts initially recorded and may cause volatility in our results of operations.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Risk

On April 25, 2012, the Borrowers and the Guarantors entered into the Credit Agreement with the lenders from time to time party thereto, Chase, as Administrative Agent, and the other parties thereto. On April 17, 2013, the Borrowers and Guarantors entered into various amendments to the Amended and Restated Credit Agreement. Each of the Credit Agreement and Amended and Restated Credit Agreement, as amended, is described in more detail above under the caption Liquidity and Capital Resources in the MD&A. Our primary market risks are related to fluctuations in interest rates related to borrowings under our current credit facilities.

As of September 25, 2015, we had an aggregate $114.8 million of indebtedness outstanding under the Revolving Credit Facility and Term Loan Facility and $4.2 million outstanding under a software financing agreement that bore interest at variable rates. A 100 basis point increase in market interest rates would decrease our after tax earnings by approximately $695 per annum, holding other variables constant.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the Exchange Act), as of the end of the period covered by this Form 10-Q. The evaluation included certain internal control areas in which we have made and are continuing to make changes to improve and enhance controls. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective at the end of the period covered by this Form 10-Q to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the most recent fiscal period that may have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are involved in legal proceedings, claims and litigation arising out of the ordinary conduct of our business. Although we cannot assure the outcome, management presently believes that the result of such legal proceedings, either individually or in the aggregate, will not have a material adverse effect on our consolidated financial statements, and no material amounts have been accrued in our consolidated financial statements with respect to these matters.

ITEM 1A. RISK FACTORS

Except as set forth below, there have been no material changes with respect to the risk factors disclosed in our Annual Report on Form 10-K filed with the SEC on March 11, 2015 and updated in our Form 10-Q filed with the SEC on August 5, 2015:

Increases in our labor costs, including as a result of labor shortages, the unionization of some of our associates, the price or unavailability of insurance and changes in government regulation could slow our growth or harm our business.

We are subject to a wide range of labor costs. Because our labor costs (particularly those in our center-of-the-plate businesses) are, as a percentage of revenues, higher than other industries, we may be significantly harmed by labor cost increases.

Our operations are highly dependent upon our experienced and sophisticated sales professionals and, in our protein unit, on the experienced butchers we employ. Qualified individuals have historically been in short supply and an inability to attract and retain them may limit our ability to expand our operations in existing markets, as well as our ability to penetrate new markets. We can make no assurances that we will be able to attract and retain qualified individuals in the future. Additionally, the cost of attracting and retaining qualified individuals may be higher than we currently anticipate, and as a result, our profitability could decline. We are subject to the risk of employment-related litigation (which we believe is enhanced as a result of our expansion in California resulting from the Del Monte acquisition) at both the state and federal levels, including claims styled as class action lawsuits, which are more costly to defend. Also, some employment-related claims in the area of wage and hour disputes are not insurable risks.

Despite our efforts to control costs while still providing competitive healthcare benefits to our staff members, significant increases in healthcare costs continue to occur, and we can provide no assurance that our cost containment efforts in this area will be effective. Moreover, we are continuing to assess the impact of federal healthcare legislation on our healthcare benefit costs, and significant increases in such costs could adversely impact our operating results. There is no assurance that we will be able to pass through the costs of such legislation in a manner that will not adversely impact our operating results.

In addition, many of our delivery and warehouse personnel are hourly workers subject to various minimum wage requirements. Mandated increases in minimum wage levels have recently been and continue to be proposed and implemented at both federal and state government levels. Minimum wage increases may increase our labor costs.

We are also subject to the regulations of the U.S. Citizenship and Immigration Services and U.S. Customs and Immigration Enforcement. Our failure to comply with federal and state labor laws and regulations, or our employees' failure to meet federal citizenship or residency requirements, could result in a disruption in our work force, sanctions or fines against us as well as adverse publicity and additional cost.

As of September 25, 2015, we had approximately 1,632 full-time and part-time employees, 154 of whom (approximately 9%) are represented by unions. Of the 154 employees represented by unions, 128 are operating under a collective bargaining agreement. We have in the past been the focus of union negotiating efforts, and it is likely that we will be the focus of similar efforts in the future.

As we increase our employee base and broaden our distribution operations to new geographic markets, including as a result of acquisitions, our increased visibility could result in increased or expanded union-organizing efforts or we may acquire businesses with unionized workforces. One labor union has been certified to represent a bargaining unit at our New York facility, and we have entered into a collective bargaining agreement with certain of our union employees in New York. In addition, certain employees in our Maryland facility have elected to be represented by a union and, while negotiations with those employees are ongoing, such employees are not currently operating pursuant to a collective bargaining agreement. Although we have not experienced a work stoppage to date, if we are unable to successfully negotiate union contracts, or renewals of existing contracts, if additional employees were to unionize or if we acquire additional businesses with unionized employees, we could be subject to work stoppages and increases in labor costs, either of which could have a material adverse effect on our business, financial condition or results of operations.

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

	Total Number of Shares Repurchased[(1)]	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
June 27, 2015 to July 24, 2015	7,050	$ 21.33	—	—
July 25, 2015 to August 21, 2015	—	$ —	—	—
August 22, 2015 to September 25, 2015	2,534	$ 15.72	—	—
Total	9,584	$ 19.85	—	—

(1) During the thirteen weeks ended September 25, 2015, we withheld 9,584 shares to satisfy tax withholding requirements upon the vesting of restricted shares of our common stock awarded to our officers and key employees.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

None.

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ITEM 6. EXHIBITS

Exhibit No.	Description
10.1	Amendment No. 7, dated as of August 26, 2015, to the Amended and Restated Credit Agreement dated as of April 17, 2013, by and among Dairyland USA Corporation, The Chefs' Warehouse Mid-Atlantic, LLC, Bel Canto Foods, LLC, The Chefs' Warehouse West Coast, LLC, and The Chefs' Warehouse of Florida, LLC, as Borrowers, the other Loan Parties thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized on November 4, 2015.

	THE CHEFS' WAREHOUSE, INC. **(Registrant)**
November 4, 2015	/s/ John D. Austin
Date	**John D. Austin** Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

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