

SCOTTS MIRACLE-GRO CO

Form 10-K

November 25, 2008

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

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended September 30, 2008

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 1-13292

The Scotts Miracle-Gro Company

(Exact name of registrant as specified in its charter)

Ohio

31-1414921

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

14111 Scottslawn Road, Marysville, Ohio

43041

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: 937-644-0011

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

Title of Each Class

Name of Each Exchange On Which Registered

Common Shares, without par value

New York Stock Exchange

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

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

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

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

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

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

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

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

The aggregate market value of Common Shares (the only common equity of the registrant) held by non-affiliates of the registrant computed by reference to the price at which Common Shares were last sold as of the last business day of the registrant's most recently completed second fiscal quarter (March 28, 2008) was approximately \$1,410,465,487.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date: The number of Common Shares of the registrant outstanding as of November 21, 2008 was 65,373,940.

DOCUMENT INCORPORATED BY REFERENCE:

Portions of the definitive Proxy Statement for Registrant's 2009 Annual Meeting of Shareholders to be held January 22, 2009, are incorporated by reference into Part III hereof.

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The Scotts Miracle-Gro Company, an Ohio corporation (Scotts Miracle-Gro) and, together with its subsidiaries, the Company), traces its roots to two businesses launched by entrepreneurs. In 1868, Civil War veteran O.M. Scott started a seed business in Marysville, Ohio, based on the conviction that farmers shall have clean, weed-free fields. Beginning in 1907, The Scotts Company expanded its reach by selling grass seed to consumers and eventually exited the agricultural market. By 1988 through innovation and acquisition The Scotts Company had become a leading marketer of lawn fertilizer, grass seed and growing media products within the United States.

Separately, Horace Hagedorn and his partner Otto Stern launched Stern's Miracle-Gro Products, Inc. in 1951 in New York. Their easy-to-use plant food quickly revolutionized the gardening category. Through innovative marketing, Miracle-Gro® eventually became the leading plant food product in the gardening industry. In 1995, The Scotts Company and Stern's Miracle-Gro Products, Inc. merged, marking the start of a significant evolution for the Company.

In the late 1990's, the Company launched both a geographic and a category expansion. It acquired companies with industry-leading brands in France, Germany and the United Kingdom. In fiscal 1999, the Company acquired the Ortho® brand in the United States and exclusive rights for the marketing and distribution of consumer Roundup®* brand products within the United States and other specified countries, thereby adding industry-leading weed, insect and disease control products to its portfolio. The Company expanded into the lawn care service industry with the launch of Scotts LawnService® in 1998. Since fiscal 2001, the Company has invested nearly \$125 million in acquisitions of local and regional lawn care businesses to provide a platform for rapid expansion throughout the United States. Most recently, the Company entered the North American wild bird food category in fiscal 2006 with the acquisition of Gutwein & Co., Inc. (Gutwein) and its Morning Song® brand of bird food.

As the Company celebrates more than 100 years of selling products to consumers, we own the leading brands in nearly every category of the lawn and garden industry. A list of some of our North American leading consumer brands is as follows:

Category	Brands
Lawns	Scotts®; Turf Builder®
Gardens	Miracle-Gro®; Osmocote®; LiquaFeed®; Organic Choice®
Growing Media	Miracle-Gro®; Scotts®; Hyponex®; Earthgro®; SuperSoil®
Grass Seed	Scotts®; Turf Builder®
Controls	Ortho®; Home Defense Max®; Weed-B-Gon Max®; Roundup®*
Outdoor Living	Smith & Hawken®
Wild Bird Food	Morning Song®; Scotts Songbird Selections®

In addition, we have the following significant brands in Europe: Miracle-Gro® plant fertilizers, Weedol® and Pathclear® herbicides, EverGreen® lawn fertilizers and Levington® growing media in the United Kingdom; KB® and Fertiligène® in France; Celaflor®, Nexa Lotte® and Substral® in Germany and Austria; and ASEF®, KB® and Substral® in Belgium, the Netherlands and Luxembourg. Roundup® is also a significant brand in the United Kingdom,

France, Germany and other European markets.

Business Segments

For fiscal 2008, the Company divided its businesses into the following segments:

Global Consumer;

Global Professional;

* Roundup® is a registered trademark of Monsanto Technology LLC, a company affiliated with Monsanto Company.

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Scotts LawnService®; and

Corporate & Other.

These segments were changed entering fiscal 2008 and differ from the segments used in the prior year due to the realignment of the North America and International segments into the Global Consumer and Global Professional segments. This division of reportable segments is consistent with how the segments report to and are managed by senior management of the Company. Financial information about these current segments for the three years ended September 30, 2008 is presented in NOTE 21. SEGMENT INFORMATION to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

Global Consumer

In our Global Consumer segment, the Company manufactures and markets products that provide easy, reliable and effective assistance to homeowners who seek beautiful, weed and pest-free lawns, gardens and indoor plants. These products incorporate many of the latest technologies available. The Global Consumer segment sells products in the following categories:

Lawns: A complete line of granular lawn fertilizer and combination products, including fertilizer and crabgrass control, weed control or pest control, is sold under the Scotts® and Turf Builder® brand names. The Turf Builder® line of products in the United States is designed to make it easy for do-it-yourself consumers to select and properly apply the right product in the right quantity for their lawns. A similar range of products is available in the United Kingdom under the EverGreen® brand.

