

VARIAN MEDICAL SYSTEMS INC
Form 10-K/A
May 05, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended October 1, 2010

OR

☐ **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: 1-7598

VARIAN MEDICAL SYSTEMS, INC.

(Exact name of Registrant as specified in its charter)

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Delaware (State or other jurisdiction of incorporation or organization)	94-2359345 (I.R.S. Employer Identification Number)
3100 Hansen Way, Palo Alto, California (Address of principal executive offices)	94304-1030 (Zip Code)
(650) 493-4000 (Registrant's telephone number, including area code)	

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

Title of each class Common Stock, \$1 par value	Name of each exchange on which registered New York Stock Exchange
Securities registered pursuant to Section 12(g) of the Act: None	

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

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 ☐ No ☒

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 ☒ No ☐

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of 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 ☒

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer <input checked="" type="checkbox"/>	Accelerated filer <input type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

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

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As of April 2, 2010, the last business day of Registrant's most recently completed second fiscal quarter, the aggregate market value of shares of Registrant's common stock held by non-affiliates of Registrant (based upon the closing sale price of such shares on the New York Stock Exchange on April 2, 2010) was approximately \$6,071,051,905. Shares of Registrant's common stock held by the Registrant's executive officers and directors and by each entity that owned 5% or more of Registrant's outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

At November 18, 2010, the number of shares of the Registrant's common stock outstanding was 118,985,831.

DOCUMENTS INCORPORATED BY REFERENCE

Definitive Proxy Statement for the Company's 2011 Annual Meeting of Stockholders Part III of this Form 10-K

EXPLANATORY NOTE

Varian Medical Systems, Inc. (the Company) is amending and restating in their entirety Item 15 of its Annual Report on Form 10-K for the fiscal year ended October 1, 2010 filed on November 23, 2010 (the 2010 Form 10-K) and Exhibit 101 thereto for the purpose of including detailed XBRL (eXtensible Business Reporting Language) tagging of notes and schedules in the following: (i) Consolidated Statements of Earnings for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; (ii) Consolidated Balance Sheets at October 1, 2010 and October 2, 2009; (iii) Consolidated Statements of Cash Flows for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; (iv) Consolidated Statements of Stockholders' Equity and Comprehensive Earnings for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; and (v) Notes to Consolidated Financial Statements for fiscal year ended October 1, 2010. Detailed XBRL tagging of notes and schedules in these financial statements was unintentionally omitted from the original filing. No attempt has been made in this Amendment No. 1 on Form 10-K/A to modify or update the other disclosures presented in the 2010 Form 10-K. This Amendment No. 1 on Form 10-K/A does not reflect events occurring after the filing of the 2010 Form 10-K/A. Accordingly, this Amendment No. 1 on Form 10-K/A should be read in conjunction with the 2010 Form 10-K and the Company's other filings with the Securities and Exchange Commission.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as part of this report:

(1) Consolidated Financial Statements:

Consolidated Statements of Earnings

Consolidated Balance Sheets

Consolidated Statements of Cash Flows

Consolidated Statements of Stockholders' Equity and Comprehensive Earnings

Notes to the Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

(2) Consolidated Financial Statement Schedule:

The following financial statement schedule of the Registrant and its subsidiaries for fiscal years 2010, 2009 and 2008 is filed as a part of this report and should be read in conjunction with the Consolidated Financial Statements of the Registrant and its subsidiaries.

Schedule

II Valuation and Qualifying Accounts

All other schedules are omitted because of the absence of conditions under which they are required or because the required information is given in the financial statements or the notes thereto.

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(3) Exhibits:

Exhibit

Number	Description
2	Amended and Restated Distribution Agreement, dated as of January 14, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 2 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).
3.1	Registrant's Amended and Restated Certificate of Incorporation, as amended (incorporated by reference to Exhibit No. 3.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).
3.2	Registrant's By-Laws, as amended, effective November 12, 2010. (incorporated by reference to Exhibit No. 3.2 to the Registrant's Form 8-K/A Current Report filed as of November 17, 2010, File No. 1-7598).

