Wendy's Co
Form 10-K
February 27, 2019

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K
(X) ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED December 30, 2018
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: 1-2207
THE WENDY’S COMPANY
(Exact name of registrants as specified in its charter)

Delaware	38-0471180
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

One Dave Thomas Blvd., Dublin, Ohio	43017
(Address of principal executive offices)	(Zip Code)

Registrant’s Telephone Number, Including Area Code: (614) 764-3100

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

Title of each class	Name of each exchange on which registered
Common Stock, $.10 par value	The Nasdaq Stock Market LLC

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 [x] No [ ]

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

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

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 (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes [x] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant’s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [x]

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

Large accelerated filer [x]	Accelerated filer [ ]
Non-accelerated filer [ ]	Smaller reporting company [ ]
	Emerging growth company [ ]

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. [ ]

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

The aggregate market value of common equity held by non-affiliates of The Wendy’s Company as of June 29, 2018 was approximately $3,213.1 million. As of February 19, 2019, there were 230,230,350 shares of The Wendy’s Company common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE
The information required by Part III of this Form 10-K, to the extent not set forth herein, is incorporated herein by reference from The Wendy’s Company’s definitive proxy statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after December 30, 2018.

PART I

Special Note Regarding Forward-Looking Statements and Projections

This Annual Report on Form 10-K and oral statements made from time to time by representatives of the Company may contain or incorporate by reference certain statements that are not historical facts, including, most importantly, information concerning possible or assumed future results of operations of the Company. Those statements, as well as statements preceded by, followed by, or that include the words “may,” “believes,” “plans,” “expects,” “anticipates,” or the negation thereof, or similar expressions, constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (the “Reform Act”). All statements that address future operating, financial or business performance; strategies, initiatives or expectations; future synergies, efficiencies or savings; anticipated costs or charges; future capitalization; and anticipated financial impacts of recent or pending transactions are forward-looking statements within the meaning of the Reform Act. The forward-looking statements are based on our expectations at the time such statements are made, speak only as of the dates they are made and are susceptible to a number of risks, uncertainties and other factors. Our actual results, performance and achievements may differ materially from any future results, performance or achievements expressed or implied by our forward-looking statements. For all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Reform Act. Many important factors could affect our future results and could cause those results to differ materially from those expressed in or implied by the forward-looking statements contained herein. Such factors, all of which are difficult or impossible to predict accurately, and many of which are beyond our control, include, but are not limited to, the following:

- competition, including pricing pressures, couponing, aggressive marketing and the potential impact of competitors’ new unit openings on sales of Wendy’s restaurants;
- consumers’ perceptions of the relative quality, variety, affordability and value of the food products we offer, and changes in consumer tastes and preferences;
- food safety events, including instances of food-borne illness (such as salmonella or E. coli) involving Wendy’s or its supply chain;
- consumer concerns over nutritional aspects of beef, chicken, french fries or other products we sell, the ingredients in our products and/or the cooking processes used in our restaurants;
- conditions beyond our control, such as weather, natural disasters, disease outbreaks, epidemics or pandemics impacting our customers or food supplies, or acts of war or terrorism;
- the effects of negative publicity that can occur from increased use of social media;
- success of operating and marketing initiatives, including advertising and promotional efforts and new product and concept development by us and our competitors;
- prevailing economic, market and business conditions affecting us, including competition from other food service providers, unemployment and decreased consumer spending levels, particularly in geographic regions that contain a high concentration of Wendy’s restaurants;
- changes in the quick-service restaurant industry, spending patterns and demographic trends, such as consumer trends toward value-oriented products and promotions or toward consuming fewer meals away from home;
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certain factors affecting our franchisees, including the business and financial viability of franchisees, the timely payment of franchisees' obligations due to us or to national or local advertising organizations, and the ability of franchisees to open new restaurants and reimage existing restaurants in accordance with their development and franchise commitments, including their ability to finance restaurant development and reimages;

- increased labor costs due to competition or increased minimum wage or employee benefit costs;

- changes in commodity costs (including beef, chicken, pork, cheese and grains), labor, supplies, fuel, utilities, distribution and other operating costs;

- the availability of suitable locations and terms for restaurant development by us and our franchisees;

- development costs, including real estate and construction costs;
- delays in opening new restaurants or completing reimages of existing restaurants, including risks associated with our Image Activation program;
- the ability to effectively manage the acquisition and disposition of restaurants or successfully implement other strategic initiatives;
- anticipated or unanticipated restaurant closures by us and our franchisees;
- our ability to identify, attract and retain franchisees with sufficient experience and financial resources to develop and operate Wendy’s restaurants successfully;
- availability of qualified restaurant personnel to us and our franchisees, and the ability to retain such personnel;
- our ability, if necessary, to secure alternative distribution of supplies of food, equipment and other products to Wendy’s restaurants at competitive rates and in adequate amounts, and the potential financial impact of any interruptions in such distribution;
- availability and cost of insurance;
- availability, terms (including changes in interest rates) and deployment of capital, and changes in debt, equity and securities markets;
- changes in, and our ability to comply with, legal, regulatory or similar requirements, including franchising laws, payment card industry rules, overtime rules, minimum wage rates, wage and hour laws, tax legislation, federal ethanol policy and accounting standards, policies and practices (including the changes to lease accounting standards that are effective for fiscal year 2019);
- the costs, uncertainties and other effects of legal, environmental and administrative proceedings;
- the effects of charges for impairment of goodwill or for the impairment of other long-lived assets;
- risks associated with failures, interruptions or security breaches of our computer systems or technology, or the occurrence of cyber incidents or a deficiency in cybersecurity that impacts us or our franchisees, including the cybersecurity incident described in “Item 1A. Risk Factors” below;
- the difficulty in predicting the ultimate costs that will be incurred in connection with our plan to reduce general and administrative expense, and the future impact on our earnings;
- risks associated with our securitized financing facility and other debt agreements, including the ability to generate sufficient cash flow to meet increased debt service obligations, compliance with operational and financial covenants, and restrictions on our ability to raise additional capital;
- risks associated with the amount and timing of share repurchases under share repurchase programs approved by our Board of Directors;
- risks associated with the proposed settlement of the Financial Institutions case described herein, including the timing and amount of payments;

- risks associated with our digital commerce strategy, platforms and technologies, including our ability to adapt to changes in industry trends and consumer preferences; and

- other risks and uncertainties affecting us and our subsidiaries referred to in this Annual Report on Form 10-K (see especially “Item 1A. Risk Factors” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations”) and in our other current and periodic filings with the Securities and Exchange Commission.

All future written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. We assume no obligation to update any forward-looking statements after the date of this Annual Report on Form 10-K as a result of new information, future events or developments, except as required by federal securities laws. In addition, we do not endorse any projections regarding future performance that may be made by third parties.

Item 1. Business.

Introduction

The Wendy’s Company (“The Wendy’s Company”) is the parent company of its 100% owned subsidiary holding company Wendy’s Restaurants, LLC (“Wendy’s Restaurants”). Wendy’s Restaurants is the parent company of Wendy’s International, LLC, formerly known as Wendy’s International, Inc. Wendy’s International, LLC is the indirect parent company of Quality Is Our Recipe, LLC (“Quality”), which is the owner and franchisor of the Wendy’s® restaurant system in the United States. As used in this report, unless the context requires otherwise, the term “Company” refers to The Wendy’s Company and its direct and indirect subsidiaries, and “Wendy’s” refers to Quality when the context relates to ownership of or franchising the Wendy’s restaurant system and to Wendy’s International, LLC when the context refers to the Wendy’s brand.

As of December 30, 2018, the Wendy’s restaurant system was comprised of 6,711 restaurants, of which 353 were owned and operated by the Company. References in this Annual Report on Form 10-K (the “Form 10-K”) to restaurants that we “own” or that are “Company-operated” include owned and leased restaurants. The Wendy’s Company’s corporate predecessor was incorporated in Ohio in 1929 and was reincorporated in Delaware in June 1994. Effective September 29, 2008, in conjunction with the merger with Wendy’s, the Company’s corporate name was changed from Triarc Companies, Inc. (“Triarc”) to Wendy’s/Arby’s Group, Inc. (“Wendy’s/Arby’s”). Effective July 5, 2011, in connection with the sale of Arby’s Restaurant Group, Inc. (“Arby’s”), Wendy’s/Arby’s changed its name to The Wendy’s Company. The Company’s principal executive offices are located at One Dave Thomas Blvd., Dublin, Ohio 43017, and its telephone number is (614) 764-3100. We make our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to such reports, as well as our annual proxy statement, available, free of charge, on the Investor Relations portion of our website as soon as reasonably practicable after such reports are electronically filed with, or furnished to, the Securities and Exchange Commission. We also provide our Code of Business Conduct and Ethics, free of charge, on our website. Our website address is www.wendys.com/who-we-are. Information contained on that website is not part of this Form 10-K.

Merger with Wendy’s

On September 29, 2008, Triarc and Wendy’s completed their merger (the “Wendy’s Merger”) in an all-stock transaction in which Wendy’s shareholders received 4.25 shares of Wendy’s/Arby’s Class A common stock for each Wendy’s common share owned. In the Wendy’s Merger, approximately 377,000,000 shares of Wendy’s/Arby’s Class A common stock were issued to Wendy’s shareholders. In addition, effective on the date of the Wendy’s Merger, Wendy’s/Arby’s Class B common stock was converted into Class A common stock. In connection with the May 28, 2009 amendment and restatement of Wendy’s/Arby’s Certificate of Incorporation, Class A common stock was redesignated as “Common Stock.”

Sale of Arby’s

On July 4, 2011, Wendy’s Restaurants completed the sale of 100% of the common stock of Arby’s to ARG IH Corporation (“ARG”), a wholly-owned subsidiary of ARG Holding Corporation (“ARG Parent”), for $130.0 million in cash (subject to customary purchase price adjustments) and 18.5% of the common stock of ARG Parent (through which Wendy's Restaurants indirectly retained an 18.5% interest in Arby's). Our 18.5% equity interest was diluted to 12.3% on February 5, 2018, when a subsidiary of ARG Parent acquired Buffalo Wild Wings, Inc. As a result, our diluted ownership interest included both the Arby's® and Buffalo Wild Wings® brands under the newly formed combined company, Inspire Brands, Inc. ("Inspire Brands"). On August 16, 2018, the Company sold its remaining 12.3% ownership interest to Inspire Brands for $450.0 million. (Arby's is a registered trademark of Arby's IP Holder, LLC and Buffalo Wild Wings is a registered trademark of Buffalo Wild Wings, Inc.)

Fiscal Year

The Company's fiscal reporting periods consist of 52 or 53 weeks ending on the Sunday closest to December 31 and are referred to herein as (1) "the year ended December 30, 2018" or "2018," (2) "the year ended December 31, 2017" or "2017" and (3) "the year ended January 1, 2017" or "2016," all of which consisted of 52 weeks.

Business Segments

The Company manages and internally reports its business geographically. The operation and franchising of Wendy's restaurants in North America (defined as the United States and Canada) comprises virtually all of our current operations and represents a single reportable segment. The revenues and operating results of Wendy's restaurants outside of North America are not material. See Note 25 of the Financial Statements and Supplementary Data contained in Item 8 herein for financial information attributable to our geographic areas.

The Wendy's Restaurant System

Wendy's is the world's third largest quick-service restaurant company in the hamburger sandwich segment.

Wendy's is primarily engaged in the business of operating, developing and franchising a system of distinctive quick-service restaurants serving high quality food. At December 30, 2018, there were 6,178 Wendy's restaurants in operation in North America. Of these restaurants, 353 were operated by the Company and 5,825 were operated by a total of 330 franchisees. In addition, at December 30, 2018, there were 533 franchised Wendy's restaurants in operation in 30 countries and territories other than North America. See "Item 2. Properties" herein for a listing of the number of Company-operated and franchised locations in the United States and in foreign countries and United States territories.

The revenues from our restaurant business are derived from two principal sources: (1) sales at Company-operated restaurants and (2) franchise-related revenues, including royalties, national advertising funds contributions, rents and franchise fees received from Wendy's franchised restaurants. Company-operated restaurants comprised approximately 5% of the total Wendy's system as of December 30, 2018.