Gardens: A complete line of plant foods is marketed under the Miracle-Gro® brand name. In fiscal 2006, we introduced Miracle-Gro® LiquaFeed®, an innovative product that allows consumers to easily feed and water their outdoor plants simultaneously. The Miracle-Gro® brand is marketed primarily in North America and the United Kingdom, although it has been introduced into other Western European markets in recent years. In addition to our high-quality granular and liquid water-soluble plant foods, we have continuous-release plant foods for extended feeding and convenience, which we market under the Osmocote® brand as well as the Shake n Feed® sub-brand. The Company also markets an extensive line of plant food products under the Substral® brand name in Germany, Austria, the Nordic countries and throughout Eastern Europe, and under the Fertiligène® brand name in France.

Growing Media: A complete line of growing media products for indoor and outdoor uses is marketed under the Miracle-Gro®, Scotts®, Hyponex®, Earthgro® and SuperSoil® brand names in the United States, as well as other labels. These products include potting mix, garden soils, seeding soil, topsoil, manures, sphagnum peat and decorative barks and mulches. The addition of the Miracle-Gro® and Scotts® brand names plus plant food to higher quality potting mixes, garden soils and seeding soil has turned previously low-margin commodity products into value-added category leaders. The introduction of the Moisture Control®, Organic Choice® and Nature Scapes® line extensions has provided further innovation and differentiation of our products in the marketplace. This same strategy is being employed in Europe, where the Miracle-Gro® brand, as well as the Levington®, Fertiligène®, KB® and Substral® brands, are being used to market growing media products.

Grass Seed: We offer a broad line of grass seed products for consumers. Our leading grass seed products are sold under the Scotts® Pure Premium®, Classic®, Turf Builder® and PatchMaster® brand names in the consumer market.

Controls: A broad line of weed control, indoor and outdoor pest control and plant disease control products is marketed under the Ortho® brand name in the United States. Ortho® products are available in aerosol, ready-to-use

liquid, concentrated, granular and dust forms. Ortho® control products include Weed-B-Gon MAX®, Bug-B-Gon MAX®, Home Defense MAX®, Ortho MAX®, GroundClear®, RosePride®, and Orthene® Fire Ant Killer. In Europe, the Company markets an extensive line of control products under a variety of brand names, including Weedol®, Pathclear®, KB®, Fertiligéne®, Celaflor® and Nexa Lotte®.

In fiscal 1999, the Company entered into a long-term marketing agreement with Monsanto Company (Monsanto) and became Monsanto s exclusive agent for the marketing and distribution of Roundup® non-selective herbicide products in the consumer lawn and garden market within the United States and other specified countries, including Australia, Austria, Belgium, Canada, France, Germany, the Netherlands and the United Kingdom. (See the Roundup® Marketing Agreement discussion later in this Item 1 for a more detailed explanation of the Company s agreement with Monsanto.)

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Wild Bird Food: In November 2005, the Company acquired Gutwein and its Morning Song® brand of products. Morning Song® products are sold at leading mass retailers, grocery, pet and general merchandise stores. The Company launched a Scotts® branded line of wild bird food in fiscal 2007, with premium blends and innovative packaging.

Other Consumer Products: The Company also manufactures and markets several lines of high-quality lawn spreaders under the Scotts® brand name - Deluxe EdgeGuard® spreaders, AccuGreen® drop spreaders and Handy Green®II handheld spreaders. We sell a line of hose-end applicators for water-soluble plant foods such as Miracle-Gro® products, and lines of applicators under the Ortho® and Dial N Spray® trademarks for the diluted application of control products sold in the concentrated form.

The Global Consumer segment also includes our Canadian consumer operations. In Canada, we believe we are the leading marketer of branded consumer lawn and garden products. We sell a full range of lawn and garden fertilizer, control products, grass seed, spreaders, and value-added growing media products under the Scotts®, Turf Builder®, EcoSense®, Miracle-Gro®, Ortho®, Killlex® and Roundup® brands.

Global Professional

The Global Professional business sells professional products to commercial nurseries, greenhouses and specialty crop growers primarily in North America, Europe, the Middle East, Africa, Latin America, Australia, New Zealand and throughout the Far East. Our professional products include a broad line of sophisticated controlled-release fertilizers, water-soluble fertilizers, plant protection products, wetting agents, growing media and grass seed that are sold under brand names that include Osmocote®, Sierrablen Plus®, Peters Professional®, Peters Excel®, Agroblen®, Agrocote®, Rout®, OH2®, Scotts® Professional Seed, Scotts® Turfseed™ and Scotts® Landmark™.

Scotts LawnService®

The Scotts LawnService® segment provides residential lawn care, lawn aeration, tree and shrub care and external pest control services in the United States. As of September 30, 2008, Scotts LawnService® had 81 company-operated locations serving 46 metropolitan markets and 76 independent franchises primarily operating in secondary markets.