Exhibit

Number	Description
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit No. 4.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).
10.1	Registrant's Amended and Restated Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).
10.2	Registrant's Amended and Restated 2000 Stock Option Plan (incorporated by reference to Exhibit No. 10.2 to the Registrant's Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).
10.3	Form of Registrant's Indemnity Agreement with the directors and executive officers (incorporated by reference to Exhibit No. 10.3 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).
10.4	Form of Registrant's Change in Control Agreement for Chief Executive Officer (incorporated by reference to Exhibit No. 10.4 to the Registrant's Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).
10.5	Form of Registrant's Change in Control Agreement for Chief Executive Officer (effective for any person assuming such position on or after February 12, 2012) (incorporated by reference to Exhibit No. 10.4 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).
10.6	Form of Registrant's Change in Control Agreement for Senior Executives (Chief Financial Officer and General Counsel) (incorporated by reference to Exhibit No. 10.5 to the Registrant's Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).
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10.8	Form of Registrant's Change in Control Agreement for Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) (incorporated by reference to Exhibit No. 10.6 to the Registrant's Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).
10.9	Form of Registrant's Change in Control Agreement for Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) (effective for any person assuming such position on or after February 12, 2012) (incorporated by reference to Exhibit No. 10.6 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).
10.10	Form of Registrant's Change in Control Agreement for Key Employees (incorporated by reference to Exhibit No. 10.7 to the Registrant's Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).
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10.12	Form of Amendment to the Change in Control Agreement for Chief Executive Officer, Senior Executives (Chief Financial Officer and General Counsel), Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) and Key Employees (incorporated by reference to Exhibit No. 10.8 to the Registrant's Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).
10.13	Amended and Restated Note Purchase and Private Shelf Agreement, dated as of April 2, 1999, between the Registrant and Prudential Insurance Company of America (certain exhibits and schedules omitted) (incorporated by reference to Exhibit No. 10.7 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).
10.14	Employee Benefits Allocation Agreement, dated April 2, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 99.1 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).
10.15	Intellectual Property Agreement, dated April 2, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 99.2 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).
10.16	Tax Sharing Agreement, dated April 2, 1999, by and among Varian Associates, Inc. (which has been renamed Varian Medical Systems, Inc.), Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. (incorporated by reference to Exhibit No. 99.3 to the Registrant's Form 8-K Current Report filed as of April 2, 1999, File No. 1-7598).
10.17	

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Registrant's Frozen Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.17 to the Registrant's Form 10-K Annual Report for the fiscal year ended September 29, 2000, File No. 1-7598).

Exhibit

Number	Description
10.18	Registrant's Amended and Restated 2005 Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.2 of the Registrant's Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).
10.19	Registrant's Management Incentive Plan (incorporated by reference to Exhibit No. 10.5 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).
10.20	Registrant's Retirement Plan (incorporated by reference to Exhibit No. 99.1 to the Registrant's Registration Statement on Form S-8 filed on March 14, 2001, and amended June 20, 2001, Registration No. 333-57012).
10.21	Registrant's 2010 Employee Stock Purchase Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).
10.22	Registrant's Employment Letter dated September 17, 2004 with Dow R. Wilson as Corporate Vice President and President, Oncology Systems, effective January 10, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended December 31, 2004, File No. 1-7598).
10.23	Amendment to the Registrant's Employment Letter dated August 5, 2005 with Dow R. Wilson (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended July 1, 2005, File No. 1-7598)
10.24 *	Description of Certain Compensatory Arrangements between the Registrant and its Executive Officers and Directors as of November 13, 2010.
10.25	Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended March 30, 2007, File No. 1-7598).
10.26	Amendment No. 1 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended June 27, 2008, File No. 1-7598).
10.27	Amendment No. 2 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant's Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).
10.28	Amendment No. 3 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.4 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).
10.29	Amendment No. 4 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.2 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).
10.30	Form of Registrant's Restricted Stock Agreement under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.3 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).
10.31	Form of Registrant's Nonqualified Stock Option Agreement under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.22 to the Registrant's Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).
10.32	Form of Registrant's Nonqualified Stock Option Agreement for Officers under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant's Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).
10.33	Form of Registrant's Nonqualified Stock Option Agreement for Directors under the Registrant's Second Amended and Restated 2005 Omnibus Stock Option Plan (incorporated by reference to Exhibit No. 10.24 to the Registrant's Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).
10.34	Form of Registrant's Non-Employee Director NonQualified Stock Option Agreement (for use outside the United States) under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.1 of the Registrant's Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).
10.35	Form of Registrant's Grant Agreement for Deferred Stock Units under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.28 to the Registrant's Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).
10.36	Form of Registrant's Non-Employee Director Deferred Stock Unit Agreement (for use outside the United States) under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.2 of the Registrant's Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).
10.37	

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Form of Registrant's Restricted Stock Unit Agreement under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan. (incorporated by reference to Exhibit 10.3 of the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).

Exhibit

Number	Description
10.38++	Amended and Restated Credit Agreement entered into as of November 10, 2008 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).
10.39	Amendment to Amended and Restated Credit Agreement entered into as of July 14, 2009 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.33 to the Registrant's Form 10-K Annual Report for the year ended October 2, 2009, File No. 1-7598).
10.40*	Amendment No. 2 to Amended and Restated Credit Agreement entered into as of August 11, 2010, by and between the Registrant and Bank of America, N.A.
10.41*	Amendment No. 3 to Amended and Restated Credit Agreement entered into as of August 24, 2010, by and between the Registrant and Bank of America, N.A.
10.42*++	Confirmation dated August 24, 2010 by and between the Registrant and Bank of America, N.A.
21*	List of Subsidiaries.
23*	Consent of Independent Registered Public Accounting Firm.
31.1*	Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.
31.2*	Chief Financial Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.
31.3**	Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act, relating to this Amendment No. 1 on Form 10-K/A.
31.4**	Chief Financial Officer Certificate Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, relating to this Amendment No. 1 on Form 10-K/A.
32.1*	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.3**	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, relating to this Amendment No. 1 on Form 10-K/A.
32.4**	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, relating to this Amendment No. 1 on Form 10-K/A.
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

Management contract or compensatory arrangement.