Wendy's Restaurants

Wendy's opened its first restaurant in Columbus, Ohio in 1969. During 2018, Wendy's opened seven new Company-operated restaurants and closed five generally underperforming Company-operated restaurants. During 2018, Wendy's franchisees opened 152 new restaurants and closed 77 generally underperforming restaurants.

The following table sets forth the number of Wendy's restaurants in operation at the beginning and end of each fiscal year from 2016 to 2018:

	2018	2017	2016
Restaurants open at beginning of period	6,634	6,537	6,479
Restaurants opened during period	159	174	149
Restaurants closed during period	(82)	(77)	(91)
Restaurants open at end of period	6,711	6,634	6,537

Operations

Each Wendy's restaurant offers an extensive menu specializing in hamburger sandwiches and featuring filet of chicken breast sandwiches, which are prepared to order with the customer's choice of condiments. Wendy's menu also includes chicken nuggets, chili, french fries, baked potatoes, freshly prepared salads, soft drinks, Frosty® desserts and kids' meals. In addition, the restaurants sell a variety of promotional products on a limited time basis. Wendy's also offers breakfast in some restaurants in the United States.

Free-standing Wendy's restaurants generally include a pick-up window in addition to a dining room. Approximately two-thirds of sales at Company-operated Wendy's restaurants occur through the pick-up window.

Wendy’s strives to maintain quality and uniformity throughout all restaurants by publishing detailed specifications for food products, preparation and service, continual in-service training of employees, restaurant operational audits and field visits from Wendy’s supervisors. In the case of franchisees, field visits are made by Wendy’s personnel who review operations, including quality, service and cleanliness and make recommendations to assist in compliance with Wendy’s specifications.

Wendy’s does not sell food or restaurant supplies to its franchisees.

Raw Materials and Purchasing

As of December 30, 2018, four independent processors (five total production facilities) supplied all of Wendy’s beef in the United States. In addition, six independent processors (12 total production facilities) supplied all of Wendy’s chicken in the United States. Wendy’s and its franchisees have not experienced any material shortages of food, equipment, fixtures or other products that are necessary to maintain restaurant operations. Wendy’s anticipates no such shortages of products and believes that alternate suppliers are available. Suppliers to the Wendy’s system must comply with United States Department of Agriculture (“USDA”) and United States Food and Drug Administration (“FDA”) regulations governing the manufacture, packaging, storage, distribution and sale of all food and packaging products.

Wendy’s has a purchasing co-op relationship agreement with its franchisees which establishes Quality Supply Chain Co-op, Inc. (“QSCC”). QSCC manages, for the Wendy’s system in the United States and Canada, contracts for the purchase and distribution of food, proprietary paper, operating supplies and equipment under national agreements with pricing based upon total system volume. QSCC’s supply chain management facilitates the continuity of supply and provides consolidated purchasing efficiencies while monitoring and seeking to minimize possible obsolete inventory throughout the Wendy’s supply chain in the United States and Canada. Wendy’s and its franchisees pay sourcing fees to third-party vendors on certain products sourced by QSCC. Such sourcing fees are remitted by these vendors to QSCC and are the primary means of funding QSCC’s operations. Should QSCC’s sourcing fees exceed its expected needs, QSCC’s board of directors may return some or all of the excess to its members in the form of a patronage dividend.

Quality Assurance

Wendy’s quality assurance program is designed to verify that the food products supplied to our restaurants are processed in a safe, sanitary environment and in compliance with our food safety and quality standards. Wendy’s quality assurance personnel conduct multiple on-site sanitation and production audits throughout the year at all of our core menu product processing facilities, which include beef, chicken, pork, buns, french fries, Frosty® dessert ingredients and produce. Animal welfare audits are also conducted every year at all beef, chicken and pork facilities to confirm compliance with our required animal welfare and handling policies and procedures. In addition to our facility audit program, weekly samples of beef, chicken and other core menu products from our distribution centers are randomly sampled and analyzed by a third-party laboratory to test conformance to our quality specifications. Each year, Wendy’s representatives conduct unannounced inspections of all Company-operated and franchise restaurants to test conformance to our sanitation, food safety and operational requirements. Wendy’s has the right to terminate franchise agreements if franchisees fail to comply with quality standards.

Trademarks and Service Marks

Wendy’s or its subsidiaries have registered certain trademarks and service marks in the United States Patent and Trademark Office and in international jurisdictions, some of which include Wendy’s®, Old Fashioned Hamburgers® and Quality Is Our Recipe®. Wendy’s believes that these and other related marks are of material importance to its business. Domestic trademarks and service marks expire at various times from 2019 to 2028, while international trademarks and service marks have various durations of ten to 15 years. Wendy’s generally intends to renew trademarks and service marks that are scheduled to expire.

Wendy’s entered into an Assignment of Rights Agreement with the Company’s founder, R. David Thomas, and his wife dated as of November 5, 2000 (the “Assignment”). Wendy’s had used Mr. Thomas, who was Senior Chairman of the Board until his death on January 8, 2002, as a spokesperson and focal point for its products and services for many years. With the efforts and attributes of Mr. Thomas, Wendy’s has, through its extensive investment in the advertising and promotional use of Mr. Thomas’ name, likeness, image, voice, caricature, endorsement rights and photographs (the “Thomas Persona”), made the Thomas Persona well known in the United States and throughout North America and a valuable asset for both Wendy’s and Mr. Thomas’ estate. Under the terms of the Assignment, Wendy’s acquired the entire right, title, interest and ownership in and to the Thomas Persona, including the sole and exclusive right to commercially use the Thomas Persona.

Seasonality

Wendy’s restaurant operations are moderately seasonal. Wendy’s average restaurant sales are normally higher during the summer months than during the winter months. Because our business is moderately seasonal, results for any quarter are not necessarily indicative of the results that may be achieved for any other quarter or for the full fiscal year.

Competition

Each Wendy’s restaurant is in competition with other food service operations within the same geographical area. The quick-service restaurant segment is highly competitive and includes well-established competitors. Wendy’s competes with other restaurant companies and food outlets, primarily through the quality, variety, convenience, price and value perception of food products offered. The number and location of units, quality and speed of service, attractiveness of facilities, effectiveness of marketing and new product development by Wendy’s and its competitors are also important factors. The price charged for each menu item may vary from market to market (and within markets) depending on competitive pricing and the local cost structure. Wendy’s also competes within the food service industry and the quick-service restaurant sector not only for customers, but also for personnel, suitable real estate sites and qualified franchisees.

Wendy’s competitive position is differentiated by a focus on quality, its use of fresh, never frozen ground beef* and fresh-cut vegetables in the United States and Canada and certain other countries, its unique and diverse menu, its promotional products, its choice of condiments and the atmosphere and decor of its restaurants. (*Fresh beef available in the contiguous U.S., Alaska and Canada.) Wendy’s continues to implement its Image Activation program, which includes innovative exterior and interior restaurant designs, with plans for a significant number of new and reimaged Company-operated and franchised restaurants in 2019 and beyond. The Image Activation program also differentiates the Company from its competitors by its emphasis on selection and performance of restaurant employees that provide friendly and engaged customer service in Wendy’s restaurants.

Many of the leading restaurant chains continue to focus on new unit development as one strategy to increase market share through increased consumer awareness and convenience. This results in increased competition for available development sites and higher development costs for those sites. Competitors also employ marketing strategies such as frequent use of price discounting, frequent promotions and heavy advertising expenditures. Continued price discounting, including the use of coupons and offers, in the quick-service restaurant industry and the emphasis on value menus has had and could continue to have an adverse impact on Wendy’s business.

Other restaurant chains have also competed by offering high quality sandwiches made with fresh ingredients and artisan breads, and there are several emerging restaurant chains featuring high quality food served at in-line locations. Several chains have also sought to compete by targeting certain consumer groups, such as capitalizing on trends toward certain types of diets or diet preferences (e.g., low carbohydrate, low trans fat, gluten free or antibiotic free) by offering menu items that are promoted as being consistent with such diets.

Additional competitive pressures for prepared food purchases come from operators outside the restaurant industry. A number of major grocery chains offer fresh deli sandwiches and fully prepared food and meals to go as part of their deli sections. Some of these chains also have in-store cafes with service counters and tables where consumers can order and consume a full menu of items prepared especially for that portion of the operation. Additionally, convenience stores and retail outlets at gas stations frequently offer sandwiches and other foods.

Wendy’s also competes with grocery chains and other retail outlets which sell food that will be prepared at home. Competition with these chains and other outlets has increased as the gap between the price of food at home compared to the price of food purchased at restaurants has widened.

Technology and delivery are becoming increasingly critical parts of the restaurant consumer experience. Restaurant technology includes mobile interactive technology for brand menu search information, mobile ordering, mobile payment, mobile offers and rewards programs and other self-service technologies. Wendy’s has established a delivery arrangement using a third-party vendor in several United States markets, and certain of our franchisees have established delivery arrangements using a third-party vendor in several Canadian markets. As of December 30, 2018, delivery was available at more than 60% of Wendy’s North America system restaurants. Other restaurant chains have also introduced or expanded their restaurant technology initiatives and delivery arrangements as another strategy to increase market share.

Acquisitions and Dispositions of Wendy's Restaurants

During 2016, the Company completed the sale of 310 Company-operated restaurants to franchisees, which resulted in the completion of the Company's plan to reduce its Company-operated restaurant ownership percentage to approximately 5% of the total system. During 2017, the Company acquired 140 Wendy's restaurants from DavCo Restaurants, LLC ("DavCo"), which were immediately sold to NPC International, Inc. ("NPC"), an existing franchisee of the Company. During 2018, the Company sold three Company-operated restaurants to franchisees and acquired 16 Wendy's restaurants from franchisees. In addition, during 2018, 2017 and 2016, the Company facilitated franchisee-to-franchisee transfers of 96, 400 and 144 restaurants, respectively.

Wendy’s expects to continue to optimize its system by facilitating franchisee-to-franchisee transfers of restaurants, as well as evaluating strategic acquisitions of franchised restaurants and strategic dispositions of Company-operated restaurants to existing and new franchisees, to further strengthen the franchisee base, drive new restaurant development and accelerate Image Activation adoption. Wendy’s generally retains a right of first refusal in connection with any proposed sale of a franchisee’s interest.

North America Franchised Restaurants

As of December 30, 2018, Wendy’s franchisees operated 5,825 Wendy’s restaurants in 50 states, the District of Columbia and Canada.

The rights and obligations governing the majority of franchised restaurants operating in the United States are set forth in the Wendy’s Unit Franchise Agreement (non-traditional locations may operate under an amended agreement). This document provides the franchisee the right to construct, own and operate a Wendy’s restaurant upon a site accepted by Wendy’s and to use the Wendy’s system in connection with the operation of the restaurant at that site. The Unit Franchise Agreement provides for a 20-year term and a 10-year renewal subject to certain conditions. The initial term may be extended up to 25 years and the renewal extended up to 20 years for qualifying restaurants under the new restaurant development incentive and remodel programs described below. Wendy’s has in the past franchised under different agreements on a multi-unit basis; however, Wendy’s now grants new Wendy’s franchises on a unit-by-unit basis.

The Wendy’s Unit Franchise Agreement requires that the franchisee pay a monthly royalty of 4% of sales, as defined in the agreement, from the operation of the restaurant. The agreement also typically requires that the franchisee pay Wendy’s an initial technical assistance fee. In the United States, the standard technical assistance fee required under a newly executed Unit Franchise Agreement is $50,000 for each new restaurant opened.

The technical assistance fee is used to defray some of the costs to Wendy’s for training, start-up and transitional services related to new and existing franchisees acquiring Company-operated restaurants and in the development and opening of new restaurants. In certain limited instances (such as the re-granting of franchise rights for a previously closed restaurant, a reduced franchise agreement term or other unique circumstances), Wendy’s may charge a reduced technical assistance fee or may waive the technical assistance fee. Wendy’s does not select or employ personnel on behalf of franchisees.