Corporate & Other

The Corporate & Other segment includes Smith & Hawken®, a leading brand in the outdoor living and gardening lifestyle category. Smith & Hawken® products, which include high-end outdoor furniture, pottery, garden tools, gardening containers and live goods, are sold in the United States through its 57 retail stores, catalog and Internet sales, and other trade and wholesale relationships. While the Company maintains a bias for divesting the business, current market conditions are not advantageous. As a result, the Company is now simultaneously pursuing other options.

Competitive Marketplace

Our major customers include home centers, mass merchandisers, warehouse clubs, large hardware chains, independent hardware stores, nurseries, garden centers, food and drug stores, commercial nurseries and greenhouses and specialty crop growers. Each of our segments participates in markets that are highly competitive and many of our competitors sell their products at prices lower than ours. The Company attributes its market leadership and continued success in the lawn and garden category to our industry-leading brands, innovative products, award-winning advertising, supply chain excellence, highly effective field sales and merchandising organization and the strength of our relationships with major retailers in our product categories.

In the North American Global Consumer do-it-yourself lawn and garden and pest control markets, we compete primarily against private label products as well as branded products. Private label products are those sold under a retailer-owned label or a supplier-owned label, which are sold exclusively at a specific retail chain. Recently, the Company's largest North American competitor, Spectrum Brands, announced it would cease competing in the lawn fertilizer, grass seed and growing media categories. As a result, some of our retail partners have approached us regarding the possibility of providing private label solutions for them in these product categories. We believe such an opportunity, if executed, could be beneficial to both the Company and our retail partners.

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The Company continues to compete with Spectrum Brands in other lawn and garden categories. We also compete with Bayer AG, Central Garden & Pet Company, Enforcer Products, Inc., Green Light Company and Lebanon Seaboard Corporation. In addition, we face competition from regional competitors who compete primarily on the basis of price for commodity growing media business.

Internationally, we face strong competition in the consumer do-it-yourself lawn and garden market, particularly in Europe. Our competitors in the European Union include Bayer AG, Compo GmbH, a subsidiary of K&S Aktiengesellschaft (which owns the Compo[®], Sem[®] and Algoflash[®] brands), Westland Horticulture and a variety of local companies.

In the North American Global Professional horticulture markets, we face a broad range of competition from numerous companies such as Agrium, Inc., Haifa Chemicals Ltd., Chisso Asahi Fertilizer Co. Ltd., Syngenta AG and Bayer AG. Some of these competitors have significant financial resources and research departments.

The international Global Professional horticulture markets in which we compete are also very competitive, particularly the markets for controlled-release and water-soluble fertilizer products. We have numerous U.S. and European competitors in these international markets, including Pursell Industries, Inc., Compo GmbH, a subsidiary of K&S Aktiengesellschaft, Norsk Hydro ASA, Haifa Chemicals Ltd. and Kemira Oyj.

We have the second largest market share position in the fragmented U.S. do-it-for-me lawn care service market. We compete against TruGreen-ChemLawn[®], a division of ServiceMaster, which has the leading market share in the U.S. lawn care service market and has a substantially larger share of this market than Scotts LawnService[®], as well as numerous regional and local lawn care services operations.

Significant Customers

Approximately 75% of our worldwide net sales in fiscal 2008 were made by our Global Consumer segment. Within the Global Consumer segment, approximately 28% of our net sales in fiscal 2008 were made to Home Depot, 18% to Lowe's and 18% to Walmart. We face strong competition for the business of these significant customers. The loss of any of these customers or a substantial decrease in the volume or profitability of our business with any of these customers could have a material adverse effect on our earnings and cash flows.

Competitive Strengths

Strong Brands

The Company considers its industry-leading brands to be its single largest competitive advantage, though hardly its only advantage. The Company believes it has the leading market share in every major U.S. category in which its Global Consumer business competes. The Company also owns many of the leading brands in the European marketplace.

The Company has helped to build awareness of its brands through consistently investing in advertising and marketing. As a result, consumer awareness of the Company's key brands especially in the United States rivals that of nearly any other consumer products company. The strength of the Scotts[®] brand, in particular, has been a critical aspect of the success of Scotts LawnService[®].

Trademarks, Patents and Licenses

The Company considers its brands, patents and licenses all to be key competitive advantages. We pursue a vigorous brand protection strategy consisting of registration and maintenance of key trademarks and proactive monitoring and enforcement activities to protect against infringement. The Scotts[®], Miracle-Gro[®], Ortho[®], Scotts LawnService[®], Smith & Hawken[®], Osmocote[®], Hyponex[®] and Earthgro[®] brand names and logos, as well as a number of product trademarks, including Turf Builder[®], Organic Choice[®], Home Defense Max[®] and Weed-B-Gon Max[®], are federally and/or internationally registered and are considered material to our business.

As of September 30, 2008, we held 95 issued patents in the United States covering fertilizer, chemical and growing media compositions and processes; grass varieties; and mechanical dispensing devices such as applicators, spreaders and sprayers. Similar patents have also been issued or are pending internationally, bringing our total worldwide patent portfolio to 406 patents and applications.