++ Confidential treatment has been requested as to certain portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

* Incorporated by reference to the exhibit of the same number to the 2010 Form 10-K (File No. 1-7598).

** Filed herewith.

*** Attached as Exhibit 101 to this Amendment No. 1 on Form 10-K/A are the following formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Statements of Earnings for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; (ii) Consolidated Balance Sheets at October 1, 2010 and October 2, 2009; (iii) Consolidated Statements of Cash Flows for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; (iv) Consolidated Statements of Stockholders' Equity and Comprehensive Earnings for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; and (v) Notes to

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Consolidated Financial Statements for fiscal year ended October 1, 2010.

In accordance with Rule 406T of Regulation S-T, the XBRL related information in Exhibit 101 to this Amendment No. 1 to Form 10-K/A shall not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be part of any registration statement or other document filed under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: May 5, 2011

VARIAN MEDICAL SYSTEMS, INC.

By: **/s/ ELISHA W. FINNEY**
Elisha W. Finney

Senior Vice President, Finance and

Chief Financial Officer

EXHIBIT INDEX

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10.25	Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended March 30, 2007, File No. 1-7598).
10.26	Amendment No. 1 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended June 27, 2008, File No. 1-7598).
10.27	Amendment No. 2 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant's Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).
10.28	Amendment No. 3 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.4 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).
10.29	Amendment No. 4 to Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.2 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).
10.30	Form of Registrant's Restricted Stock Agreement under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.3 to the Registrant's Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).
10.31	Form of Registrant's Nonqualified Stock Option Agreement under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.22 to the Registrant's Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).
10.32	Form of Registrant's Nonqualified Stock Option Agreement for Officers under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant's Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).
10.33	Form of Registrant's Nonqualified Stock Option Agreement for Directors under the Registrant's Second Amended and Restated 2005 Omnibus Stock Option Plan (incorporated by reference to Exhibit No. 10.24 to the Registrant's Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).
10.34	Form of Registrant's Non-Employee Director NonQualified Stock Option Agreement (for use outside the United States) under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.1 of the Registrant's Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).
10.35	Form of Registrant's Grant Agreement for Deferred Stock Units under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.28 to the Registrant's Form 10-K Annual Report for the year

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ended September 26, 2008, File No. 1-7598).

- 10.36 Form of Registrant's Non-Employee Director Deferred Stock Unit Agreement (for use outside the United States) under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.2 of the Registrant's Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).
- 10.37 Form of Registrant's Restricted Stock Unit Agreement under the Registrant's Second Amended and Restated 2005 Omnibus Stock Plan. (incorporated by reference to Exhibit 10.3 of the Registrant's Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).

Exhibit

Number	Description
10.38++	Amended and Restated Credit Agreement entered into as of November 10, 2008 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.1 to the Registrant's Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).
10.39	Amendment to Amended and Restated Credit Agreement entered into as of July 14, 2009 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.33 to the Registrant's Form 10-K Annual Report for the year ended October 2, 2009, File No. 1-7598).
10.40*	Amendment No. 2 to Amended and Restated Credit Agreement entered into as of August 11, 2010, by and between the Registrant and Bank of America, N.A.
10.41*	Amendment No. 3 to Amended and Restated Credit Agreement entered into as of August 24, 2010, by and between the Registrant and Bank of America, N.A.
10.42*++	Confirmation dated August 24, 2010 by and between the Registrant and Bank of America, N.A.
21*	List of Subsidiaries.
23*	Consent of Independent Registered Public Accounting Firm.
31.1*	Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.
31.2*	Chief Financial Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.
31.3**	Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act, relating to this Amendment No. 1 on Form 10-K/A.
31.4**	Chief Financial Officer Certificate Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, relating to this Amendment No. 1 on Form 10-K/A.
32.1*	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.3**	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, relating to this Amendment No. 1 on Form 10-K/A.
32.4**	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, relating to this Amendment No. 1 on Form 10-K/A.
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

Management contract or compensatory arrangement.

++ Confidential treatment has been requested as to certain portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

* incorporated by reference to the exhibit of the same number to the 2010 Form 10-K (File No. 1-7598).

** Filed herewith.

*** Attached as Exhibit 101 to this Amendment No. 1 on Form 10-K/A are the following formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Statements of Earnings for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; (ii) Consolidated Balance Sheets at October 1, 2010 and October 2, 2009; (iii) Consolidated Statements of Cash Flows for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; (iv) Consolidated Statements of Stockholders' Equity and Comprehensive Earnings for the fiscal years ended October 1, 2010, October 2, 2009 and September 26, 2008; and (v) Notes to

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Consolidated Financial Statements for fiscal year ended October 1, 2010.

In accordance with Rule 406T of Regulation S-T, the XBRL related information in Exhibit 101 to this Amendment No. 1 on Form 10-K/A shall not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be part of any registration statement or other document filed under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.