Wendy’s also enters into development and/or relationship agreements with certain franchisees. The development agreement provides the franchisee with the right to develop a specified number of new Wendy’s restaurants using the Image Activation design within a stated, non-exclusive territory for a specified period, subject to the franchisee meeting interim new restaurant development requirements. The relationship agreement addresses other aspects of the franchisor-franchisee relationship, such as restrictions on operating competing restaurants, participation in brand initiatives such as the Image Activation program, employment of approved operators, confidentiality and restrictions on engaging in sale/leaseback or debt refinancing transactions without Wendy’s prior consent.

Wendy’s Restaurants of Canada Inc. (“WROC”), a 100% owned subsidiary of Wendy’s, holds master franchise rights for Canada. The rights and obligations governing the majority of franchised restaurants operating in Canada are set forth in a Single Unit Sub-Franchise Agreement. This document provides the franchisee the right to construct, own and operate a Wendy’s restaurant upon a site accepted by WROC and to use the Wendy’s system in connection with the operation of the restaurant at that site. The Single Unit Sub-Franchise Agreement provides for a 20-year term and a 10-year renewal subject to certain conditions. The sub-franchisee pays to WROC a monthly royalty of 4% of sales, as defined in the agreement, from the operation of the restaurant. The agreement also typically requires that the franchisee pay WROC an initial technical assistance fee. The standard technical assistance fee is C$50,000 for each new restaurant opened.

In order to promote new restaurant development, Wendy's has an incentive program for franchisees that provides for reductions in royalty and national advertising payments for up to the first two years of operation for qualifying new restaurants opened by December 31, 2020, with the value of the incentives declining in the later years of the program. In August 2018, Wendy's announced a new restaurant development incentive program that provides for incremental reductions in royalty and national advertising payments for up to the first two years of operation for qualifying new restaurants for existing franchisees that sign up for the program and commit to incremental development of new Wendy's restaurants under a new development agreement by July 1, 2019. Wendy's also provides franchisees with the option of an early 20-year renewal of their franchise agreement upon completion of reimaging utilizing certain approved Image Activation remodel designs.

Franchised restaurants are required to be operated under uniform operating standards and specifications relating to the selection, quality and preparation of menu items, signage, decor, equipment, uniforms, suppliers, maintenance and cleanliness of premises and customer service. Wendy’s monitors franchisee operations and inspects restaurants periodically to ensure that required practices and procedures are being followed.

See Note 7 and Note 21 of the Financial Statements and Supplementary Data contained in Item 8 herein, and the information under “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” herein, for further information regarding guarantee obligations, reserves, commitments and contingencies involving franchisees.

Advertising and Marketing

In the United States and Canada, Wendy’s advertises nationally through national advertising funds on network and cable television programs, including nationally televised events. Locally in the United States and Canada, Wendy’s primarily advertises through regional network and cable television, radio and social media. Wendy’s maintains two national advertising funds established to collect and administer funds contributed for use in advertising through television, radio, the Internet and a variety of promotional campaigns, including the increasing use of social media. Separate national advertising funds are administered for Wendy’s United States and Canadian restaurant locations. Contributions to the national advertising funds are required to be made by both Company-operated and franchised restaurants and are based on a percentage of restaurant retail sales. In addition to the contributions to the national advertising funds, Wendy’s requires additional contributions to be made for both Company-operated and franchised restaurants based on a percentage of restaurant retail sales for the purpose of local and regional advertising programs. Required franchisee contributions to the national advertising funds and for local and regional advertising programs are governed by the Wendy’s Unit Franchise Agreement in the United States and by the Single Unit Sub-Franchise Agreement in Canada. Required contributions by Company-operated restaurants for advertising and promotional programs are at the same percent of retail sales as franchised restaurants within the Wendy’s system. As of December 30, 2018, the contribution rate for United States restaurants was generally 3.5% of retail sales for national advertising and 0.5% of retail sales for local and regional advertising. The contribution rate for Canadian restaurants is generally 3% of retail sales for national advertising and 1% of retail sales for local and regional advertising, with the exception of Quebec, for which there is no national advertising contribution rate and the local and regional advertising contribution rate is 4% of retail sales. See Note 24 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information regarding advertising.

International Operations and Franchising

As of December 30, 2018, Wendy’s had 533 franchised restaurants in 30 countries and territories other than the United States and Canada. Wendy’s intends to grow its international business aggressively, yet responsibly. In addition to new market expansion, further development within existing markets will continue to be an important component of Wendy’s international strategy. In 2018, Wendy’s grew its international business by 29 net new restaurants. Wendy’s has granted development rights in certain countries and territories listed under “Item 2. Properties” herein.

Franchisees who wish to operate Wendy’s restaurants outside of the United States and Canada enter into agreements with Wendy’s that generally provide franchise rights for each restaurant for an initial term of 10 years or 20 years, depending on the country, and typically include a 10-year renewal provision, subject to certain conditions. The agreements grant a license to the franchisee to use the Wendy’s trademarks and know-how in the operation of a Wendy’s restaurant at a specified location. Generally, the franchisee pays Wendy’s an initial technical assistance fee or other per restaurant fee and monthly fees based on a percentage of gross monthly sales of each restaurant. In certain foreign markets, Wendy’s may grant the franchisee exclusivity to develop a territory in exchange for the franchisee undertaking to develop a specified number of new Wendy’s restaurants in the territory based on a negotiated schedule. In these instances, the franchisee generally pays Wendy’s an upfront development fee, annual development fees or a per restaurant development fee. In certain circumstances, Wendy’s may grant a franchisee the right to sub-franchise in a stated territory, subject to certain conditions.

Wendy’s also continually evaluates non-franchise opportunities for development of Wendy’s restaurants in other international markets, including through joint ventures with third parties and opening Company-operated restaurants.

General

Governmental Regulations

Various state laws and the Federal Trade Commission regulate Wendy’s franchising activities. The Federal Trade Commission requires that franchisors make extensive disclosure to prospective franchisees before the execution of a franchise agreement. Several states require registration and disclosure in connection with franchise offers and sales and have “franchise relationship laws” that limit the ability of franchisors to terminate franchise agreements or withhold consent to the renewal or transfer of these agreements. In addition, Wendy’s and its franchisees must comply with the federal Fair Labor Standards Act and similar state and local laws, the Americans with Disabilities Act (the “ADA”), which requires that all public accommodations and commercial facilities meet federal requirements related to access and use by disabled persons, and various state and local laws governing matters that include, for example, the handling, preparation and sale of food and beverages, the provision of nutritional information on menu boards, minimum wages, overtime and other working and safety conditions. Compliance with the ADA requirements could require removal of access barriers and non-compliance could result in imposition of fines by the United States government or an award of damages to private litigants. We do not believe that costs relating to compliance with the ADA will have a material adverse effect on the Company’s consolidated financial position or results of operations. We cannot predict the effect on our operations, particularly on our relationship with franchisees, of any pending or future legislation or regulations.

Legal and Environmental Matters

The Company’s past and present operations are governed by federal, state and local environmental laws and regulations concerning the discharge, storage, handling and disposal of hazardous or toxic substances. These laws and regulations provide for significant fines, penalties and liabilities, sometimes without regard to whether the owner or operator of the property knew of, or was responsible for, the release or presence of the hazardous or toxic substances. In addition, third parties may make claims against owners or operators of properties for personal injuries and property damage associated with releases of hazardous or toxic substances. We cannot predict what environmental legislation or regulations will be enacted in the future or how existing or future laws or regulations will be administered or interpreted. We similarly cannot predict the amount of future expenditures that may be required to comply with any environmental laws or regulations or to satisfy any claims relating to environmental laws or regulations. We believe that our operations comply substantially with all applicable environmental laws and regulations. Accordingly, the environmental matters in which we are involved generally relate either to properties that our subsidiaries own, but on which they no longer have any operations, or properties that we or our subsidiaries have sold to third parties, but for which we or our subsidiaries remain liable or contingently liable for any related environmental costs. Our Company-operated restaurants have not been the subject of any material environmental matters. Based on currently available information, including defenses available to us and/or our subsidiaries, and our current reserve levels, we do not believe that the ultimate outcome of the environmental matters in which we are involved will have a material adverse effect on our consolidated financial position or results of operations.

The Company is involved in litigation and claims incidental to our current and prior businesses. We provide accruals for such litigation and claims when payment is probable and reasonably estimable. We believe we have adequate accruals for continuing operations for all of our legal and environmental matters, including the accrual that we recorded for the legal proceedings related to a cybersecurity incident as described in Note 23 of the Financial Statements and Supplementary Data contained in Item 8 herein. See Note 11 of the Financial Statements and supplementary Data contained in Item 8 herein for further information on the accrual. We cannot estimate the aggregate possible range of loss for various reasons, including, but not limited to, many proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur and/or significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions is thus inherently difficult and future developments could cause these actions or claims, individually or in aggregate, to have a material adverse effect on the Company’s financial condition, results of operations or cash flows for a particular reporting period.

Employees

As of December 30, 2018, the Company had approximately 12,500 employees, including approximately 1,150 salaried employees and approximately 11,350 hourly employees. We believe that our employee relations are satisfactory.

Item 1A. Risk Factors.

We wish to caution readers that in addition to the important factors described elsewhere in this Form 10-K, we have included below the most significant factors that have affected, or in the future could affect, our actual results and could cause our actual consolidated results during fiscal 2019, and beyond, to differ materially from those expressed in any forward-looking statements made by us or on our behalf.

Our success depends in part upon the continued succession and retention of certain key personnel.

We believe that over time our success has been dependent to a significant extent upon the efforts and abilities of our senior management team. The failure by us to retain members of our senior management team in the future could adversely affect our ability to build on the efforts we have undertaken to increase the efficiency and profitability of our business.

During 2018, the Company and Chief Information Officer David G. Trimm completed an effective succession process in connection with Mr. Trimm’s retirement from the Company. Mr. Trimm transitioned his restaurant technology responsibilities to Robert D. Wright, Executive Vice President and Chief Operations Officer, his enterprise technology responsibilities to Gunther Plosch, Chief Financial Officer, and his digital technology responsibilities to Laura Titas, Chief Digital Experience Officer. Ms. Titas joined the Company in December 2018 and serves on the Company’s senior leadership team, reporting to Kurt A. Kane, Executive Vice President and Chief Concept and Marketing Officer.

Competition from other restaurant companies, as well as grocery chains and other retail food outlets, or poor customer experience at Wendy’s restaurants, could hurt our brand.

The market segments in which Company-operated and franchised Wendy’s restaurants compete are highly competitive with respect to, among other things, price, food quality and presentation, service, location, convenience, and the nature and condition of the restaurant facility. If customers have a poor experience at a Wendy’s restaurant, whether at a Company-operated or franchised restaurant, we may experience a decrease in guest traffic. Further, Wendy’s restaurants compete with a variety of locally-owned restaurants, as well as competitive regional and national chains and franchises. Several of these chains compete by offering menu items that are targeted at certain consumer groups or dietary trends. Additionally, many of our competitors have introduced lower cost, value meal menu options, and have employed marketing strategies that include frequent use of price discounting (including through the use of coupons and other offers), frequent promotions and heavy advertising expenditures. Our revenues and those of our franchisees may be hurt by this product and price competition.

Moreover, new companies, including operators outside the quick-service restaurant industry, may enter our market areas and target our customer base. For example, additional competitive pressures for prepared food purchases have come from deli sections and in-store cafes of a number of major grocery store chains, as well as from convenience stores and casual dining outlets. Such competitors may have, among other things, lower operating costs, better locations, better facilities, better management, better products, more effective marketing and more efficient operations. Many of our competitors have substantially greater financial, marketing, personnel and other resources than we do, which may allow them to react to changes in pricing and marketing strategies in the quick-service restaurant industry better than we can. Many of our competitors spend significantly more on advertising and marketing than we do, which may give them a competitive advantage through higher levels of brand awareness among consumers.