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The issued patents provide protection generally extending to 20 years from the date of filing, subject to the payment of applicable governmental maintenance and annuity fees. Accordingly, many of our patents will extend well into the next decade.

In addition, we continue to file new patent applications each year covering new, commercially significant developments conceived by our research and development associates. Currently, we have 205 pending patent applications worldwide, including 35 pending U.S. applications. We also hold exclusive and non-exclusive patent licenses and supply arrangements, permitting the use and sale of additional patented fertilizers, pesticides and mechanical devices.

During fiscal 2008, we were granted four U.S. and 21 foreign national patents, including patents for the design of an improved spraying device and for various hybrid varieties of turfgrass. We continue to extend patent coverage of our core technologies nationally and in our Canadian, European, Asia/Pacific and South American markets.

No significant U.S. or foreign patents expired in fiscal 2008.

Supply Chain and Sales Force

Because the Company sells a substantial majority of its products to a small number of retail customers, it is critical to maintain strong relationships with these partners. We believe our supply chain and sales force are major competitive advantages that have allowed us to build unrivaled relationships with our key retail partners.

Major investments in technology have allowed the Company's supply chain to be a more efficient supplier to its key retail accounts. The Company considers its order fill rate which measures the accuracy of shipments to be an important measure of customer service. In fiscal 2008, the Company achieved a global order fill rate of 99.0 percent. Additionally, the supply chain has helped the Company to improve its inventory turns over the past several years, as well as those of its retail partners. The Company has made substantial investments to lower the cost structure of its supply chain operations in Europe while simultaneously improving customer service levels.

The Company's U.S. sales force is another major competitive advantage. By increasing the size of the sales force over several years, the Company has taken a more proactive role in helping our retail partners merchandise the lawn and garden department and maximize the productivity of this space. In addition to working closely with retailers, our nearly 2,000 person full-time and seasonal U.S. in-store sales force also provides the Company with an opportunity to interact face-to-face with consumers at-the-shelf. By helping consumers answer their lawn and garden questions, we believe we can drive higher sales of our products.

Innovation

The Company views its commitment to innovation as a competitive advantage. Consequently, we continually invest in research and development and consumer research to improve and develop existing and new products, manufacturing processes and packaging and delivery systems. Spending on research and development was \$44.7 million, \$38.8 million and \$35.1 million in fiscal 2008, 2007 and 2006, including product registration costs of \$9.8 million, \$9.3 million and \$8.2 million, respectively. The Company's long-standing commitment to innovation is evidenced by a worldwide portfolio of patents. In addition to the benefits of our own research and development, we actively seek ways to leverage the research and development activities of our suppliers.

Our research and development worldwide headquarters is located at the Dwight G. Scott Research Center in Marysville, Ohio. We also have research and development facilities in the United Kingdom, France, the Netherlands and Sydney, Australia, as well as several research field stations located throughout the United States. In these

combined locations, the Company employs approximately 30 PhD scientists.

The Company's biotechnology program is evidence of its commitment to responsible research and to developing more effective and easier-to-use products that are preferred by consumers and are better for the environment. As part of this program, the Company is currently employing technology already proven in agriculture to develop new turf varieties that could one day require less maintenance, less water and fewer chemical inputs to resist insects, weeds and disease.

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Roundup® Marketing Agreement

The Company is Monsanto's exclusive agent for the marketing and distribution of consumer Roundup® products (with additional rights to new products containing glyphosate or other similar non-selective herbicides) in the consumer lawn and garden market within the United States and other specified countries, including Australia, Austria, Belgium, Canada, France, Germany, the Netherlands and the United Kingdom. Under the terms of the Amended and Restated Exclusive Agency and Marketing Agreement (the Marketing Agreement) between us and Monsanto, we and Monsanto are jointly responsible for developing global consumer and trade marketing programs for consumer Roundup®. We have assumed responsibility for sales support, merchandising, distribution and logistics for consumer Roundup®. Monsanto continues to own the consumer Roundup® business and provides significant oversight of its brand. In addition, Monsanto continues to own and operate the agricultural Roundup® business.

We are compensated under the Marketing Agreement based on the success of the consumer Roundup® business in the markets covered by the Marketing Agreement. We receive a graduated commission to the extent that the earnings before interest and taxes of the consumer Roundup® business in the included markets exceed specified thresholds. Regardless of these earnings, we are required to make an annual contribution payment against the overall expenses of the consumer Roundup® business. The minimum annual contribution payment is \$20 million until 2018 or the earlier termination of the Marketing Agreement.

The gross commission earned under the Marketing Agreement, the contribution payments to Monsanto and the amortization of the initial marketing fee paid to Monsanto are included in the calculation of net sales in the Company's Consolidated Statements of Operations. For fiscal 2008, 2007 and 2006, the net amount earned under the Marketing Agreement was \$44.3 million, \$41.9 million and \$39.9 million, respectively. For further details, see NOTE 7. **MARKETING AGREEMENT** to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

The Marketing Agreement has no definite term except as it relates to the European Union countries (the EU term). The EU term had previously been extended through September 30, 2008 and, on March 28, 2008, the parties agreed to further extend the EU term through September 30, 2011, with up to two additional automatic renewal periods of two years each, subject to non-renewal only upon the occurrence of certain performance defaults.

The Marketing Agreement provides Monsanto with the right to terminate the Marketing Agreement upon an event of default (as defined in the Marketing Agreement) by the Company, a change in control of Monsanto or the sale of the consumer Roundup® business. The Marketing Agreement provides the Company with the right to terminate the Marketing Agreement in certain circumstances, including an event of default by Monsanto or the sale of the consumer Roundup® business. Unless Monsanto terminates the Marketing Agreement due to an event of default by the Company, Monsanto is required to pay a termination fee to the Company that varies by program year. The termination fee is calculated as a percentage of the value of the Roundup® business exceeding a certain threshold, but in no event will the termination fee be less than \$16 million. If Monsanto were to terminate the Marketing Agreement due to an event of default by the Company, however, the Company would not be entitled to any termination fee, and it would lose all, or a substantial portion, of the significant source of earnings and overhead expense absorption the Marketing Agreement provides. Monsanto may also be able to terminate the Marketing Agreement within a given region, including North America, without paying a termination fee if unit volume sales to consumers in that region decline: (1) over a cumulative three-fiscal-year period; or (2) by more than 5% for each of two consecutive years.

Monsanto has agreed to provide us with notice of any proposed sale of the consumer Roundup® business, allow us to participate in the sale process and negotiate in good faith with us with respect to any such proposed sale. In the event we acquire the consumer Roundup® business in such a sale, we would receive as a credit against the purchase price the amount of the termination fee that would have been paid to us if Monsanto had exercised its right to terminate the

Marketing Agreement in connection with a sale to another party. If Monsanto decides to sell the consumer Roundup® business to another party, we must let Monsanto know whether we intend to terminate the Marketing Agreement and forfeit any right to a termination fee or whether we will agree to continue to perform under the Marketing Agreement on behalf of the purchaser.

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Strategic Initiatives

Our strategic plan is focused on leveraging our key competitive advantages in a way that fuels growth, reduces costs, distances us from the competition and drives shareholder value. We are currently involved in several initiatives designed to meet this criteria:

Even in a difficult economy, we continue to expand upon our strategy of strengthening our relationship with the consumer. This will allow us to leverage the cornerstone of our business our brands and drive higher usage of our products. Our strategy is to raise household penetration of our products, as well as the frequency with which existing consumers use our products. We believe this can be accomplished by pursuing an advertising strategy that increasingly relies on regional radio advertising, as well as a national approach on television.

We also continue to execute a strategy focused on better understanding the needs and attitudes of our consumers. We have historically demonstrated the ability to use customer feedback to develop improved products and packaging that drives increased consumer demand.

In 2008, these strategies helped us succeed with new products such as Roundup® Pump 'N Go® in the United States, as well as a full line of natural and organic lawn and garden products in Europe. In 2009, insights gained from consumers will be critical as we navigate a challenging economic environment. Our research will help us more effectively communicate to consumers that our products cost more because they are worth more.

Our strategic plan is heavily focused on driving innovation, which we believe is necessary to achieve higher sales and profits. In recent years, new products have been critical to our success. Our strategy is focused on continuing to leverage what we consider an unmatched commitment to innovation. This takes into account three strategic imperatives: all new products must be simple, sustainable and significant.

Simple means that products must be easy for the consumer to buy, easy to use and easy to store. In addition, they should reduce the amount of time it takes to accomplish a task and should give the consumer improved results. Being sustainable means products must be designed with consumer safety and environmental impacts in mind. Significant products should have strong margin potential, generate possible cost savings, present a global opportunity and be proprietary whenever possible.

We believe this strategy will result in the successful launch of several new products in 2009, including Turf Builder® Water Smart™ Grass Seed and EZ Seed™ Grass Seed. The former includes a full line of premium grass seed products that provide consumers high-performance seed wrapped in a super-absorbent coating. The patented coating allows every seed to absorb up to 40% more water than ordinary seed. As a result, the seed needs to be watered less frequently, which enables consumers to more easily succeed in growing a healthy lawn. EZ Seed™ is a seed mix which includes premium grass seed, fertilizer and a proprietary growing material. Our proprietary technology absorbs water, expanding to surround the seed in a moist protective layer. The protective layer continues to care for the seed, infusing it with water and nutrients, so it builds strong roots that survive tough conditions.

Our strategic plan also continues to focus on further assisting our retail partners in order to improve their sales and the productivity of the lawn and garden department. We believe this strategy makes us a more critical component to their success and helps to ensure our continued growth.

In 2009, we will employ more merchandisers and expert product counselors and significantly increase the number of hours we spend in the stores of our major retail partners. We are rebalancing our sales force in a cost neutral way that allows us to spend more time helping our retailers and consumers and less time on administrative activities.

We believe this strategy will provide a more flexible cost structure that helps maximize the return on our investment and allows us to better meet the needs and timing of local markets. It also allows us to quickly deploy more labor in those regions where business is particularly strong and reduce spending in regions where sales may be lower than expected due to poor weather, economic concerns or other factors.