Wendy’s also competes with grocery chains and other retail outlets which sell food that will be prepared at home. Competition with these chains and other outlets has increased as the gap between the price of food at home compared to the price of food purchased at restaurants has widened. This increased product and price competition could put deflationary pressure on the selling price of products offered at Wendy’s restaurants.

All such competition may adversely affect our revenues and profits by reducing revenues of Company-operated restaurants and royalty revenue from franchised restaurants.

Changes in consumer tastes and preferences, and in discretionary consumer spending, could result in a decline in sales at Company-operated restaurants and in the royalties that we receive from franchisees.

The quick-service restaurant industry is often affected by changes in consumer tastes, national, regional and local economic conditions, discretionary spending priorities, demographic trends, traffic patterns and the type, number and location of competing restaurants. Our success depends to a significant extent on discretionary consumer spending, which is influenced by general economic conditions and the availability of discretionary income. Accordingly, we may experience declines in sales during economic downturns. Any material decline in the amount of discretionary spending or a decline in consumer food-away-from-home spending could hurt our revenues, results of operations, business and financial condition. If Company-operated and franchised restaurants are unable to adapt to changes in consumer preferences and trends, Company-operated and franchised restaurants may lose customers and the resulting revenues from Company-operated restaurants and the royalties that we receive from franchisees may decline.

Disruptions in the national and global economies may adversely impact our revenues, results of operations, business and financial condition.

Disruptions in the national and global economies could result in higher unemployment rates and declines in consumer confidence and spending. If such disruptions occur, they may result in significant declines in consumer food-away-from-home spending and customer traffic in our restaurants and those of our franchisees. There can be no assurance that government responses to economic disruptions will restore consumer confidence. Ongoing disruptions in the national and global economies may adversely impact our revenues, results of operations, business and financial condition.

Changes in commodity costs (including beef, chicken, pork, cheese and grains), supplies, fuel, utilities, distribution and other operating costs could adversely affect our results of operations.

Our profitability depends in part on our ability to anticipate and react to changes in commodity costs (including beef, chicken, pork, cheese and grains), supplies, fuel, utilities, distribution and other operating costs. Commodity cost pressures, and any increase in these costs, especially beef or chicken prices, could adversely affect future operating results. In addition, our business is susceptible to increases in these costs as a result of other factors beyond our control, such as weather conditions, global demand, food safety concerns, product recalls and government regulations. Further, prices for feed ingredients used to produce beef, chicken and pork could be adversely affected by changes in global weather patterns, which are inherently unpredictable, and by federal ethanol policy. Increases in gasoline prices could result in the imposition of fuel surcharges by our distributors, which would increase our costs. Significant increases in expenses incurred by consumers, such as living expenses or gasoline prices, could also result in a decrease in customer traffic at our restaurants, which could adversely affect our business. We cannot predict whether we will be able to anticipate and react to changing food costs by adjusting our purchasing practices and menu prices, and a failure to do so could adversely affect our operating results. In addition, we may not seek to or be able to pass along price increases to our customers.

Shortages or interruptions in the supply or distribution of perishable food products could damage the Wendy’s brand reputation and adversely affect our sales and operating results.

Wendy’s and its franchisees are dependent on frequent deliveries of perishable food products that meet brand specifications. Shortages or interruptions in the supply of perishable food products caused by unanticipated demand, problems in production or distribution, disease or food-borne illnesses, inclement weather or other conditions could adversely affect the availability, quality and cost of ingredients, which could lower our revenues, increase operating costs, damage brand reputation and otherwise harm our business and the businesses of our franchisees.

As of December 30, 2018, four independent processors (five total production facilities) supplied all of Wendy’s beef in the United States and six independent processors (12 total production facilities) supplied all of Wendy’s chicken in the United States. In addition, Wendy’s had one main in-line distributor of food, packaging and beverage products, excluding produce and breads, that serviced approximately 41% of its Company-operated and franchised restaurants and six additional in-line distributors that, in the aggregate, serviced approximately 55% of its Company-operated and franchised restaurants.

Wendy’s and its franchisees have not experienced any material shortages of food, equipment, fixtures or other products that are necessary to maintain restaurant operations. Wendy’s anticipates no such shortages of products and believes that alternate suppliers and distribution sources are available. However, if a disruption of service from any of our key suppliers or distributors was to occur, we could experience short-term increases in our costs while supply and distribution channels were adjusted, and there can be no assurance that we will be able to identify or negotiate with such suppliers or distributors on terms that are commercially reasonable to us.

Food safety events, including instances of food-borne illness (such as salmonella or E. coli) involving Wendy's, its supply chain or other food service companies, could create negative publicity and adversely affect sales and operating results.

Food safety is a top priority, and we dedicate substantial resources to ensure that our customers enjoy safe, quality food products. However, food safety events, including instances of food-borne illness (such as salmonella or E. coli), have occurred in the food industry in the past, and could occur in the future. Food safety events could adversely affect the price and availability of beef, chicken or other food products. As a result, Wendy's restaurants could experience a significant increase in food costs if there are food safety events, whether or not such events involve Wendy's restaurants or restaurants of competitors.

In addition, food safety events, whether or not involving Wendy's, could result in negative publicity for Wendy's or for the industry or market segments in which we operate. This negative publicity, as well as any other negative publicity concerning types of food products Wendy's serves, may reduce demand for Wendy's food and could result in a decrease in guest traffic to our restaurants as consumers shift their preferences to our competitors or to other products or food types. A decrease in guest traffic to our restaurants as a result of these health concerns or negative publicity could result in a decline in sales and operating results at Company-operated restaurants or in royalties from sales at franchised restaurants.

Consumer concerns regarding the nutritional aspects of beef, chicken, french fries or other products we sell, concerns regarding the ingredients in our products and/or the cooking processes used in our restaurants, or concerns regarding the effects of disease outbreaks, epidemics or pandemics could affect demand for our products.

Consumer concerns regarding the nutritional aspects of beef, chicken, french fries or other products we sell, concerns regarding the ingredients in our products and/or the cooking processes used in our restaurants, or concerns regarding the effects of disease outbreaks, epidemics or pandemics could result in less demand for our products and a decline in sales at Company-operated restaurants and in royalties from sales at franchised restaurants.

Increased use of social media could create and/or amplify the effects of negative publicity and adversely affect sales and operating results.

Events reported in the media, including social media, whether or not accurate or involving Wendy's, could create and/or amplify negative publicity for Wendy's or for the industry or market segments in which we operate. These and other types of social media risks could reduce demand for Wendy's food and result in a decrease in guest traffic to our restaurants as consumers shift their preferences to our competitors or to other products or food types. A decrease in guest traffic to our restaurants as a result of negative publicity created or amplified by social media could result in a decline in sales and operating results at Company-operated restaurants or in royalties from sales at franchised restaurants. Social media risks could also arise from Company or franchise employees not following defined policies for the use of social media during business operations, or actions taken by Company or franchise employees during personal activities outside of their employment, but which could still reflect negatively on the Wendy's brand.

Growth of our restaurant business is dependent to a large extent on new restaurant openings, which may be affected by factors beyond our control.

Our restaurant business derives earnings from sales at Company-operated restaurants, franchise royalties received from franchised restaurants and franchise fees from franchise restaurant operators for each new unit opened. Growth in our restaurant revenues and earnings is dependent to a large extent on new restaurant openings. Numerous factors beyond our control may affect restaurant openings. These factors include but are not limited to:

- our ability to attract new franchisees;

- the availability of site locations for new restaurants;
- the ability of potential restaurant owners to obtain financing;
- the ability of restaurant owners to hire, train and retain qualified operating personnel;
- construction and development costs of new restaurants, particularly in highly-competitive markets;
- the ability of restaurant owners to secure required governmental approvals and permits in a timely manner, or at all; and
- adverse weather conditions.

Wendy’s franchisees could take actions that could harm our business.

As of December 30, 2018, approximately 95% of restaurants in the Wendy’s system were operated by franchisees. Wendy’s franchisees are contractually obligated to operate their restaurants in accordance with the standards set forth in our franchise and other agreements with them. Wendy’s also provides training and support to franchisees. However, franchisees are independent third parties that we do not control, and franchisees own, operate and oversee the daily operations of their restaurants. Specifically, franchisees are solely responsible for developing and utilizing their own policies and procedures, making their own hiring, firing and disciplinary decisions, scheduling hours and establishing wages, and managing their day-to-day employment processes and procedures, all of which is done independent of Wendy’s and in compliance with all applicable laws, rules or regulations. Further, franchisees have discretion as to the prices charged to customers. As a result, the ultimate success and quality of any franchise restaurant rests with the franchisee. If franchisees do not successfully operate their restaurants in a manner consistent with required standards, then royalty payments to us could be adversely affected and the brand’s image and reputation could be harmed, both of which in turn could hurt our business and operating results. In addition, the failure of franchisees to adequately engage in succession planning may affect their restaurant operations and development of new Wendy’s restaurants, which in turn could hurt our business and operating results.

Our success depends on franchisees’ participation in brand strategies and the ability of our system to respond and adapt to market changes.

Wendy’s franchisees are an integral part of our business. Wendy’s may be unable to successfully implement the strategies that we believe are necessary for future growth if franchisees do not participate in the implementation of those strategies. Our business and operating results could be adversely affected if a significant number of franchisees do not participate in brand strategies, such as new restaurant development, Image Activation and digital commerce platforms and technologies. In addition, Wendy’s current franchise model, and the way our brand strategies are executed across the Wendy’s system, may make it difficult for the Wendy’s brand to respond and adapt to the speed of change in technology, consumer preferences, the regulatory environment or other external factors as quickly as may be required to maintain and grow market share and remain competitive.

Our Image Activation program may not positively affect sales at Company-operated restaurants and franchised restaurants or improve our results of operations, and franchisees may not participate in the Image Activation program to the extent expected by the Company.

The Company and its franchisees reimaged 401 North America system restaurants and built 159 global restaurants in 2018. As of December 30, 2018, the global Wendy’s system had 50% of restaurants on the new image. The Company has plans for significantly more new and reimaged Company and franchisee restaurants in 2019 and beyond.

In order to promote new restaurant development, Wendy’s has an incentive program for franchisees that provides for reductions in royalty and national advertising payments for up to the first two years of operation for qualifying new restaurants opened by December 31, 2020, with the value of the incentives declining in the later years of the program. In August 2018, Wendy’s announced a new restaurant development incentive program that provides for incremental reductions in royalty and national advertising payments for up to the first two years of operation for qualifying new restaurants for existing franchisees that sign up for the program and commit to incremental development of new Wendy’s restaurants under a new development agreement by July 1, 2019. Wendy’s also provides franchisees with the option of an early 20-year renewal of their franchise agreement upon completion of reimaging utilizing certain approved Image Activation remodel designs.

The Company’s Image Activation program may not positively affect sales at Company-operated restaurants or improve our results of operations. There can be no assurance that sales at participating franchised restaurants will achieve or maintain projected levels or that after giving effect to the incentives provided to franchisees the Company’s results of operations will improve. There can also be no assurance that franchisees will participate in the Image Activation program to the extent expected by the Company.

Further, it is possible that Wendy's may provide other financial incentives to franchisees to participate in the Image Activation program. These incentives could also result in additional expense and/or a reduction in royalties or other revenues received from franchisees in the future. If Wendy's provides additional incentives to franchisees related to financing of the Image Activation program, Wendy's may incur costs related to loan guarantees, interest rate subsidies and/or costs related to collectability of loans.

In addition, approximately 95% of the Wendy's system consists of franchised restaurants. Many of our franchisees will need to borrow funds in order to participate in the Image Activation program. Other than the incentive programs described above, Wendy's generally does not provide franchisees with financing, although we continue to develop third-party financing sources for franchisees. If franchisees are unable to obtain financing at commercially reasonable rates, or at all, they may be unwilling or unable to invest in the reimaging of their existing restaurants and/or the development of new restaurants, and our future growth and results of operations could be adversely affected.

Our financial results are impacted to a large extent by the operating results of franchisees.