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Our strategy will continue to transform our U.S. supply chain into a more regional model. We believe this effort can result in cost savings of \$50 million annually and reduce inventories by more than \$100 million.

Today, the majority of our lawn fertilizer products in the United States are shipped from our plant in Marysville, Ohio to one of 11 warehouses across the country. From those warehouses, the fertilizer products are then shipped along with controls, plant food, grass seed and durable products directly to home center stores. These products are often shipped on less-than-full trucks, making their distribution less efficient than we would like.

Meanwhile, growing media products are shipped direct-to-store through a network of 26 manufacturing facilities. Because these shipments go shorter distances on full trucks, they are more efficient.

Our strategy for a future model which is being rolled out in the Southeastern United States in 2009 allows fertilizer products to be shipped into these growing media facilities, instead of to warehouses. From there, the fertilizer and growing media products are co-distributed directly to the stores. Once deployed across the entire country, nearly all fertilizer products for home center customers will be shipped through these growing media facilities, significantly improving our product distribution efficiency.

Within five years, it is anticipated that up to half of our third-party warehouse square footage could be eliminated. With fertilizer and growing media products shipping together to home center retailers, most of the remaining cased goods would be shipped from the warehouses to our retail partners distribution centers on fully-loaded trucks.

These strategic efforts not only present a significant economic benefit to the Company, but our retail partners will benefit as well, through more frequent store replenishment, improved inventory turns and reduced order lead times. As such, we believe our partners can maximize their retail point-of-sale opportunities without compromising the customer service rates they have come to expect.

Strengthening our Global Consumer Business Internationally

We continue to believe in the long-term growth potential of our Global Consumer business internationally. In order to maximize shareholder value in this business, we have sharpened our focus by: (i) reducing costs in the business to improve profitability and to allow for marketing investments; (ii) aligning the organization by category rather than by geography to better leverage our knowledge of the marketplace and the consumer; and (iii) better leveraging the Company's innovation competencies. We have implemented a global supply chain to provide our smaller, international market segments with the benefits of the larger Company, such as lower packaging costs and the ability to source products from any Company-owned plant globally. The first steps of the organizational realignment have taken place, and as part of a broader corporate initiative, they will continue to evolve in fiscal 2009 and beyond. Finally, we are combining global scale with locally tailored products to streamline our technology platform in the international Global Consumer business. As an example, when the Company introduced LiquaFeed® Plant Food to a variety of European countries in fiscal 2008, each label carried the same design and branding while the claims and instructions were displayed in the local language. At the same time, the European business doubled sales of natural products in fiscal 2008 by launching Naturen® sub-branded products as a locally driven effort.

Expanding Scotts LawnService®

The number of homeowners who want to maintain their lawns and gardens but do not want to do it themselves represents a significant portion of the total lawn and garden market. We recognize that our portfolio of well-known brands provides us with a unique ability to extend our business into lawn and garden services and that the strength of our brands provides us with a competitive advantage in acquiring new customers. We have spent the past several years developing our Scotts LawnService® business model and the business has grown significantly, from revenues of

\$41.2 million in fiscal 2001 to revenues of \$247.4 million in fiscal 2008. This growth has come from geographic expansion, acquisitions and organic growth fueled by our direct marketing programs. Although acquisition activity was negligible in fiscal 2008 and \$22.5 million in fiscal 2007, we anticipate continuing to make selective acquisitions in fiscal 2009 and beyond. We will also continue to invest in the Scotts LawnService®

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business infrastructure in order to continually improve customer service throughout the organization and leverage economies of scale as we continue to grow.

Seasonality and Backlog

Our business is highly seasonal, with 70% to 75% of our annual net sales occurring in our combined second and third fiscal quarters. Our annual sales are further concentrated in our second and third fiscal quarters by retailers who increasingly rely on our ability to deliver products in season when consumers buy our products, thereby reducing their inventories.

We anticipate significant orders for the upcoming spring season will start to be received late in the winter and continue through the spring season. Historically, substantially all orders are received and shipped within the same fiscal year with minimal carryover of open orders at the end of the fiscal year.

Raw Materials

We purchase raw materials for our products from various sources that we presently consider to be adequate to supply the needs of each of our segments and our business as a whole. We are subject to market risk from fluctuating prices of certain raw materials, including urea, resins, fuel, grass seed and wild bird food components. Our objectives surrounding the procurement of these materials are to ensure continuous supply and to minimize costs. We seek to achieve these objectives through negotiation of contracts with favorable terms directly with vendors. When appropriate, we will procure a certain percentage of our needs in advance of the season to secure pre-determined prices. We also hedge certain commodities to improve predictability and control costs.

Manufacturing and Distribution

We manufacture products for our Global Consumer business in North America at our facilities in Marysville, Ohio, Fort Madison, Iowa, Albany, Oregon and Temecula, California, as well as at a number of third-party contract packer facilities in the United States and Canada. In addition, the Company manufactures growing media products in 27 regional facilities located throughout North America. We also own five production facilities for our wild bird food operations in Indiana, South Dakota, South Carolina and Texas. The primary distribution centers for our Global Consumer business in North America are managed by the Company and strategically placed across the United States.

We manufacture the non-growing media products for our Global Consumer business internationally at our facilities in Howden, the United Kingdom and Bourth, France. We also utilize a number of third-party contract packers. The primary distribution centers for our Global Consumer business internationally are located in the United Kingdom, France and Germany and are managed by a logistics provider.

The growing media products for our international Global Consumer business are produced at our facilities in Hatfield and Sutton Bridge, both in the United Kingdom, and Hautmont, France, and at a number of third-party contract packer facilities. These growing media products are generally shipped direct without passing through a distribution center.

We also manufacture horticultural products for our Global Professional business at a leased fertilizer manufacturing facility in Charleston, South Carolina and a Company-owned site in Heerlen, the Netherlands. The remaining products for our Global Professional businesses are produced at other Company-owned facilities and subcontractors in the United States and Europe.

The majority of shipments to customers are made via common carriers or through distributors in the United States and through a network of public warehouses and distributors in Europe. We are subject to market risk from fluctuating

market prices of diesel fuel, which our common carriers pass on to the Company in the form of fuel surcharges. When appropriate, the Company will hedge a portion of these indirect fuel costs to improve predictability and control costs.

Employees

As of September 30, 2008, we employed 5,303 full-time employees in the United States and an additional 1,075 full-time employees located outside the United States. During peak sales and production periods, we utilize seasonal and temporary labor.

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None of our U.S.-based employees are members of a union. Approximately 35 of our full-time U.K.-based employees are members of the Transport and General Workers Union and have full collective bargaining rights. An undisclosed number of our full-time employees at our office in Ecully, France are members of the Confederation Francaise Democratique du Travail and Confederation Generale du Travail, participation in which is confidential under French law. In addition, a number of union and non-union full-time employees are members of works councils at three sites in Bourth, Hautmont and Ecully, France, and a number of non-union employees are members of works councils in Ingelheim, Germany. In the Waardenburg office and in the Heerlen Plant in the Netherlands, approximately 10 employees are members of a workers union, but we are not responsible for collective bargaining negotiations with this union. In the Netherlands, we are governed by the Works Councils Act with respect to the union. Works councils represent employees on labor and employment matters and manage social benefits.

We believe we have good relationships with our employees in the United States, and both unionized and non-unionized international employees.

Regulatory Considerations

Local, state, federal and foreign laws and regulations affect the sale of our products in several ways.

In the United States, all products containing pesticides must comply with the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended (FIFRA), and be registered with the U.S. Environmental Protection Agency (the U.S. EPA) (and similar state agencies) before they can be sold or distributed. The inability to obtain or maintain such compliance, or the cancellation of any such registration, could have an adverse effect on our business, the severity of which would depend on the products involved, whether another product could be substituted and whether our competitors were similarly affected. We attempt to anticipate regulatory developments and maintain registrations of, and access to, substitute active ingredients, but there can be no assurance that we will continue to be able to avoid or minimize these risks.

Fertilizer and growing media products are subject to state and foreign labeling regulations. Our manufacturing operations are subject to waste, water and air quality permitting and other regulatory requirements of federal and state agencies. The Company's wild bird food business is subject to regulation by the U.S. Food and Drug Administration and our grass seed products are regulated by the Federal Seed Act and various state regulations.

Pursuant to the Food Quality Protection Act, the U.S. EPA is evaluating the cumulative risks from dietary and non-dietary exposures to pesticides. The pesticides in our products are typically manufactured by independent third parties and as a result of the U.S. EPA's continuing risk assessment, a decision by the U.S. EPA or the third party registrant may restrict our access to the pesticides. We cannot predict the outcome or the severity of the effect of these continuing evaluations.

The use of certain pesticide and fertilizer products is regulated by various local, state, federal and foreign environmental and public health agencies. These regulations may include requirements that only certified or professional users apply the product or that certain products be used only on certain types of locations (such as not for use on sod farms or golf courses), may require users to post notices on properties to which products have been or will be applied, may require notification to individuals in the vicinity that products will be applied in the future or may ban the use of certain ingredients. We believe we are operating in substantial compliance with, or taking action aimed at ensuring compliance with, these laws and regulations.

State, federal and foreign authorities generally require growing media facilities to obtain permits (sometimes on an annual basis) in order to harvest peat and to discharge storm water run-off or water pumped from peat deposits. The permits typically specify the condition in which the property must be left after the peat is fully harvested, with the

residual use typically being natural wetland habitats combined with open water areas. We are generally required by these permits to limit our harvesting and to restore the property consistent with the intended residual use. In some locations, these facilities have been required to create water retention ponds to control the sediment content of discharged water.