As of December 30, 2018, approximately 95% of the Wendy’s system consisted of franchised restaurants. We receive revenues in the form of royalties and national advertising funds contributions (both of which are generally based on a percentage of sales at franchised restaurants), as well as rent and fees from franchisees. Accordingly, a substantial portion of our financial results is to a large extent dependent upon the operational and financial success of our franchisees. If sales trends or economic conditions worsen for franchisees, their financial results may worsen and our royalty, national advertising funds, rent and other fee revenues may decline. In addition, our accounts receivable and related allowance for doubtful accounts may increase. When Company-operated restaurants with leased real estate are sold to franchisees, one of our subsidiaries is often required to remain responsible for lease payments for these restaurants to the extent that the purchasing franchisees default on their leases. During periods of declining sales and profitability of franchisees, the incidence of franchisee defaults for these lease payments may increase and we may be required to make those payments and seek recourse against the franchisee or agree to repayment terms. Additionally, if franchisees fail to renew their franchise agreements, or if we decide to restructure franchise agreements to induce franchisees to renew these agreements, then our royalty revenues may decrease. Further, we may decide from time to time to acquire restaurants from franchisees that experience significant financial hardship, which may reduce our cash and cash equivalents.

Wendy’s may be unable to manage effectively the acquisition and disposition of restaurants, or successfully implement other strategic initiatives, which could adversely affect our business and financial results.

Wendy’s has from time to time acquired Wendy’s restaurants from, and sold Wendy’s restaurants to, franchisees. Wendy’s will continue to evaluate strategic acquisitions of franchised restaurants and strategic dispositions of Company-operated restaurants to existing and new franchisees. The success of these transactions is dependent upon many factors, such as the availability of sellers and buyers, the availability of financing, and the ability to negotiate transactions on terms deemed acceptable. In addition, the operations of restaurants that are acquired from or sold to franchisees may not be integrated successfully, and the intended benefits of such transactions may not be realized.

Acquisitions of franchised restaurants pose various risks to Wendy’s business operations, including:

- diversion of management’s attention to the integration of acquired restaurant operations;
- increased operating expenses and the inability to achieve expected cost savings and operating efficiencies;
- exposure to liabilities arising out of prior operations of acquired restaurants; and
- the assumption of long-term, non-cancelable leases.

Engaging in acquisitions and dispositions also places increased demands on Wendy’s operational and financial management resources and may require us to continue to expand these resources. If Wendy’s is unable to manage the acquisition and disposition of restaurants effectively, our business and financial results could be adversely affected.

In addition, Wendy’s from time to time evaluates and may pursue other opportunities for growth through new and existing franchise partners, joint venture investments, expansion of our brand through other opportunities and strategic mergers, acquisitions and divestitures. These strategic initiatives involve various inherent risks, including, without limitation, general business risk, integration and synergy risk, market acceptance risk and risks associated with the potential distraction of management. Strategic transactions may not ultimately create value for us or our stockholders and may harm our reputation and materially adversely affect our business, financial condition and results of operations.

Current restaurant locations may become unattractive, and attractive new locations may not be available for a reasonable price, if at all.

The success of any restaurant depends in substantial part on its location. There can be no assurance that our current restaurant locations will continue to be attractive as demographic patterns change. Neighborhood or economic conditions where our restaurants are located could decline in the future, resulting in potentially reduced sales in those locations. In addition, rising real estate prices in some areas may restrict our ability and the ability of franchisees to purchase or lease new desirable locations. If desirable locations cannot be obtained at reasonable prices, or at all, Wendy’s ability to execute our growth strategies could be adversely affected.

Wendy’s leasing and ownership of significant amounts of real estate exposes it to possible liabilities and losses, including liabilities associated with environmental matters.

As of December 30, 2018, Wendy’s leased or owned the land and/or the building for 353 Company-operated Wendy’s restaurants. Wendy’s also owned 516 and leased 1,279 properties that were either leased or subleased principally to franchisees as of December 30, 2018. Accordingly, we are subject to all of the risks associated with leasing and owning real estate. In particular, the value of our real property assets could decrease, and costs could increase, because of changes in the investment climate for real estate, demographic trends, supply or demand for the ownership and operation of the restaurants (which may be impacted by competition from similar restaurants in the area) and liability for environmental matters.

Wendy’s is subject to federal, state and local environmental, health and safety laws and regulations concerning the discharge, storage, handling, release and disposal of hazardous or toxic substances. These environmental laws provide for significant fines, penalties and liabilities, sometimes without regard to whether the owner, operator or occupant of the property knew of, or was responsible for, the release or presence of the hazardous or toxic substances. Third parties may also make claims against owners, operators or occupants of properties for personal injuries and property damage associated with releases of, or actual or alleged exposure to, such substances. A number of our restaurant sites were formerly gas stations or are adjacent to current or former gas stations, or were used for other commercial activities that can create environmental impacts. We may also acquire or lease these types of sites in the future. We have not conducted a comprehensive environmental review of all of our properties. We may not have identified all of the potential environmental liabilities at our leased and owned properties, and any such liabilities identified in the future could cause us to incur significant costs, including costs associated with litigation, fines or clean-up responsibilities. In addition, we cannot predict what environmental legislation or regulations will be enacted in the future or how existing or future laws or regulations will be administered or interpreted. We cannot predict the amount of future expenditures that may be required in order to comply with any environmental laws or regulations or to satisfy any such claims. See “Item 1. Business - General - Legal and Environmental Matters” for additional information.

Wendy’s leases real property generally for initial terms of 15 to 20 years with one or more options to extend the term of the leases in consecutive five-year increments. Many leases provide that the landlord may increase the rent over the term of the lease and any renewals of the term. Most leases require us to pay all of the costs of insurance, taxes, maintenance and utilities. We generally cannot cancel these leases prior to the expiration of their term. If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each lease expires, we may fail to negotiate additional renewals or renewal options, either on commercially acceptable terms or at all, which could cause us to close restaurants in desirable locations.

Due to the concentration of Wendy’s restaurants in particular geographic regions, our business results could be impacted by the adverse economic conditions prevailing in those regions.

As of December 30, 2018, we and our franchisees operated Wendy’s restaurants in all 50 states, the District of Columbia and 31 foreign countries and territories. As of December 30, 2018 and as detailed in “Item 2. Properties,” the eight leading states by number of operating units were: Florida, Ohio, Texas, Georgia, California, Pennsylvania, North Carolina and Michigan. This geographic concentration can cause economic conditions in particular areas of the country to have a disproportionate impact on our overall results of operations, regardless of the state of the national economy as a whole. It is possible that adverse economic conditions in states or regions that contain a high concentration of Wendy’s restaurants could have a material adverse impact on our results of operations in the future.

Our operations are influenced by adverse weather conditions.

Weather, which is unpredictable, can adversely impact Wendy’s restaurant operations. Harsh weather conditions that keep customers from dining out can result in lost sales and revenues for our restaurants. A heavy snowstorm in the Northeast or Midwest or a hurricane in the Southeast can shut down an entire metropolitan area, resulting in a reduction in sales in that area. Our first quarter includes winter months and historically has a lower level of sales at Company-operated restaurants. Because a significant portion of our restaurant operating costs is fixed or semi-fixed in nature, the loss of sales during these periods hurts our operating margins and can result in restaurant operating losses. For these reasons, a quarter-to-quarter comparison may not be a good indication of Wendy’s performance or how we may perform in the future.

Our business could be hurt by increased labor costs or labor shortages.

Labor is a primary component in the cost of operating our restaurants. We devote significant resources to recruiting and training our managers and hourly employees. Increased labor costs due to competition, increased minimum wage or employee benefits costs (including various federal, state and local actions to increase minimum wages), unionization activity or other factors would adversely impact our cost of sales and operating expenses. In addition, Wendy’s success depends on our ability to attract, motivate and retain qualified employees, including restaurant managers and staff, and our inability to do so could adversely affect our results of operations.

Complaints or litigation may hurt the Wendy’s brand.

Wendy’s customers from time to time file complaints or lawsuits against us alleging that we are responsible for an illness or injury they suffered at or after a visit to a Wendy’s restaurant, or alleging that there was a problem with food quality or operations at a Wendy’s restaurant. We are also subject to a variety of other claims arising in the ordinary course of our business, including personal injury claims, contract claims, claims from franchisees and claims alleging violations of federal and state law regarding workplace and employment matters, discrimination and similar matters, including class action lawsuits related to these matters. Regardless of whether any claims against us are valid or whether we are found to be liable, claims may be expensive to defend and may divert management’s attention away from operations and hurt our performance. We believe we have adequate accruals for continuing operations for all of our legal and environmental matters, including the accrual that we recorded for the legal proceedings related to a cybersecurity incident as described in Note 23 of the Financial Statements and Supplementary Data contained in Item 8 herein. See Note 11 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information on the accrual. We cannot estimate the aggregate possible range of loss due to most proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur, and significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions are thus inherently difficult. Insurance policies contain customary limitations, conditions and exclusions that can affect the amount of insurance proceeds ultimately received. A judgment significantly in excess of our insurance coverage for any claims could materially adversely affect our financial condition or results of operations. Further, adverse publicity resulting from these claims may hurt us and our franchisees.

Additionally, the restaurant industry has been subject to a number of claims alleging that the menus and actions of restaurant chains have contributed to the obesity or otherwise adversely impacted the health of certain of their customers. Adverse publicity resulting from these allegations may harm the reputation of our restaurants, even if the allegations are not directed against our restaurants or are not valid, and even if we are not found liable or the concerns relate only to a single restaurant or a limited number of restaurants. Moreover, complaints, litigation or adverse publicity experienced by one or more of Wendy’s franchisees could also hurt our business as a whole.

We may be unable to adequately protect our intellectual property, which could harm the value of the Wendy’s brand and hurt our business.

Our intellectual property is material to the conduct of our business. We rely on a combination of trademarks, copyrights, service marks, trade secrets and similar intellectual property rights to protect our brand and other intellectual property. The success of our business strategy depends, in part, on our continued ability to use our existing trademarks and service marks to increase brand awareness and further develop our branded products in both existing and new markets. If our efforts to protect our intellectual property are not adequate, or if any third party misappropriates or infringes on our intellectual property, the value of our brand may be harmed, which could have a material adverse effect on our business, including the failure of our brand to achieve and maintain market acceptance. This could harm our image, brand or competitive position and, if we commence litigation to enforce our rights, cause us to incur significant legal fees.

We franchise the Wendy’s brand to various franchisees. While we try to ensure that the quality of our brand is maintained by all of our franchisees, we cannot ensure that franchisees will not take actions that hurt the value of our intellectual property or the reputation of the Wendy’s brand or restaurant system.

We have registered certain trademarks and have other trademark registrations pending in the United States and certain foreign jurisdictions. The trademarks that we currently use have not been registered in all of the countries outside of the United States in which we do business or may do business in the future and may never be registered in all of these countries. We cannot ensure that all of the steps we have taken to protect our intellectual property in the United States and foreign countries will be adequate. The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States.

In addition, we cannot ensure that third parties will not bring infringement claims against us in the future. Any such claim, whether or not it has merit, could be time-consuming, result in costly litigation, cause delays in introducing new menu items, require costly modifications to advertising and promotional materials or require us to enter into royalty or licensing agreements. As a result, any such claim could harm our business and cause a decline in our results of operations and financial condition.

Our current insurance may not provide adequate levels of coverage against claims that have been or may be filed.

We currently maintain insurance we believe is adequate for businesses of our size and type. However, there are types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure, such as losses due to natural disasters or acts of terrorism. In addition, we currently self-insure a significant portion of expected losses under workers' compensation, general liability and property insurance programs. Unanticipated changes in the actuarial assumptions and management estimates underlying our reserves for these losses could result in materially different amounts of expense under these programs, which could harm our business and adversely affect our results of operations and financial condition.

The Company currently maintains insurance coverage to address cyber incidents. Applicable insurance policies contain customary limitations, conditions and exclusions. There can be no assurance that the cyber policies maintained by the Company will cover substantially all of the Company's costs and expenses incurred related to previous or future cybersecurity incidents, including those described below in this Item 1A and in Note 23 to the Consolidated Financial Statements contained in Item 8 herein.

Changes in legal or regulatory requirements, including licensing approvals, franchising laws, payment card industry rules, overtime rules, minimum wage rates, tax legislation, federal ethanol policy and accounting standards, may adversely affect our existing and future operations and results, including our ability to open new restaurants.

Each Wendy's restaurant is subject to licensing and regulation by health, sanitation, safety and other agencies in the state and/or municipality in which the restaurant is located, as well as to federal laws, rules and regulations and requirements of non-governmental entities such as payment card industry rules. State and local government authorities may enact laws, rules or regulations that impact restaurant operations and the cost of conducting those operations. There can be no assurance that we and/or our franchisees will not experience material difficulties or failures in obtaining the necessary licenses or approvals for new restaurants, which could delay the opening of such restaurants in the future. In addition, more stringent and varied requirements of local governmental bodies with respect to tax, zoning, land use and environmental factors could delay or prevent development of new restaurants in particular locations.

Federal laws, rules and regulations address many aspects of our business, such as franchising, federal ethanol policy, minimum wages and taxes. We and our franchisees are also subject to the Fair Labor Standards Act, which governs such matters as minimum wages, overtime and other working conditions, along with the ADA, family leave mandates and a variety of other state laws that govern these and other employment law matters. Changes in laws, rules, regulations and governmental policies, including the joint employer standard, could increase our costs and adversely affect our existing and future operations and results.

Changes in accounting standards, or in the interpretation of existing standards, applicable to us could also affect our future results. See Note 1 to the Consolidated Financial Statements contained in Item 8 herein for a summary of new or amended accounting standards applicable to us.

We do not exercise ultimate control over purchasing for our restaurant system, which could harm sales or profitability and the brand.

Although we seek to ensure that all suppliers to the Wendy’s system meet quality control standards, Wendy’s franchisees control the purchasing of food, proprietary paper, equipment and other operating supplies from such suppliers through QSCC, Wendy’s independent purchasing co-op. QSCC manages, for the Wendy’s system in the U.S. and Canada, contracts for the purchase and distribution of food, proprietary paper, operating supplies and equipment under national agreements with pricing based upon total system volume. We are entitled to appoint two representatives (of the total of 11) on the board of directors of QSCC and participate in QSCC through our Company-operated restaurants, but we do not control the decisions and activities of QSCC except to require that all suppliers satisfy our quality control standards. If QSCC does not properly estimate the product needs of the Wendy’s system, makes poor purchasing decisions or decides to cease its operations, system sales and operating costs could be adversely affected and the results of operations and financial condition of the Company and franchisees could be negatively impacted.

Our international operations are subject to various factors of uncertainty and there is no assurance that international operations will be profitable.

In addition to many of the risk factors described throughout this Item 1A, Wendy’s business outside of the United States is subject to a number of additional factors, including international economic and political conditions, risk of corruption and violations of the United States Foreign Corrupt Practices Act or similar laws of other countries, the inability to adapt to differing cultures or consumer preferences, inadequate brand infrastructure within foreign countries to support our international activities, inability to obtain adequate supplies meeting our quality standards and product specifications or interruptions in obtaining such supplies, restrictions on our ability to move cash out of certain foreign countries, currency regulations and fluctuations, diverse government regulations and tax systems, uncertain or differing interpretations of rights and obligations in connection with international franchise agreements, the collection of royalties and other fees from international franchisees, the inability to protect intellectual property rights, compliance with international privacy and information security laws and regulations, the availability and cost of land, construction costs, other legal, financial or regulatory impediments to the development and/or operation of new restaurants and the inability to identify, attract and retain experienced management, qualified franchisees and joint venture partners. Although we believe we have developed the support structure required for international growth, there is no assurance that such growth will occur or that international operations will be profitable. In addition, to the extent we invest in international Company-operated restaurants or joint ventures, we would also have the risk of operating losses related to those restaurants, which could adversely affect our results of operations and financial condition.

There are risks associated with our increasing dependence on digital commerce platforms and technologies to maintain and grow sales, and we cannot predict the impact that these digital commerce platforms and technologies, other new or improved technologies or alternative methods of delivery may have on consumer behavior and our financial results.

Advances in technologies and changes in consumer behavior driven by such advances could have a negative effect on our business. Technology and consumer offerings continue to develop, and we expect that new and enhanced technologies and consumer offerings will be available in the future, including those with a focus on restaurant modernization, restaurant technology and digital engagement and ordering. We may pursue certain of those technologies and consumer offerings if we believe they offer a sustainable guest proposition and can be successfully integrated into our business model. However, we cannot predict consumer acceptance of these digital platforms, delivery channels or other technologies or their impact on our business. In addition, our competitors, some of whom have greater resources than us, may be able to benefit from changes in technologies or consumer acceptance of such changes, which could harm our competitive position. There can be no assurance that we will be able to successfully respond to changing consumer preferences, including with respect to new technologies, or to effectively adjust our product mix, service offerings and marketing initiatives for products and services that address, and anticipate advances in, technology and market trends. If we are not able to successfully respond to these challenges, our business, financial condition, and operating results could be adversely affected.

In addition, we anticipate that consumers will continue to have more options to place orders digitally, both domestically and internationally. Our failure to adequately invest in new technology or adapt to technological developments and industry trends, particularly with respect to digital commerce capabilities, could result in a loss of customers and related market share. If Wendy’s digital commerce platforms do not meet customers’ expectations in terms of security, speed, attractiveness or ease of use, customers may be less inclined to return to such digital commerce platforms, which could negatively impact our sales, results of operations and financial condition.

We are heavily dependent on computer systems and information technology and any material failure, misuse, interruption or security breach of our computer systems, technology or social media platforms could adversely affect our business.

We are significantly dependent upon our computer systems and information technology to properly conduct our business, including point-of-sale processing in our restaurants, management of our supply chain, collection of cash, payment of obligations and various other processes and procedures. Our ability to efficiently manage our business depends significantly on the reliability and capacity of these systems and information technology. The failure of these systems and information technology to operate effectively, an interruption in such systems or technology, problems with maintenance, upgrading or transitioning to replacement systems, fraudulent manipulation of sales reporting from our franchised restaurants resulting in loss of sales and royalty payments, or a breach in security of these systems could be harmful and cause delays in customer service, result in the loss of data, reduce efficiency or cause delays in operations. Significant capital investments might be required to remediate any problems. Additionally, the success of certain of our strategic initiatives, including to expand our consumer-facing digital capabilities to connect with customers and drive growth, is highly dependent on our technology systems. Any security breach involving our or our franchisees' point-of-sale or other systems could result in a loss of consumer confidence and potential costs associated with fraud. Also, despite our considerable efforts and technological resources to secure our computer systems and information technology, security breaches, such as unauthorized access and computer viruses, may occur, resulting in system disruptions, shutdowns or unauthorized disclosure of confidential information. A security breach of our computer systems or information technology could require us to notify customers, employees or other groups, result in adverse publicity or a loss in consumer confidence, sales and profits or cause us to incur penalties or other costs that could adversely affect the operation of our business and results of operations.

As part of our marketing efforts, we rely on search engine marketing and social media platforms to attract and retain customers. These efforts may not be successful, and could pose a variety of other risks, including the improper disclosure of proprietary information, negative comments about the Wendy's brand, exposure of personally identifiable information or fraud. The inappropriate use of social media vehicles by franchisees, customers or employees could increase our costs, lead to litigation or result in negative publicity that could damage the brand's reputation. The occurrence of any such developments could have an adverse effect on our results of operations and financial condition.

The occurrence of cyber incidents, or a deficiency in cybersecurity, could negatively impact our business by causing a disruption to our operations, a compromise of confidential information and/or damage to our employee and business relationships, all of which could subject us to loss and harm the Wendy's brand.

A cyber incident includes any adverse event that threatens the confidentiality, integrity or availability of information resources. More specifically, a cyber incident is an intentional attack or unintentional event that can include gaining unauthorized access to systems to disrupt operations, corrupt data or steal confidential information about customers, franchisees, vendors and employees. A number of retailers and other companies have recently experienced serious cyber incidents and breaches of their information technology systems. The Wendy's system has also experienced unusual payment card activity at certain franchised restaurants, as further described below. As the Company's reliance on technology has increased, so have the risks posed to its systems, both internal and those managed by third parties. Three primary risks that could result from a cyber incident include operational interruption, damage to our relationship with customers, franchisees and employees and exposure of private data. In addition to maintaining insurance coverage to address cyber incidents, the Company has also implemented processes, procedures and controls to help mitigate these risks. However, these measures, as well as the increased awareness of a risk of a cyber incident, do not guarantee that the Company's reputation and financial results will not be adversely affected by such an incident.

Because the Company and its franchisees accept electronic forms of payment from customers, the Company's business requires the collection and retention of customer data, including credit and debit card numbers and other personally identifiable information, in various information systems that the Company and its franchisees maintain and in those maintained by third parties with whom the Company and its franchisees contract to provide credit card processing and related services. The Company also maintains important internal Company data, such as personally identifiable information about its employees and franchisees and information relating to its operations. The Company’s use of personally identifiable information is regulated by international, federal and state laws, as well as by certain third-party agreements. As privacy and information security laws and regulations change, the Company may incur additional costs to ensure that it remains in compliance with those laws and regulations. If the Company’s security and information systems are compromised or if its employees or franchisees fail to comply with these laws, regulations, or contract terms, and this information is obtained by unauthorized persons or used inappropriately, it could adversely affect the Company’s reputation, disrupt its operations and result in costly litigation, judgments, or penalties resulting from violation of applicable laws and payment card industry regulations. A cyber incident could also require the Company to notify customers, employees or other groups, result in adverse publicity, loss of sales and profits, increase fees payable to third parties and cause the Company to incur penalties or remediation and other costs that could adversely affect the operation of the Company’s business and results of operations.

Certain of our franchisees have experienced cybersecurity incidents.

The Company first reported unusual payment card activity affecting some franchise-owned restaurants in February 2016 and that malware had been discovered on certain systems. Subsequently, on June 9, 2016, the Company reported that an additional malware variant had been identified and disabled. On July 7, 2016, the Company, on behalf of affected franchise locations, provided information about specific restaurant locations that may have been impacted by these attacks, all of which are located in the United States, along with support for customers who may have been affected by the malware variants.

Working closely with third-party forensic experts, federal law enforcement and payment card industry contacts as part of its investigation, the Company determined that specific payment card information was targeted by the additional malware variant. This information included cardholder name, credit or debit card number, expiration date, cardholder verification value and service code. The Company believes the criminal cyberattacks resulted from service providers' remote access credentials being compromised, allowing access, and the ability to deploy malware, to some franchisees' point-of-sale systems. There has been no indication in the investigation that any Company-operated restaurants were impacted by this activity. The Company worked with investigators to disable the malware involved in the first attack in 2016. Soon after detecting the malware variant involved in the subsequent attack, the Company identified a method of disabling it and thereafter disabled it in all franchisee restaurants where it was discovered. The investigation confirmed that criminals used malware believed to have been effectively deployed on some Wendy's franchisee systems starting in late fall 2015.

The Company has been named as a defendant in a putative class action filed in the United States on behalf of customers, as well as five class actions brought by financial institutions in the United States that have been consolidated into a single proceeding. In addition, certain of the Company's present and former directors, and one non-director executive officer of the Company, were named as defendants in putative shareholder derivative complaints, which have been consolidated into one action, alleging breach of fiduciary duty, waste of corporate assets, unjust enrichment and gross mismanagement. These civil proceedings seek damages and other relief allegedly arising from the cybersecurity incident. In addition, claims may also be made by payment card networks against the affected franchisees. These claims and investigations may adversely affect how we or our franchisees operate the business, divert the attention of management from the operation of the business, have an adverse effect on our reputation, result in additional costs and adversely affect our results of operations.

We may be required to recognize additional asset impairment and other asset-related charges.

We have significant amounts of long-lived assets, goodwill and intangible assets and have incurred impairment charges in the past with respect to those assets. In accordance with applicable accounting standards, we test for impairment generally annually, or more frequently if there are indicators of impairment, such as:

- significant adverse changes in the business climate;
- current period operating or cash flow losses combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with long-lived assets;
- a current expectation that more-likely-than-not (i.e., a likelihood that is more than 50%) long-lived assets will be sold or otherwise disposed of significantly before the end of their previously estimated useful life; and
- a significant drop in our stock price.

Based upon future economic and capital market conditions, as well as the operating performance of our business, future impairment charges could be incurred. Further, as a result of our system optimization initiative, the Company has recorded losses on remeasuring long-lived assets to fair value upon determination that the assets will be leased and/or subleased to franchisees in connection with the sale or anticipated sale of Company-operated restaurants, and the Company may incur further losses as the Company sells additional restaurants from time to time.

The Company and certain of its subsidiaries are subject to various restrictions, and substantially all of the assets of certain subsidiaries are security, under the terms of a securitized financing facility.

On January 17, 2018, Wendy’s Funding, LLC (the “Master Issuer”), a limited-purpose, bankruptcy-remote, wholly owned indirect subsidiary of the Company, completed a refinancing transaction under which the Master Issuer issued Series 2018-1 3.573% Fixed Rate Senior Secured Notes, Class A-2-I (the “Series 2018-1 Class A-2-I Notes”) with an initial principal amount of $450.0 million and Series 2018-1 3.884% Fixed Rate Senior Secured Notes, Class A-2-II (the “Series 2018-1 Class A-2-II Notes”) with an initial principal amount of $475.0 million (collectively, the “Series 2018-1 Class A-2 Notes”). Interest payments on the Series 2018-1 Class A-2 Notes are payable on a quarterly basis. The net proceeds from the sale of the Series 2018-1 Class A-2

Notes were used to redeem the Master Issuer's outstanding Series 2015-1 Class A-2-I Notes, to pay prepayment and transaction costs, and for general corporate purposes.

Concurrently, the Master Issuer entered into a revolving financing facility of Series 2018-1 Variable Funding Senior Secured Notes, Class A-1 (the "Series 2018-1 Class A-1 Notes" and, together with the Series 2018-1 Class A-2 Notes, the "Series 2018-1 Senior Notes"), which allows for the drawing of up to $150.0 million under the Series 2018-1 Class A-1 Notes using various credit instruments, including a letter of credit facility. The Series 2015-1 Class A-1 Notes were canceled on the closing date and the letters of credit outstanding against the Series 2015-1 Class A-1 Notes were transferred to the Series 2018-1 Class A-1 Notes. The Company had no outstanding borrowings under its Series 2018-1 Class A-1 Notes as of December 30, 2018.

In addition to the Series 2018-1 Senior Notes, the Master Issuer also has outstanding the Series 2015-1 4.080% Fixed Rate Senior Secured Notes, Class A-2-II with an initial principal amount of $900.0 million (the "Class A-2-II Notes") and the Series 2015-1 4.497% Fixed Rate Senior Secured Notes, Class A-2-III with an initial principal amount of $500.0 million (the "Class A-2-III Notes") (collectively, the "remaining Series 2015-1 Class A-2 Notes") that were issued on June 1, 2015. The Series 2018-1 Senior Notes and the remaining Series 2015-1 Class A-2 Notes are collectively the "Senior Notes."

The Senior Notes are secured by a security interest in substantially all of the assets of the Master Issuer and certain other limited-purpose, bankruptcy remote, wholly-owned indirect subsidiaries of the Company that act as guarantors (collectively, the "Securitization Entities"), except for certain real estate assets and subject to certain limitations as set forth in the Senior Notes Indenture (as amended and supplemented) and the Guarantee and Collateral Agreement. The assets of the Securitization Entities include most of the domestic and certain of the foreign revenue-generating assets of the Company and its subsidiaries, which principally consist of franchise-related agreements, certain Company-operated restaurants, intellectual property and license agreements for the use of intellectual property.

The Senior Notes are subject to a series of covenants and restrictions customary for transactions of this type, including (i) that the Master Issuer maintains specified reserve accounts to be used to make required payments in respect of the Senior Notes, (ii) provisions relating to optional and mandatory prepayments and the related payment of specified amounts, including specified make-whole payments under certain circumstances, (iii) certain indemnification payments in the event, among other things, the assets pledged as collateral for the Senior Notes are in stated ways defective or ineffective and (iv) covenants relating to recordkeeping, access to information and similar matters. The Senior Notes are also subject to customary rapid amortization events provided for in the Indenture, including events tied to failure to maintain stated debt service coverage ratios, the sum of global gross sales for specified restaurants being below certain levels on certain measurement dates, certain manager termination events, an event of default, and the failure to repay or refinance on the applicable scheduled maturity date. The Senior Notes are also subject to certain customary events of default, including events relating to non-payment of required interest, principal, or other amounts due on or with respect to the Senior Notes, failure to comply with covenants within certain time frames, certain bankruptcy events, breaches of specified representations and warranties, failure of security interests to be effective, and certain judgments.

In the event that a rapid amortization event occurs under the Indenture (including, without limitation, upon an event of default under the Indenture or the failure to repay the securitized debt at the end of the applicable term), the funds available to the Company would be reduced or eliminated, which would in turn reduce our ability to operate or grow our business. If the Company's subsidiaries are not able to generate sufficient cash flow to service their debt obligations, they may need to refinance or restructure debt, sell assets, reduce or delay capital investments or seek to raise additional capital. If the Company's subsidiaries are unable to implement one or more of these alternatives, they may not be able to meet debt payment and other obligations.

The Company has a significant amount of debt outstanding. Such indebtedness, along with the other contractual commitments of our subsidiaries, could adversely affect our business, financial condition and results of operations, as well as the ability of certain of our subsidiaries to meet debt payment obligations.

As of December 30, 2018, the Company had approximately $2.8 billion of outstanding debt on its balance sheet. Additionally, a subsidiary of the Company has issued the Series 2018-1 Class A-1 Notes, which allows the subsidiary to borrow amounts from time to time on a revolving basis, up to an aggregate principal amount of $150.0 million.

This level of debt could have significant consequences on the Company’s future operations, including:

- making it more difficult to meet payment and other obligations under outstanding debt;

- resulting in an event of default if the Company’s subsidiaries fail to comply with the financial and other restrictive covenants contained in debt agreements, which event of default could result in all of the Company’s subsidiaries’ debt becoming immediately due and payable;
- reducing the availability of the Company’s cash flow to fund working capital, capital expenditures, acquisitions and other general corporate purposes, and limiting the Company’s ability to obtain additional financing for these purposes;
- subjecting the Company to the risk of increased sensitivity to interest rate increases on indebtedness with variable interest rates;
- limiting the Company’s flexibility in planning for or reacting to, and increasing its vulnerability to, changes in the Company’s business, the industry in which it operates and the general economy; and
- placing the Company at a competitive disadvantage compared to its competitors that are less leveraged.

In addition, certain of the Company’s subsidiaries also have significant contractual requirements for the purchase of soft drinks. If consumer preferences change and the Company’s customers purchase fewer soft drinks than expected or estimated, such contractual commitments may adversely affect the financial condition of the Company. The Company has also provided loan guarantees to various lenders on behalf of franchisees entering into debt arrangements for new restaurant development and equipment financing. Certain subsidiaries also guarantee or are contingently liable for certain leases of their respective franchisees for which they have been indemnified. In addition, certain subsidiaries also guarantee or are contingently liable for certain leases of their respective franchisees for which they have not been indemnified. These commitments could have an adverse effect on the Company’s liquidity and the ability of its subsidiaries to meet payment obligations.

The ability to meet payment and other obligations under the debt instruments of the Company’s subsidiaries depends on their ability to generate significant cash flows in the future. This, to some extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond the Company’s control. There can be no assurance that the Company’s business will generate cash flows from operations, or that future borrowings will be available to the Company under existing or any future credit facilities or otherwise, in an amount sufficient to enable its subsidiaries to meet their debt payment obligations and to fund other liquidity needs. If the Company’s subsidiaries are not able to generate sufficient cash flow to service their debt obligations, they may need to refinance or restructure debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If the Company’s subsidiaries are unable to implement one or more of these alternatives, they may not be able to meet debt payment and other obligations.

In addition, the Company may incur additional indebtedness in the future. If new debt or other liabilities are added to the Company’s current consolidated debt levels, the related risks that the Company now faces could be amplified.

The securitized financing facility imposes certain restrictions on the activities of the Company and its subsidiaries.

The Senior Notes Indenture and the management agreement entered into between a subsidiary of the Company and the Indenture trustee (the “Management Agreement”) contain various covenants that limit the Company’s and its subsidiaries’ ability to engage in specified types of transactions. For example, the Indenture and the Management Agreement contain covenants that, among other things, restrict, subject to certain exceptions, the ability of certain subsidiaries to:

- incur or guarantee additional indebtedness;
- sell certain assets;

- create or incur liens on certain assets to secure indebtedness; or
- consolidate, merge, sell or otherwise dispose of all or substantially all of their assets.

As a result of these restrictions, the Company may not have adequate resources or flexibility to continue to manage the business and provide for growth of the Wendy’s system, which could have a material adverse effect on the Company’s future growth prospects, financial condition, results of operations and liquidity.

To service debt and meet its other cash needs, the Company will require a significant amount of cash, which may not be generated by its business or available under its existing debt agreements or other sources.

The ability of Wendy's to make payments on, repay or refinance its debt, and any additional debt, and to fund planned capital expenditures, dividends and other cash needs will depend largely upon its future operating performance. Future performance, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. In addition, the ability of Wendy's to borrow funds in the future to make payments on its debt will depend on the satisfaction of the covenants in the securitized financing facility and other debt agreements, and other agreements it may enter into in the future. Specifically, Wendy's will need to maintain specified financial ratios and satisfy financial condition tests. There is no assurance that the Wendy's business will generate sufficient cash flow from operations or that future borrowings will be available under the Company's securitized financing facility or other debt agreements or from other sources in an amount sufficient to enable the Company to pay its debt or to fund its dividend and other liquidity needs.

There can be no assurance regarding whether or to what extent the Company will pay dividends on its common stock in the future.

Holders of the Company's common stock will only be entitled to receive such dividends as the Company's Board of Directors may declare out of funds legally available for such payments. Any dividends will be made at the discretion of the Board of Directors and will depend on the Company's earnings, financial condition, cash requirements and such other factors as the Board of Directors may deem relevant from time to time.

Because the Company is a holding company, its ability to declare and pay dividends is dependent upon cash, cash equivalents and short-term investments on hand and cash flows from its subsidiaries. The ability of its subsidiaries to pay cash dividends and/or make loans or advances to the holding company will be dependent upon their respective abilities to achieve sufficient cash flows after satisfying their respective cash requirements, including the securitized financing facility and other debt agreements, to enable the payment of such dividends or the making of such loans or advances. The ability of any of its subsidiaries to pay cash dividends or other payments to the Company will also be limited by restrictions in debt instruments currently existing or subsequently entered into by such subsidiaries, which is described earlier in this Item 1A.

A substantial amount of the Company's common stock is concentrated in the hands of certain stockholders.

Nelson Peltz, the Company's Chairman and former Chief Executive Officer, Peter May, the Company's Vice Chairman and former President and Chief Operating Officer, and Edward Garden, a former director of the Company, beneficially own shares of the Company's outstanding common stock that collectively constitute approximately 20% of its total voting power as of February 19, 2019. Messrs. Peltz, May and Garden may, from time to time, acquire beneficial ownership of additional shares of common stock.

On December 1, 2011, the Company entered into an agreement (the "Trian Agreement") with Messrs. Peltz, May and Garden, and several of their affiliates (the "Covered Persons"). Pursuant to the Trian Agreement, the Board of Directors, including a majority of the independent directors, approved, for purposes of Section 203 of the Delaware General Corporation Law ("Section 203"), the Covered Persons becoming the owners (as defined in Section 203(c)(9) of the DGCL) of or acquiring an aggregate of up to (and including), but not more than, 32.5% (subject to certain adjustments set forth in the Agreement) of the outstanding shares of the Company's common stock, such that no such persons would be subject to the restrictions set forth in Section 203 solely as a result of such ownership. Certain other provisions of the Trian Agreement terminated when the Covered Persons' beneficial ownership of the Company's common stock decreased to less than 25% of the outstanding voting power of the Company in January 2014.

This concentration of ownership gives Messrs. Peltz, May and Garden significant influence over the outcome of actions requiring stockholder approval, including the election of directors and the approval of mergers, consolidations and the sale of all or substantially all of the Company’s assets. They are also in a position to have significant influence to prevent or cause a change in control of the Company. If in the future Messrs. Peltz, May and Garden were to acquire more than a majority of the Company’s outstanding voting power, they would be able to determine the outcome of the election of members of the Board of Directors and the outcome of corporate actions requiring majority stockholder approval, including mergers, consolidations and the sale of all or substantially all of the Company’s assets. They would also be in a position to prevent or cause a change in control of the Company.

The Company's certificate of incorporation contains certain anti-takeover provisions and permits our Board of Directors to issue preferred stock without stockholder approval and limits our ability to raise capital from affiliates.

Certain provisions in the Company's certificate of incorporation are intended to discourage or delay a hostile takeover of control of the Company. The Company's certificate of incorporation authorizes the issuance of shares of "blank check" preferred stock, which will have such designations, rights and preferences as may be determined from time to time by the Board of Directors. Accordingly, the Board of Directors is empowered, without stockholder approval, to issue preferred stock with dividend, liquidation, conversion, voting or other rights that could adversely affect the voting power and other rights of the holders of its common stock. The preferred stock could be used to discourage, delay or prevent a change in control of the Company that is determined by the Board of Directors to be undesirable. Although the Company has no present intention to issue any shares of preferred stock, it cannot assure that it will not do so in the future.

The Company's certificate of incorporation prohibits the issuance of preferred stock to affiliates, unless offered ratably to the holders of the Company's common stock, subject to an exception in the event that the Company is in financial distress and the issuance is approved by the Audit Committee of the Board of Directors. This prohibition limits the ability to raise capital from affiliates.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

We believe that our properties, taken as a whole, are generally well maintained and are adequate for our current and foreseeable business needs.

The following table contains information about our principal office facilities as of December 30, 2018:

ACTIVE FACILITIES	FACILITIES LOCATION	LAND TITLE	APPROXIMATE SQ. FT. OF FLOOR SPACE	
Corporate Headquarters	Dublin, Ohio	Owned	324,025	*
Wendy's Restaurants of Canada Inc.	Burlington, Ontario, Canada	Leased	8,917	

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* QSCC, the independent Wendy's purchasing cooperative in which Wendy's has non-controlling representation on the board of directors, leases 14,493 square feet of this space from Wendy's.

At December 30, 2018, Wendy's and its franchisees operated 6,711 Wendy's restaurants. Of the 353 Company-operated Wendy's restaurants, Wendy's owned the land and building for 144 restaurants, owned the building and held long-term land leases for 145 restaurants and held leases covering land and building for 64 restaurants. Lease terms are generally initially between 15 and 20 years and, in most cases, provide for rent escalations and renewal options. Certain leases contain contingent rent provisions that require additional rental payments based upon restaurant sales volume in excess of specified amounts. As of December 30, 2018, Wendy's also owned 516 and leased 1,279 properties that were either leased or subleased principally to franchisees. Surplus land and buildings are generally held for sale and are not material to our financial condition or results of operations.

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The location of Company-operated and franchised restaurants as of December 30, 2018 is set forth below.

State	Company	Franchise
Alabama	—	99
Alaska	—	8
Arizona	—	98
Arkansas	—	62
California	—	270
Colorado	43	85
Connecticut	—	50
Delaware	—	12
Florida	104	409
Georgia	—	284
Hawaii	—	9
Idaho	—	31
Illinois	56	138
Indiana	—	179
Iowa	—	42
Kansas	—	66
Kentucky	—	143
Louisiana	—	125
Maine	—	16
Maryland	—	100
Massachusetts	46	51
Michigan	—	250
Minnesota	—	59
Mississippi	—	95
Missouri	—	98
Montana	—	14
Nebraska	—	27
Nevada	—	42
New Hampshire	—	23
New Jersey	—	142
New Mexico	—	42
New York	47	169
North Carolina	—	258
North Dakota	—	8
Ohio	49	363
Oklahoma	—	42
Oregon	—	40
Pennsylvania	—	258
Rhode Island	8	11
South Carolina	—	128
South Dakota	—	8
Tennessee	—	176
Texas	—	399
Utah	—	83
Vermont	—	4
Virginia	—	221
Washington	—	79
West Virginia	—	69

Wisconsin	—	55
Wyoming	—	14
District of Columbia	—	3
Domestic subtotal	353	5,457
Canada	—	368
North America subtotal	353	5,825

Country/Territory	Company	Franchise
Argentina	—	8
Aruba	—	4
Bahamas	—	12
Brazil	—	5
Chile	—	17
Curacao	—	1
Dominican Republic	—	13
Ecuador	—	6
El Salvador	—	24
Georgia	—	10
Grand Cayman Islands	—	2
Guam	—	5
Guatemala	—	12
Honduras	—	24
India	—	2
Indonesia	—	80
Jamaica	—	7
Japan	—	41
Kuwait	—	7
Malaysia	—	14
Mexico	—	21
New Zealand	—	23
Panama	—	8
Philippines	—	50
Puerto Rico	—	76
Qatar	—	1
Trinidad and Tobago	—	6
United Arab Emirates	—	17
Venezuela	—	35
U.S. Virgin Islands	—	2
International subtotal	—	533
Grand total	353	6,358

Item 3. Legal Proceedings.

The Company is involved in litigation and claims incidental to our current and prior businesses. We provide accruals for such litigation and claims when payment is probable and reasonably estimable. The Company believes it has adequate accruals for continuing operations for all of its legal and environmental matters, including the accrual that we recorded for the legal proceedings related to a cybersecurity incident as described in Note 23 of the Financial Statements and Supplementary Data contained in Item 8 herein. See Note 11 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information on the accrual. We cannot estimate the aggregate possible range of loss for various reasons, including, but not limited to, many proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur and/or significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions is thus inherently difficult and future developments could cause these actions or claims, individually or in aggregate, to have a material adverse effect on the Company’s financial condition, results of operations, or cash flows of a particular reporting period.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

The Company's common stock is traded on the Nasdaq Global Select Market ("Nasdaq") under the symbol "WEN."

The Company's common stock is entitled to one vote per share on all matters on which stockholders are entitled to vote. The Company has no class of equity securities currently issued and outstanding except for its common stock. However, it is currently authorized to issue up to 100 million shares of preferred stock.

During the 2017 fiscal year, the Company paid quarterly cash dividends of $0.07 per share of common stock. During the 2018 fiscal year, the Company paid quarterly cash dividends of $0.085 per share of common stock.

During the first quarter of 2019, the Company declared a dividend of $0.10 per share to be paid on March 15, 2019 to shareholders of record as of March 1, 2019. Although the Company currently intends to continue to declare and pay quarterly cash dividends, there can be no assurance that any additional quarterly cash dividends will be declared or paid or as to the amount or timing of such dividends, if any. Future dividend payments, if any, will be made at the discretion of our Board of Directors and will be based on such factors as the Company's earnings, financial condition and cash requirements and other factors.

As of February 19, 2019, there were approximately 24,406 holders of record of the Company's common stock.

The following table provides information with respect to repurchases of shares of our common stock by us and our "affiliated purchasers" (as defined in Rule 10b-18(a)(3) under the Exchange Act) during the fourth fiscal quarter of 2018:

Issuer Repurchases of Equity Securities

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plan	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plan (2)
October 1, 2018 through November 4, 2018	1,605,477	$ 17.11	1,595,900	$ 128,846,202
November 5, 2018 through December 2, 2018 (3)	4,709,606	$ 17.49	4,708,578	$ 166,511,724
December 3, 2018 through December 30, 2018 (3)	1,293,013	$ 15.68	1,222,554	$ 147,416,700
Total	7,608,096	$ 17.10	7,527,032	$ 147,416,700

(1) Includes 81,064 shares reacquired by the Company from holders of share-based awards to satisfy certain requirements associated with the vesting or exercise of the respective award. The shares were valued at the average

of the high and low trading prices of our common stock on the vesting or exercise date of such awards.

(2) In February 2018, our Board of Directors authorized the repurchase of up to $175.0 million of our common stock through March 3, 2019, when and if market conditions warrant and to the extent legally permissible. As a result of the 2018 accelerated share repurchase agreement (the “2018 ASR Agreement”) described below, the February 2018 share repurchase authorization was completed. In August 2018, our Board of Directors authorized an additional share repurchase program for up to $100.0 million of our common stock through December 27, 2019, when and if market conditions warrant and to the extent legally permissible. In November 2018, the Board of Directors approved an increase of $120.0 million to the August 2018 authorization, resulting in a total authorization of $220.0 million.

(3) In November 2018, the Company entered into an accelerated share repurchase agreement (the “2018 ASR Agreement”) with a third-party financial institution to repurchase common stock as part of the Company’s existing share repurchase programs. Under the 2018 ASR Agreement, the Company paid the financial institution an initial purchase price of $75.0 million in cash and received an initial delivery of 3.6 million shares of common stock, representing an estimate of 85%

of the total shares expected to be delivered under the 2018 ASR Agreement. The total number of shares of common stock ultimately purchased by the Company under the 2018 ASR Agreement was based on the average of the daily volume-weighted average prices of the common stock during the term of the 2018 ASR Agreement, less an agreed upon discount. On December 18, 2018, the Company completed the ASR Agreement and received an additional 0.7 million shares of common stock. In total, 4.4 million shares were delivered under the ASR Agreement at an average purchase price of $17.18 per share.

Subsequent to December 30, 2018 through February 19, 2019, the Company repurchased 1.3 million shares with an aggregate purchase price of $21.5 million, excluding commissions. In February 2019, our Board of Directors authorized the repurchase of up to $225.0 million of our common stock through March 1, 2020, when and if market conditions warrant and to the extent legally permissible. In connection with the February 2019 share repurchase authorization, the November 2018 authorization was canceled.

Item 6. Selected Financial Data.

The following selected financial data has been derived from our consolidated financial statements. The data set forth below should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes thereto.

	Year Ended (1) (2) (3)				
	2018	2017	2016	2015	2014
	(In millions, except per share amounts)				
Sales (4)	$651.6	$622.8	$920.8	$1,438.8	$1,608.5
Franchise royalty revenue and fees (4)	409.0	410.5	371.5	344.5	322
Franchise rental income (4)	203.3	190.1	143.1	87.0	68.0
Advertising funds revenue	326.0	—	—	—	—
Revenues	1,589.9	1,223.4	1,435.4	1,870.3	1,998.5
Cost of sales (4) (5)	548.6	517.9	752.1	1,194.5	1,364.4
Advertising funds expense	321.9	—	—	—	—
System optimization losses (gains), net (6)	(0.5)	39.1	(71.9)	(74.0)	(91.5)
Reorganization and realignment costs (7)	9.1	22.6	10.1	21.9	31.9
Impairment of long-lived assets (8)	4.7	4.1	16.2	25.0	19.6
Operating profit	249.9	214.8	314.8	274.5	242.6
Loss on early extinguishment of debt (9)	(11.5)	—	—	(7.3)	—
Investment income, net (10)	450.7	2.7	0.7	52.2	1.2
(Provision for) benefit from income taxes (11)	(114.8)	93.0	(72.1)	(94.1)	(76.1)
Income from continuing operations	460.1	194.0	129.6	140.0	116.4
Net income from discontinued operations	—	—	—	21.1	5.0
Net income	$460.1	$194.0	$129.6	$161.1	$121.4
Basic income per share:					
Continuing operations	$1.93	$.79	$.49	$.43	$.31
Discontinued operations	—	—	—	.07	.01
Net income	$1.93	$.79	$.49	$.50	$.33
Diluted income per share:					
Continuing operations	$1.88	$.77	$.49	$.43	$.31
Discontinued operations	—	—			