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FIFRA Compliance, the Corresponding Governmental Investigation and Related Matters

In April 2008, the Company learned that a former associate apparently deliberately circumvented the Company's policies and U.S. EPA regulations under FIFRA by failing to obtain valid registrations for products and/or causing invalid product registration forms to be submitted to regulators. Since that time, we have been cooperating with the U.S. EPA in its civil investigation into pesticide product registration issues involving the Company and with the U.S. EPA and the U.S. Department of Justice (the U.S. DOJ) in a related criminal investigation. In late April of 2008, in connection with the U.S. EPA's investigation, the Company was required to conduct a consumer-level recall of certain consumer lawn and garden products and a Scotts LawnService® product. Subsequently, the Company and the U.S. EPA agreed upon a Compliance Review Plan for conducting a comprehensive, independent review of our product registration records. Pursuant to the Compliance Review Plan, an independent third-party firm, Quality Associates Incorporated (QAI), has been reviewing all of the Company's U.S. pesticide product registration records, some of which are historical in nature and no longer support sales of our products. The Company has identified approximately 132 of the registrations under review as relating to products for which there was sales activity in the period generally representing the Company's 2008 fiscal year (Active Registrations). These Active Registrations supported products which accounted for approximately \$680 million of the Company's net sales in the period. The U.S. EPA investigation and QAI review process identified several issues affecting Active Registrations which resulted in the issuance of a number of Stop Sale, Use or Removal Orders by the U.S. EPA and caused the Company to temporarily suspend sales and shipments of affected products. In addition, as the QAI review process or our internal review has identified a FIFRA registration issue or a potential FIFRA registration issue (some of which appear unrelated to the former associate), we have endeavored to stop selling or distributing the affected products until the issue could be resolved with the U.S. EPA.

To date, QAI has completed a review of the registration records for substantially all of the Company's Active Registrations. Based on such review, and with the cooperation and prompt attention of the U.S. EPA, the Company believes it has restored the ability to sell and distribute products representing over 90% of the sales associated with Active Registrations; and we are hopeful that we will be able to satisfactorily resolve most, if not all, of the remaining issues prior to the start of the 2009 lawn and garden season. The QAI review process is expected to continue with a focus on reviewing advertising and related promotional support of our registered pesticide products. For more information with respect to additional risks and uncertainties the Company may face in connection with the ongoing investigation and for a discussion of the related costs and expenses, see NOTE 2. PRODUCT REGISTRATION AND RECALL MATTERS to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

On September 26, 2008, the Company, doing business as Scotts LawnService®, was named as a defendant in a purported class action filed in the U.S. District Court for the Eastern District of Michigan relating to certain pesticide products. In the suit, Mark Baumkel, on behalf of himself and the purported classes, seeks an unspecified amount of damages, plus costs and attorney fees, for alleged claims involving breach of contract, unjust enrichment and violation of the Michigan consumer protection act. Given the preliminary stages of the proceedings, no reserves have been booked at this time, and the Company intends to vigorously contest the plaintiff's assertions.

In addition, in fiscal 2008 the Company conducted a voluntary recall of most of its wild bird food products due to a formulation issue. The wild bird food products had been treated with pest control additives to avoid insect infestation, especially at retail stores. While the pest control additives had been labeled for use on certain stored grains that can be processed for human and/or animal consumption, they were not labeled for use on wild bird food products. This voluntary recall was completed prior to the end of fiscal 2008.

Other Regulatory Matters

In 1997, the Ohio Environmental Protection Agency (the Ohio EPA) initiated an enforcement action against us with respect to alleged surface water violations and inadequate wastewater treatment capabilities at our Marysville, Ohio facility and sought corrective action under the Federal Resource Conservation and Recovery Act. The action related to discharges from on-site waste water treatment and several discontinued on-site disposal areas that date back to the early operations of the Marysville facility, which we had already been assessing and, in some cases, remediating, on a voluntary basis. We

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are remediating the Marysville site under the terms of a judicial consent order under the oversight of the Ohio EPA.

We completed negotiations with the Philadelphia District of the U.S. Army Corps of Engineers regarding the terms of site remediation and the resolution of the Corps' civil penalty demand in connection with our prior peat harvesting operations at our Lafayette, New Jersey facility. A final consent decree was entered into on October 18, 2004 that required us to perform five years of wetland monitoring, and the completion of additional actions if after five years, the monitoring indicates the wetlands have not developed satisfactorily.

At September 30, 2008, \$3.8 million was accrued for these non-FIFRA compliance-related environmental actions, the majority of which is for site remediation. Most of the costs accrued as of September 30, 2008 are expected to be paid in fiscal 2009; however, payments could be made for a period thereafter. During fiscal 2008, 2007 and 2006, we expensed approximately \$1.4 million, \$1.5 million, and \$2.4 million for non-FIFRA compliance-related environmental matters. There were no material capital expenditures during the last three fiscal years related to environmental or regulatory matters.

General Information

The Company maintains a website at <http://investor.scotts.com> (this uniform resource locator, or URL, is an inactive textual reference only and is not intended to incorporate our website into this Annual Report on Form 10-K). We file reports with the Securities and Exchange Commission (the SEC) and make available, free of charge, on or through our website, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, as well as our proxy and information statements, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

Financial Information About Geographic Areas

For certain information concerning our international revenues and long-lived assets, see NOTE 21. SEGMENT INFORMATION to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS