

BIOMET INC  
Form 10-Q/A  
June 04, 2007

---

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

---

**FORM 10-Q/A**

(Amendment No. 1)

---

(Mark One)

**Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended August 31, 2006

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: 0-12515

---

**BIOMET, INC.**

(Exact name of registrant as specified in its charter)

INDIANA  
(State or other jurisdiction of

incorporation or organization)

35-1418342  
(I.R.S. Employer I.D. No.)

56 East Bell Drive Warsaw, Indiana  
(Address of principal executive offices)

46582  
(Zip Code)

Edgar Filing: BIOMET INC - Form 10-Q/A

(574) 267-6639

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name, former address and former fiscal year, if changed since last report)

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

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

Large accelerated filer  Accelerated filer  Non-Accelerated filer

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

As of August 31, 2006, the registrant had 244,918,680 common shares outstanding.

---

### EXPLANATORY NOTE

As described in further detail below, Biomet, Inc. ( *Biomet* or the *Company* ) is amending its quarterly report on Form 10-Q for the fiscal period ended August 31, 2006 (the *Original Filing* ). The Company has also amended its annual report on Form 10-K for the fiscal year ended May 31, 2006 and expects to separately file its reports on Form 10-Q for the periods ended November 30, 2006 and February 28, 2007. The Company has not amended and does not intend to amend any of its previously filed annual reports on Form 10-K or quarterly reports on Form 10-Q for the periods affected by the restatement other than this amended quarterly report on Form 10-Q/A and the Company's annual report on Form 10-K for the fiscal year ended May 31, 2006. Accordingly, the Company's previously issued financial statements, earnings press releases and similar communications affected by the restatement and any related reports of its independent registered public accounting firm should not be relied upon.

The Company's decision to restate its financial results was based on the results of an independent investigation of the Company's stock option grants for the period from March 1996 through May 2006 by a special committee (the *Special Committee* ) formed by the Company's Board of Directors (the *Board* ) following the publication of an analyst report suggesting that certain historical stock option grants took place on dates where the Company's stock price was trading at relatively low prices and the filing of two shareholder derivative lawsuits alleging improper backdating of stock options. The Special Committee retained independent counsel to advise it in connection with and to conduct its investigation. Counsel to the Special Committee also hired independent accountants to assist in the investigation.

On December 18, 2006 and March 30, 2007, the Company announced preliminary reports from the Special Committee presented by counsel to the Special Committee and the independent accountants retained by counsel to the Special Committee. Based upon an analysis of these reports and relevant accounting literature, including Staff Accounting Bulletin No. 99 Materiality, the Company's Audit Committee determined on March 30, 2007 that the Company should amend its annual report on Form 10-K for the fiscal year ended May 31, 2006 and quarterly report on Form 10-Q for the period ended August 31, 2006 to reflect the restatement of the Company's consolidated financial statements (fiscal years ended May 31, 2006, 2005 and 2004 and periods ended August 31, 2006 and 2005) and related disclosures described therein. On May 25, 2007, the Board received and discussed the updated findings contained in the Special Committee's final report.

The Special Committee's review did not cover any periods subsequent to May 31, 2006. As a result, stock option awards granted during the Company's quarter ended August 31, 2006 were not examined by the Special Committee.

#### **The Special Committee's Findings**

The Special Committee's investigation was based upon the review of an extensive collection of physical and electronic documents, interviews of more than two dozen individuals, and analysis of approximately 17,000 grants to purchase approximately 17,000,000 Biomet common shares on over 500 different grant dates over the 11-year period from March 1996 through May 2006. The Special Committee made the following findings:

The Company's written stock option plans were treated by Company management, and the stock option committee, as formalities concerning the manner in which individual stock option grants were to be approved, resulting in a failure to abide by the terms of the plans;

The Company failed to receive appropriate legal or accounting advice from its former General Counsel and Chief Financial Officer related to its stock option program and, as a result, legal and accounting rules were not followed;

The Company failed to put in place and implement internal controls to manage its stock option program, including by failing to devote sufficient resources to the administration of its stock option program;

The Company failed to prepare and maintain appropriate books and records documenting the administration of its stock option program, specifically with regard to the approval of individual stock option grants;

Most stock options issued by Biomet were dated on dates other than the date of grant of those options, as that date was defined by the stock option plans;

The Company engaged in purposeful opportunistic dating (and, therefore, pricing) of stock options; and

As a result of all of the above, certain of the Company's proxy statements related to the grant of stock options, particularly to executive officers and non-employee directors, were not accurate.

The Special Committee also reported that members of senior management were aware of the practice of dating options on a date other than the date on which final action regarding the option occurred, and that certain members of senior management, namely the Company's Chief Financial Officer and General Counsel during the period, were or should have been aware of certain accounting and legal ramifications, respectively, of issuing an option with an exercise price lower than the fair market value on the date of issuance. The Special Committee also concluded that, based upon the information gathered and reviewed by the Special Committee, the misdating and mispricing of stock option awards was driven by a desire to make the options more valuable to the employees who received the awards and not to enrich those who managed the stock option program, though the Company's practice also did inure to the benefit of those who managed the stock option program.

In light of the Special Committee's findings relating to the Company's historical stock option practices over the 11-year period ending May 31, 2006, the Company performed a review of stock option awards granted during the three-months ended August 31, 2006. During the three-months ended August 31, 2006, the Company granted stock option awards to purchase 167,800 Biomet common shares, including stock option awards to purchase 4,500 Biomet common shares with exercise prices which did not equal the fair market value of the Company's common shares on the measurement date applicable to the award. The total intrinsic value of these mispriced awards to purchase 4,500 Biomet common shares was less than \$5,000 during the three-months ended August 31, 2006. There were no stock option awards made to Section 16 officers or to directors during the three-months ended August 31, 2006.

#### **The Special Committee's Recommended Remedial Measures**

In addition to its findings above, the Special Committee's report contains recommendations concerning the Company's processes relating to the granting, administration and accounting of stock options. On May 25, 2007, the Board received and discussed the remedial measures suggested by the Special Committee which included:

The procedures for stock option approval should be formalized in a manner consistent with the terms of the Company's underlying stock option plans and records of individual stock option awards should be maintained using commercially available software by experienced and qualified personnel;

The Board should commit to exercising additional oversight of Company management and conduct a thorough review of the Company's governance and internal control practices;

Certain personnel should be removed from the administration of the Company's stock option program and financial reporting function or provided additional oversight and training;

Certain individuals who were directors or executive officers of the Company at the time they received misdated or mispriced awards should disgorge any benefit derived from the exercise of such misdated or mispriced awards and increase the exercise price for those unexercised misdated or mispriced awards; and

## Edgar Filing: BIOMET INC - Form 10-Q/A

The Company should take steps to address the tax consequences to employees of the Company's historical stock option granting practices.

The Board of Directors continues to thoughtfully consider these recommendations and has either implemented or is in the process of implementing several of the Special Committee's recommendations. For example, in response to the Special Committee's preliminary report announced on March 30, 2007, all current members of the Board agreed that, with respect to misdated or mispriced stock option awards to the current directors on or after January 1, 1996 which had not yet been exercised, the exercise price of such unexercised stock option awards would be increased to the fair market value of the Company's common shares on the measurement date applicable to such award. Furthermore, the current members of the Board agreed that, with respect to misdated or mispriced stock option awards to the current directors on or after January 1, 1996 which had previously been exercised, such directors would at a future date remit to the Company an amount equal to the excess, if any, of the fair market value of the Company's common shares on the applicable measurement date, as described below for such award, over the exercise price of such award. Over the 11-year period of the investigation, the collective difference between the exercise price at which options awarded to non-employee directors should have been issued less the exercise price at which such options were improperly issued was less than \$1 million in the aggregate and did not exceed \$150,000 for any one director.

Furthermore, in light of the Special Committee's findings, on March 30, 2007, Gregory D. Hartman retired as Senior Vice President Finance, Chief Financial Officer and Treasurer, and Daniel P. Hann retired as Executive Vice President of Administration and a Director of the Company. In order to ensure a smooth transition of business operations and financial matters, Messrs. Hartman and Hann will serve as consultants to the Company pursuant to severance and consulting agreements with the Company dated as of March 30, 2007 (the *Retirement and Consulting Agreements*). Pursuant to the terms of these agreements Messrs. Hartman and Hann have agreed that, with respect to misdated or mispriced stock option awards granted to Messrs. Hartman or Hann which had vested but not yet been exercised, the exercise price of such unexercised stock option awards will be increased to the fair market value of the Company's common shares on the measurement date applicable to such award. Furthermore, Messrs. Hartman and Hann have agreed that, with respect to misdated or mispriced stock option awards which had previously been exercised, Messrs. Hartman and Hann would at a future date remit to the Company an amount equal to the excess, if any, of the fair market value of the Company's common shares on the measurement date for such award over the exercise price of such award. Over the 11-year period of the investigation, the collective difference between the exercise price at which options awarded to Section 16 officers should have been issued less the exercise price at which such options were improperly issued was less than \$3 million in the aggregate and did not exceed \$400,000 for any one Section 16 officer. Lastly, except for 75,000 options granted to Mr. Hann in March 2006, Messrs. Hartman and Hann have each agreed to immediately terminate and forfeit any unvested stock option awards and that no options will be accelerated as a result of their retirement. As a result Messrs. Hann and Hartman have agreed to immediately terminate and forfeit approximately 164,000 and 89,000 unvested stock option awards respectively. Additional details of Messrs. Hartman's and Hann's Retirement and Consulting agreements are provided in the Company's April 2, 2007 and April 23, 2007 current reports on Form 8-K. On February 26, 2007, the Company announced the appointment of Jeffrey R. Binder as President and Chief Executive Officer and a member of the Company's Board of Directors. On March 30, 2007, the Company announced the appointment of J. Pat Richardson as Vice President Finance and Interim Chief Financial Officer and Treasurer, and on May 14, 2007 the Company announced the appointment of Daniel P. Florin as Senior Vice President and Chief Financial Officer to become effective June 5, 2007.

In addition, the Company's current Chief Executive Officer and Interim Chief Financial Officer have met with the key personnel throughout the Company who have significant roles in the establishment and maintenance of internal controls over financial reporting and disclosure controls and procedures to emphasize the Company's commitment to enhancing the Company's internal controls over financial reporting and disclosure controls and procedures. The Company's Human Resources, Legal and Finance departments either have been or will, prior to the Company's resumption of the issuance of stock option awards, be provided additional training and education designed to ensure that relevant individuals involved in the administration of stock option grants understand the terms of the Company's equity-based award plans and the relevant accounting guidance for stock options and other share-based payments. In addition, the Company's Human Resources, Legal and Finance departments will develop, prior to the Company's resumption of the issuance of stock option awards, formal, documented stock

option grant procedures and practices to ensure systematic approval and execution of stock option grants and the proper recording of such grants in the Company's records and financial statements. Lastly, although the Company is not currently granting stock option awards and has not granted any stock option awards since December 2006, the Company has either implemented or is in the process of implementing additional changes to its internal controls over financial reporting noted in Part I. Item 9A. Controls and Procedures of the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006.

Finally, the Special Committee concluded that pursuit of the claims made in the Biomet derivative litigation related to stock option grants would not be in the best interests of the Company at this time. For a further description of the Special Committee's considerations in arriving at this conclusion see the Company's current report on Form 8-K filed with the Securities and Exchange Commission (the "SEC") on May 25, 2007.

The Company has advised the Midwest Regional Office of the SEC of the Special Committee's findings.

### **Accounting for Stock Option Awards and Resulting Restatement**

The accounting guidance for determining share-based compensation expense applicable to the Company's stock option awards (other than grants to non-employee distributors as discussed below) prior to June 1, 2006 was Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, or *APB No. 25*. APB No. 25 defines the measurement date of a stock option award as the first date on which are known both (1) the number of shares that an individual employee is entitled to receive and (2) the option or purchase price. Under APB No. 25 a measurement date is required to be selected for each stock option award and compensation expense must be recognized ratably over the vesting period of the option award for the excess, if any, of the quoted market price of the stock on the measurement date over the stated exercise price of the award. In many instances the Company selected option grant dates and corresponding option exercise prices with respect to awards accounted for under APB No. 25 that were before the date that both the number of shares that an individual was entitled to receive and the exercise price for the award had been finalized. The Company also deemed the stated grant date to be the measurement date resulting in no compensation expense for those options in the financial statements as previously reported. For purposes of establishing the measurement date for accounting purposes, the practice of using the stated grant date rather than the date that the number of shares that an individual is entitled to receive and exercise price were finalized resulted in incorrect measurement dates and financial statement errors. In connection with the restatement described in the Company's amended annual report on Form 10-K/A filed on May 29, 2007, the Company has selected alternative measurement dates for awards accounted for under APB No. 25 during the 11-year period under investigation to correct for these errors. See

Restated Net Income and Shareholders' Equity below for further discussion of the adjustments to net income described in this amended quarterly report on Form 10-Q/A for the period ended August 31, 2006.

On June 1, 2006, the Company adopted SFAS No. 123(R) Share-Based Payment (SFAS 123(R)). SFAS 123(R) requires stock options to be expensed based on their fair value over the required award service period. For stock options granted prior to June 1, 2006, the unrecognized expense related to the unvested portion of a stock option award at the date of adoption is to be recognized based on original grant date fair values for the award. Using the stated grant date to determine those fair values rather than the date that the option grants were finalized resulted in financial statement errors subsequent to May 31, 2006. In addition, in determining share-based expense during the three-months ended August 31, 2006 the Company did not estimate the percentage of forfeitures as required by SFAS 123(R) in the Original Filing. In connection with the restatement of the Company's financial statements described in this amended quarterly report on Form 10-Q/A, the Company has revised its fair value calculations and has estimated forfeitures to correct for these errors. See Restated Net Income and Shareholders' Equity below for further discussion of the adjustments to net income described in this amended quarterly report on Form 10-Q/A. For stock options granted subsequent to May 31, 2006 no adjustments were deemed necessary related to fair value calculations because any differences were deemed inconsequential.

The accounting guidance for determining share-based expense applicable to awards made to the Company's non-employee distributors is based on Emerging Issues Task Force 96-18, Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquisition, or in Conjunction with Selling, Goods or Services, or *EITF 96-18*. Under EITF 96-18, additional share-based expense is evaluated based on the fair value of the distributor award at the date of grant and then remeasured at each subsequent reporting period over the vesting period of the award. Prior to fiscal 2003, the Company did not record expense for stock options granted to non-employee distributors. In fiscal 2003 and subsequently, the Company began recording expense based on EITF 96-18. See Restated Net Income and Shareholders' Equity for further discussion of the adjustments to net income described in this amended quarterly report on Form 10-Q/A applicable to distributor awards as a result of the Company's recalculation of expense awards to non-employee distributors.

### Categories of Stock Option Awards

In connection with the Special Committee's investigation and the resulting restatement, the Company categorized its stock option awards based upon the recipient of the award and the process by which the award was finalized. For a description of these categories of awards and the Company's historical stock option granting practices applicable to each category, see the Explanatory Note immediately preceding Part I, Item 1 of the Company's amended annual report on Form 10-K/A filed on May 29, 2007.

### Payroll and Withholding Taxes, Penalties and Interest

The payroll and withholding tax treatment of a stock option granted to a U.S. employee or other service provider depends on whether the stock option qualifies as an Incentive Stock Option ( *ISO* ) or a Non-Qualified Stock Option ( *NQO* ). An ISO is a stock option that satisfies certain requirements set forth in Internal Revenue Code Section 422, including a requirement that the exercise price of the stock option may not be less than the fair market value of the underlying shares on the date of grant. An NQO is any stock option that does not satisfy the requirements to be treated as an ISO.

Upon exercise of an NQO, the Company is required, to the extent applicable, to (1) withhold the optionholder's share of social security, Medicare and other employment taxes (collectively referred to as *payroll taxes* ) and any federal, state or local income tax and (2) pay Biomet's share of payroll taxes. However, upon exercise of an ISO, the Company is not required to withhold any income taxes nor is the Company required to withhold or pay any payroll taxes.

The Company's stock options granted during the 11-year period were generally intended to qualify as ISOs and accordingly, except for federal withholding in certain instances with respect to same day sales, the Company did not withhold federal income taxes, state income taxes or the employee's share of social security, Medicare and other employment taxes upon exercise of these options, nor did the Company pay the employer's share of social security, Medicare and other employment taxes. However, as described above, approximately eighty percent of the Company's stock options granted during this 11-year period were subject to revised measurement dates. Any stock option that was granted with an exercise price less than the fair market value of the underlying shares on the revised measurement date would not have qualified as an ISO and should have been treated as an NQO for payroll and withholding tax purposes. In these cases, the Company has accrued payroll and withholding taxes, penalties and interest for stock options and included these amounts in the restated financial statements.

In preparing the restatement described in the Company's amended annual report on Form 10-K/A the Company has assumed a normal statute of limitations on the assessment of payroll and withholding taxes. Thus, the Company has reversed expense recorded in prior periods and as a result recognized a benefit in the period in which the statute of limitations for the respective options exercise expires in an aggregate amount of \$14.3 million. However, the statute of limitations may not apply in the case of a false or fraudulent return with the intent to evade tax or in the case of a willful attempt in any manner to defeat or evade any employment or



withholding tax. If the statute of limitations were determined not to have expired, the benefit which the Company has recognized could be deemed to be payable. The Company believes there was no intent to evade paying taxes. See Risk Factors Related to Stock Option Investigation in Item 1A of Part I of the Company's amended annual report on Form 10-K/A filed on May 29, 2007. During the three-months ended August 31, 2006 the Company did not reverse any expenses as a result of the expiration of the statute of limitations applicable to payroll and withholding taxes.

In most instances, ISOs which were exercised as a same-day sale were properly treated as a disqualifying disposition and the income was reported on the individuals' Form W-2. In these situations, the Company accrued payroll taxes, penalties and interest but did not accrue federal or state income taxes as the income from the disqualifying disposition of stock options was included on the employee's Form W-2 and applicable state and federal income taxes were paid by the employee. For certain ISOs which subsequently converted to a NQO stock option, the Company accrued federal and state income taxes, payroll taxes, penalties and interest at the applicable rates, if the income was not reported on the individuals' Form W-2.

The combination of taxes, penalties and interest resulted in a net compensation charge of \$0.3 million and \$0.4 million, respectively, for the three-months ended August 31, 2006 and August 31, 2005.

The Company believes that the unpaid employee portion of taxes represents a joint and several obligation of both the Company and its employees. However, the change of status of employee option awards from an ISO to NQO was a result of flaws in the Company's stock option granting practices as discussed above. The Company believes that the employees would likely have a valid claim against it in the event the Company attempted to recover a portion of the additional taxes, penalties and interest from its employees. Accordingly, the Company believes it is appropriate to accrue both the employee and the employer portions of these taxes. In addition, the Company believes such additional taxes, penalties and interest should be recorded in the respective years in which the underlying in-the-money options were exercised.

#### **Additional Share-Based Compensation Expense, Distributor Stock Options Expense and Payroll and Withholdings Taxes**

Management has concluded that incorrect measurement dates were used for financial accounting purposes for approximately eighty percent of the stock option awards granted during the 11-year period under investigation by the Special Committee. The effect of recognizing additional share-based compensation expense, distributor stock options expense and payroll and withholding taxes is discussed further below and in the Company's amended annual report on Form 10-K/A filed on May 29, 2007.

#### **Compensation Expense and Sensitivity Analysis**

In connection with the Special Committee's investigation the Company performed a sensitivity analysis using various alternative measurement dates for the stock option awards under investigation. For a description of this analysis see the Explanatory Note immediately preceding Part I, Item 1 of the Company's amended annual report on Form 10-K/A filed on May 29, 2007.

**Restated Net Income and Shareholders' Equity**

The following table shows, for the three-months ended August 31, 2006 and 2005, net income as previously reported by the Company, the adjustments to net income described in this amended quarterly report on Form 10-Q/A and net income as restated by the Company. Amounts for the three-months ended August 31, 2005 were previously reported in the Company's amended annual report on Form 10-K/A. The increase (decrease) in net income for each type of adjustment is as follows (in thousands):

| Three-Months Ended August 31, | Net Income as Previously Reported | Additional Share-Based Compensation Expense (Pre-Tax)(1) | Additional Distributor Stock Options Expense (Pre-Tax)(2) | Additional Payroll and Withholding Taxes (Pre-Tax) | Total Additional Expense (Pre-Tax) | Income Tax Benefit(3) | Total Adjustments | Net Income as Restated |
|-------------------------------|-----------------------------------|--|---|--|------------------------------------|-----------------------|-------------------|------------------------|
| 2006                          | \$ 102,830                        | \$ 790   | \$ 185  | \$ (313)   | \$ 662                             | \$ 888                | \$ 1,550          | \$ 104,380             |
| 2005                          | 100,299                           | (610)  | 116   | (442)  | (936)                              | 322                   | (614)             | 99,685                 |

- (1) Share-based compensation expense for the three-months ended August 31, 2006 is based upon SFAS 123(R). Share-based compensation expense for the three-months ended August 31, 2005 is based upon APB No. 25. For the three-months ended August 31, 2006, the Company recorded a benefit of \$.8 million due to an understatement of forfeitures in the Original Filing.
- (2) Distributor stock options expense or benefit is based upon EITF 96-18. The Company is recording a benefit for the three-months ended August 31, 2006 and 2005 due to an overstatement in the computation of expense in the Original Filing.
- (3) The Company is recording a tax benefit in the three-months ended August 31, 2006 due largely to the recharacterization of ISO's to NQO's. The effect of these adjustments on diluted earnings per share during the same period is as follows:

| Three-Months Ended August 31, | Diluted Earnings Per Share as Previously Reported | Adjustments | Diluted Earnings Per Share as Restated |
|-------------------------------|---|-------------|--|
| 2006                          | \$ 0.42   | \$ 0.01     | \$ 0.43                                |
| 2005                          | 0.40  |             | 0.40                                   |

The cumulative effect on shareholders' equity resulting from the adjustments discussed above impacted shareholders' equity as of May 31, 2006 and August 31, 2006 as follows (in thousands):

|  | May 31, 2006 | August 31, 2006 |
|--|--------------|-----------------|
| Increase (decrease) in retained earnings:                              |              |                 |
| Total additional expense related to stock option grants                | \$ (59,626)  | \$ (58,964)     |
| Related income tax benefit   | 19,632       | 20,520          |
| Net reduction in retained earnings                                     | (39,994)     | (38,444)        |
| Increase (decrease) in paid-in capital:                                |              |                 |
| Non-cash share-based expense related to stock option awards            | 38,220       | 37,245          |
| Increase related to tax benefit of option exercises                    | 21,122       | 21,526          |
| Decrease related to tax effects previously credited to paid-in capital | (15,653)     | (15,679)        |
| Net increase in paid-in capital  | 43,689       | 43,092          |
| Net effect on shareholders' equity                                     | \$ 3,965     | \$ 4,648        |

---

## NASDAQ Delisting Proceedings

The Company's common shares are currently traded on the NASDAQ Global Select Market under the symbol BMET. On January 9, 2007, the Company filed a Form 12b-25 with the SEC stating that it did not anticipate filing its quarterly report on Form 10-Q for the second quarter of fiscal year 2007 on or before the fifth calendar day following the prescribed due date. On January 11, 2007, the Company received a Staff Determination letter from The Nasdaq Stock Market indicating that the Company is not in compliance with the filing requirements for continued listing under Marketplace Rule 4310(c)(14). The letter was issued in accordance with NASDAQ procedures due to the Company's inability to file its quarterly report on Form 10-Q for the second quarter of fiscal year 2007 by the prescribed due date.

A hearing was held on March 1, 2007, at which the Company requested an exception within which to regain compliance with the NASDAQ's filing requirements. On April 11, 2007, a NASDAQ Listing Qualifications Panel (the *Panel*) granted the Company's request for an exception and continued listing on the NASDAQ Global Select Market, notwithstanding the Company's inability to timely file its quarterly report on Form 10-Q for the second quarter of fiscal 2007. On May 22, 2007, the Company requested an extension of the May 29, 2007 deadline until June 12, 2007.

On April 12, 2007, the Company announced that it received an additional notice of non-compliance from The Nasdaq Stock Market, pursuant to Marketplace Rule 4310(c)(14), due to the previously announced delay in filing its quarterly report on Form 10-Q for the third quarter of fiscal 2007. In the letter, the Company was invited to make an additional submission to the Panel addressing its plans for making the third quarter filing. On April 19, 2007, the Company requested an exception until June 12, 2007 to file its quarterly report on Form 10-Q for the third quarter of fiscal 2007.

On May 29, 2007, the Panel made a determination with respect to ruled on the Company's April 19, 2007 and May 22, 2007 requests. In its May 29, 2007 determination, the Panel granted the Company's request to extend the time to file the Company's reports on Form 10-Q for the second and third quarters of fiscal 2007, and to complete all required restatements, to on or before July 11, 2007. The Panel added that notwithstanding this extension it expects the Company to comply with the terms of the exception by the June 12, 2007 date referenced in the Company's April 19, 2007 and May 22, 2007 requests. In the event the Company does not fully comply with the terms of the Panel's exception, the Panel will issue a final determination to delist the Company's securities and, absent a stay by the Nasdaq Listing and Hearings Review Council, will suspend trading of the Company's shares on The Nasdaq Stock Market effective on the second business day from the date of final determination. In addition, the Panel reserved the right to consider the terms of its exception based on any event, condition or circumstance that would, in the Panel's opinion, make continued listing of the Company's securities on The Nasdaq Stock Market inadvisable or unwarranted.

## Amended Disclosures Presented in this Amended Quarterly Report on Form 10-Q/A

For the convenience of the reader, this amended quarterly report on Form 10-Q/A restates the Original Filing in its entirety. However, the Company has only updated disclosures presented in the Original Filing as required to reflect the restatement described above. Accordingly, except for the legal proceedings set forth in Note 9 (Subsequent Events) to the consolidated financial statements of this amended quarterly report on Form 10-Q/A, all information in this amended quarterly report on Form 10-Q/A is as of October 10, 2006 the date of the Company's Original Filing or an earlier date as may be noted herein, and does not modify or update disclosures affected by subsequent events. Among other things, forward-looking statements made in the Original Filing have not been revised to reflect events, results or developments that occurred or facts that became known to the Company after the date of the Original Filing (other than for the restatement described above), and such forward-looking statements should be read in conjunction with the Company's filings with the SEC subsequent to the date of the Original Filing. The Company has amended the following items in the Original Filing:

Part I Item 1 Financial Statements

Part I Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations

Part I Item 4 Controls and Procedures

Part II Item 1 Legal Proceedings

Part II Item 4 Submission of Matters to a Vote of Security Holders

Accordingly, this amended quarterly report on Form 10-Q/A should be read in conjunction with the Company's filings with the SEC subsequent to the date of the Original Filing, such as the Company's current reports on Form 8-K and the Company's definitive proxy statement on Schedule 14A filed with the SEC on April 24, 2007, and any amendments to these filings. In accordance with applicable SEC rules, this amended quarterly report on Form 10-Q/A includes updated certifications from the Company's Chief Executive Officer and Interim Chief Financial Officer as Exhibits 31.1, 31.2 and 32.1.

**Amended Annual Report on Form 10-K/A**

On May 29, 2007 the Company filed with the SEC an amended annual report on Form 10-K/A for its fiscal year ended May 31, 2006 which contains additional information concerning the Special Committee's investigation and the impact of the Special Committee's findings on certain of the Company's historical financial statements. For further information concerning the Special Committee's investigation and the impact of the Special Committee's findings on certain of the Company's historical financial statements see the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006 filed with the SEC on May 29, 2007.

---

**FORWARD-LOOKING STATEMENTS**

*This amended report contains forward-looking statements within the meaning of federal securities laws. Those statements are often indicated by the use of words such as will, intend, anticipate, estimate, expect, plan and similar expressions, and include, but are not limited to, statements related to the timing and number of planned new product introductions; the effect of anticipated changes in the size, health and activities of population on demand for the Company's products; assumptions and estimates regarding the size and growth of certain market segments; the Company's ability and intent to expand in key international markets; the timing and anticipated outcome of clinical studies; assumptions concerning anticipated product developments and emerging technologies; the future availability of raw materials; the anticipated adequacy of the Company's capital resources to meet the needs of its business; the Company's continued investment in new products and technologies; the ultimate marketability of products currently being developed; the ability to successfully implement new technologies; future declarations of cash dividends; the Company's ability to sustain sales and earnings growth; the Company's goals for sales and earnings growth; the future value of the Company's common stock; the ultimate effect of the Company's share repurchase programs; the Company's success in achieving timely approval or clearance of its products with domestic and foreign regulatory entities; the stability of certain foreign economic markets; the impact of anticipated changes in the musculoskeletal industry and the ability of the Company to react to and capitalize on those changes; the ability of the Company to successfully implement its desired organizational changes; the impact of the Company's managerial changes; the results and related outcomes of the review by the Special Committee, including: the impact of the restatement of the Company's financial statements or other actions that may be taken or required as a result of the Special Committee's review including the restatement of Biomet's financial statements announced on March 30, 2007; the impact of the inability of the Company to timely file reports with the SEC and distribute such reports or statements to its shareholders; the impact of any tax consequences, including any determination that Biomet's filed tax returns were not true, correct and complete; the impact of any determination that some of the Company's options may not have been validly issued under the stock option plans; the impact of the determination that certain of Biomet's financial statements were not prepared in accordance with GAAP and/or applicable securities rules and regulations; developments related to the Company's internal controls over financial reporting and disclosure controls and procedures; and the impact of any determination that some of Biomet's insurance policies may not be in full force and effect and/or that Biomet may not be in compliance with the terms and conditions of the policies; litigation and governmental investigations or proceedings which may arise out of Biomet's stock option granting practices and restatement of its financial statements; and the inability to meet NASDAQ requirements for continued listing. Readers of this amended report are cautioned that reliance on any forward-looking statement involves risks and uncertainties. Forward-looking statements reflect the Company's expectations, estimates, projections and assumptions as of October 10, 2006 the date of the Company's Original Filing with the SEC or an earlier date as may be noted herein, and such forward-looking statements should be read in conjunction with the Company's filings with the SEC subsequent to the Original Filing. Any of the assumptions on which forward-looking statements were made could be inaccurate given the inherent uncertainties on which these forward-looking statements were made. There can be no assurance as to the accuracy of forward-looking statements contained in this amended report. The inclusion of a forward-looking statement herein should not be regarded as a representation by the Company that the Company's objectives will be achieved. Readers of this amended report should carefully read the Company's filings with the SEC subsequent to the date of the Original Filing and the factors set forth under Part II, Item 1A Risk Factors of the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006 filed with the SEC on May 29, 2007. Such factors, among others, may have a material adverse effect upon the Company's business, financial condition and results of operations. The Company undertakes no obligation to update publicly or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Accordingly, the reader is cautioned not to place undue reliance on forward-looking statements.*

|  | <b>Page</b> |
|--|-------------|
| Part I. Financial Information  |             |
| Item 1. Financial Statements:  |             |
| <u>Consolidated Balance Sheets</u>   | 1           |
| <u>Consolidated Statements of Income</u>   | 2           |
| <u>Consolidated Statements of Cash Flows</u>   | 3           |
| <u>Notes to Consolidated Financial Statements</u>  | 4-15        |
| Item 2. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u> | 16-17       |
| Item 3. <u>Quantitative and Qualitative Disclosure about Market Risks</u>                            | 17          |
| Item 4. <u>Controls and Procedures</u>   | 17-18       |
| Part II. Other Information   |             |
| Item 1. <u>Legal Proceedings</u>   | 19          |
| Item 1A. <u>Risk Factors</u>   | 19          |
| Item 2. <u>Unregistered Sale of Equity Securities and Use of Proceeds</u>                            | 19          |
| Item 4. <u>Submission of Matters to a Vote of Security Holders</u>                                   | 19-20       |
| Item 6. <u>Exhibits</u>  | 20          |
| <u>Signatures</u>  | 21          |
| <u>Index to Exhibits</u>   | 22          |

---

**Part I. Financial Information**
**Item 1. Financial Statements**

**BIOMET, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
at August 31, 2006 and May 31, 2006  
(in thousands)

|  | August 31, 2006<br>As Restated(1) | May 31, 2006<br>As Restated(1) |
|--|-----------------------------------|--------------------------------|
|  | (Unaudited)                       |                                |
| <b>ASSETS</b>                              |                                   |                                |
| Current assets:                            |                                   |                                |
| Cash and cash equivalents                  | \$ 190,502                        | \$ 160,963                     |
| Investments                                | 6,386                             | 6,380                          |
| Accounts and notes receivable, net         | 493,639                           | 507,883                        |
| Inventories                                | 559,985                           | 534,515                        |
| Refundable income taxes                    |                                   | 16,880                         |
| Deferred income taxes                      | 76,210                            | 75,190                         |
| Prepaid expenses and other                 | 36,715                            | 32,342                         |
| Total current assets                       | 1,363,437                         | 1,334,153                      |
| Property, plant and equipment, at cost     | 682,260                           | 655,432                        |
| Less, Accumulated depreciation             | 318,710                           | 297,800                        |
| Property, plant and equipment, net         | 363,550                           | 357,632                        |
| Investments                                | 60,688                            | 58,128                         |
| Goodwill                                   | 442,118                           | 441,397                        |
| Intangible assets, net                     | 77,485                            | 79,498                         |
| Other assets                               | 16,107                            | 11,839                         |
| Total assets                               | \$ 2,323,385                      | \$ 2,282,647                   |
| <b>LIABILITIES AND SHAREHOLDERS EQUITY</b> |                                   |                                |
| Current liabilities:                       |                                   |                                |
| Short-term borrowings                      | \$ 272,894                        | \$ 276,561                     |
| Accounts payable                           | 57,165                            | 62,276                         |
| Accrued income taxes                       | 13,831                            |                                |
| Accrued wages and commissions              | 80,367                            | 84,665                         |
| Other accrued expenses                     | 113,856                           | 111,960                        |
| Total current liabilities                  | 538,113                           | 535,462                        |
| Long-term liabilities:                     |                                   |                                |
| Deferred income taxes                      | 27,450                            | 26,991                         |
| Total liabilities                          | 565,563                           | 562,453                        |

Edgar Filing: BIOMET INC - Form 10-Q/A

Contingencies (Note 8)

|  |              |              |
|--|--------------|--------------|
| Shareholders' equity:                      |              |              |
| Common shares                              | 209,740      | 206,633      |
| Additional paid-in capital                 | 116,222      | 116,528      |
| Retained earnings                          | 1,407,110    | 1,379,303    |
| Accumulated other comprehensive income     | 24,750       | 17,730       |
| Total shareholders' equity                 | 1,757,822    | 1,720,194    |
| Total liabilities and shareholders' equity | \$ 2,323,385 | \$ 2,282,647 |

(1) See Note 2, (Restatement of Consolidated Financial Statements) in the notes to the consolidated financial statements.  
The accompanying notes are a part of the consolidated financial statements.



**BIOMET, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF INCOME****for the three-months ended August 31, 2006 and 2005****(Unaudited, in thousands, except per share data)**

|   | <b>2006</b>           | <b>2005</b>           |
|---|-----------------------|-----------------------|
|   | <b>As Restated(1)</b> | <b>As Restated(1)</b> |
| Net Sales   | \$ 508,161            | \$ 484,903            |
| Cost of sales   | 138,703               | 134,581               |
| Gross profit  | 369,458               | 350,322               |
| Selling, general and administrative expenses          | 189,466               | 178,763               |
| Research and development expense                      | 24,273                | 20,988                |
| Operating income                                      | 155,719               | 150,571               |
| Other income, net                                     | 1,099                 | 461                   |
| Income before income taxes                            | 156,818               | 151,032               |
| Provision for income taxes                            | 52,438                | 51,347                |
| Net income  | \$ 104,380            | \$ 99,685             |
| Earnings per share:                                   |                       |                       |
| Basic   | \$ .43                | \$ .40                |
| Diluted   | \$ .43                | \$ .40                |
| Shares used in the computation of earnings per share: |                       |                       |
| Basic   | 244,881               | 249,582               |
| Diluted   | 244,881               | 250,656               |
| Cash dividends per common share                       | \$ .30                | \$ .25                |

(1) See Note 2, (Restatement of Consolidated Financial Statements) in the notes to the consolidated financial statements.

The accompanying notes are a part of the consolidated financial statements.

**BIOMET, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

**for the three-months ended August 31, 2006 and 2005**

**(Unaudited, in thousands)**

|  | 2006<br>As Restated(1) | 2005<br>As Restated(1) |
|--|------------------------|------------------------|
| Cash flows from (used in) operating activities:                            |                        |                        |
| Net income   | \$ 104,380             | \$ 99,685              |
| Adjustments to reconcile net income to net cash from operating activities: |                        |                        |
| Depreciation   | 20,311                 | 15,277                 |
| Amortization   | 2,237                  | 2,236                  |
| Share-based expense  | 3,415                  | 494                    |
| Gain on sale of investments, net   | (375)                  | (47)                   |
| Deferred income taxes  | (1,617)                | (1,354)                |
| Tax benefit from exercise of stock options                                 | (404)                  | 156                    |
| Changes in current assets and liabilities:                                 |                        |                        |
| Accounts and notes receivable, net   | 13,995                 | 15,276                 |
| Inventories  | (20,593)               | (15,201)               |
| Prepaid expenses   | (3,613)                | (4,547)                |
| Accounts payable   | (3,830)                | 3,034                  |
| Accrued income taxes   | 36,922                 | 23,085                 |
| Other  | (14,086)               | (6,264)                |
| <b>Net cash provided by operating activities</b>                           | <b>136,742</b>         | <b>131,830</b>         |
| Cash flows from (used in) investing activities:                            |                        |                        |
| Proceeds from sales and maturities of investments                          | 2,627                  | 11,854                 |
| Purchases of investments   | (3,718)                | (8,454)                |
| Capital expenditures   | (24,170)               | (25,984)               |
| Other  | (2,445)                | 247                    |
| <b>Net cash used in investing activities</b>                               | <b>(27,706)</b>        | <b>(22,337)</b>        |
| Cash flows from (used in) financing activities:                            |                        |                        |
| Increase (decrease) in short-term borrowings, net                          | (1,605)                | 6,823                  |
| Issuance of common shares  | 3,284                  | 2,798                  |
| Cash dividends   | (73,526)               | (62,473)               |
| Purchase of common shares  | (7,268)                | (35,447)               |
| Tax benefit from exercise of stock options                                 | 404                    |                        |
| <b>Net cash used in financing activities</b>                               | <b>(78,711)</b>        | <b>(88,299)</b>        |
| <b>Effect of exchange rate changes on cash</b>                             | <b>(786)</b>           | <b>(1,507)</b>         |
| Increase in cash and cash equivalents                                      | 29,539                 | 19,687                 |
| Cash and cash equivalents, beginning of year                               | 160,963                | 104,706                |
| <b>Cash and cash equivalents, end of period</b>                            | <b>\$ 190,502</b>      | <b>\$ 124,393</b>      |

Edgar Filing: BIOMET INC - Form 10-Q/A

- (1) See Note 2, (Restatement of Consolidated Financial Statements) in the notes to the consolidated financial statements.  
The accompanying notes are a part of the consolidated financial statements.

**BIOMET, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****Note 1: Basis of Presentation.**

The accompanying consolidated financial statements include the accounts of Biomet, Inc. and its subsidiaries (individually and collectively referred to as "Biomet" or the "Company"). The unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and notes required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included.

Operating results for the three-month period ended August 31, 2006 are not necessarily indicative of the results that may be expected for the fiscal year ending May 31, 2007. For further information, refer to the consolidated financial statements and notes thereto included in the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006.

The accompanying consolidated balance sheet at May 31, 2006, has been derived from the audited consolidated financial statements at that date, but does not include all disclosures required by accounting principles generally accepted in the United States.

The Company operates in one business segment, musculoskeletal products, which includes the designing, manufacturing and marketing of reconstructive products, fixation devices, spinal products and other products. Other products consist primarily of softgoods and bracing products produced by EBI L.P., now operating as Biomet Trauma & Biomet Spine ("BTBS"), Biomet sports medicine's arthroscopy products, general instruments and operating room supplies. The Company manages its business segment primarily on a geographic basis. These geographic markets are comprised of the United States, Europe and the Rest of World. Major markets included in the Rest of World geographic market are Canada, South America, Mexico, Japan and the Pacific Rim.

Net sales of musculoskeletal products by product category and geographic segment are as follows for the three-months ended August 31, 2006 and 2005:

|                         | <b>Three-Months Ended</b> |                   |
|-------------------------|---------------------------|-------------------|
|                         | <b>August 31,</b>         |                   |
|                         | <b>2006</b>               | <b>2005</b>       |
|                         | <b>(in thousands)</b>     |                   |
| Reconstructive Products | \$ 351,737                | \$ 323,815        |
| Fixation Devices        | 60,873                    | 64,179            |
| Spinal Products         | 51,933                    | 55,326            |
| Other Products          | 43,618                    | 41,583            |
| <b>Total</b>            | <b>\$ 508,161</b>         | <b>\$ 484,903</b> |

|  | <b>Three-Months Ended</b> |                   |
|--|---------------------------|-------------------|
|  | <b>August 31,</b>         |                   |
|  | <b>2006</b>               | <b>2005</b>       |
|  | <b>(in thousands)</b>     |                   |
| <b>Net Sales to Customers by Geographic Segment:</b> |                           |                   |
| United States  | \$ 325,947                | \$ 317,326        |
| Europe   | 134,425                   | 123,758           |
| Rest of World  | 47,789                    | 43,819            |
| <b>Total</b>   | <b>\$ 508,161</b>         | <b>\$ 484,903</b> |



## BIOMET, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

|   | Three-Months Ended<br>August 31, |                       |
|---|----------------------------------|-----------------------|
|   | 2006<br>(As Restated)            | 2005<br>(As Restated) |
|   | (in thousands)                   |                       |
| Operating Income by Geographic Segment: |                                  |                       |
| United States                           | \$ 132,825                       | \$ 128,448            |
| Europe                                  | 17,023                           | 21,002                |
| Rest of World                           | 5,871                            | 1,121                 |
| <b>Total</b>                            | <b>\$ 155,719</b>                | <b>\$ 150,571</b>     |

The Company adopted SFAS No. 123(R), Share-Based Payment, ( SFAS 123R ) on June 1, 2006 using the modified prospective method. SFAS 123R requires all share-based payments to employees, including stock options, to be expensed based on their fair value over the required award service period. The Company uses the straight-line method to recognize compensation expense related to share-based payments. In the prior year, the Company followed Accounting Principles Board No. 25, Accounting for Stock Issued to Employees, in accounting for its stock option awards to employees which required recording share-based compensation expense for awards that were issued at strike prices less than fair value at date of grant. See Note 2, (Restatement of Consolidated Financial Statements) in the notes to the financial statements for a further discussion. For the Company's non-employee distributors, share-based expense will continue to be recorded in accordance with Emerging Issues Task Force No. 96-18, Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquisition, or in Conjunction with Selling, Goods or Services.

Under the modified prospective method, the provisions of SFAS 123R apply to all share-based compensation payments granted or modified on or after the Company's date of adoption of SFAS 123(R), June 1, 2006. Prior period results are not restated under the modified prospective method. For share-based compensation awards granted prior to the date of adoption, the unrecognized expense related to the unvested portion at the date of adoption will be recognized in net income under the grant date fair value provisions under SFAS 123. The Company uses the Black-Scholes option-pricing model to determine the fair value of employee stock options. Total compensation expense, as restated, recognized in the current period was \$3,434,000 offset by \$1,084,000 of tax benefit, which is \$0.01 per share. The amount of pre-tax compensation cost, as restated, related to nonvested stock options not yet recognized was \$89.0 million at August 31, 2006, which is expected to be amortized through 2012.

If compensation expense for the Company's employee stock options had been determined based on the fair value method of accounting, pro forma net income and earnings per share for the three-months ended August 31, 2005 would have been as follows:

|  | As Reported      | Adjustments     | As Restated      |
|--|------------------|-----------------|------------------|
| Net Income as reported (in thousands)  | \$ 100,299       | \$ (614)        | \$ 99,685        |
| Total share-based compensation expense included in the determination of net income (in thousands)  |                  | 398             | 398              |
| Deduct: Total share-based employee compensation expense determined under the fair value method for all awards, net of related tax effects (in thousands) | (2,149)          | (254)           | (2,403)          |
| <b>Pro forma net income (in thousands)</b>   | <b>\$ 98,150</b> | <b>\$ (470)</b> | <b>\$ 97,680</b> |
| Earnings per share:  |                  |                 |                  |
| Basic, as reported   | \$ 0.40          | \$              | \$ 0.40          |
| Basic, pro forma   | \$ 0.39          | \$              | \$ 0.39          |
| Diluted, as reported   | \$ 0.40          | \$              | \$ 0.40          |
| Diluted, pro forma   | \$ 0.39          | \$              | \$ 0.39          |



## BIOMET, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company uses the Black-Scholes option-pricing model to determine the fair value of options. For stock options granted during the three-month period ended August 31, 2006, expected volatility was derived based on historical volatility of the Company's common stock. The expected term of the stock option was derived from historical employee exercise behavior. The risk-free interest rate is determined using the implied yield currently available for zero-coupon U.S. Government issues with a remaining term equal to the expected life of the options. A dividend yield is derived based on the historical dividend yield of the Company's common stock.

The restated weighted-average fair value of the options granted in the three-month periods ended August 31, 2006 and 2005 were \$11.55 and \$14.06 per option, respectively, determined using the following assumptions: (1) expected life of option of 5.22 and 5.45 years; (2) dividend yield of 0.90% and 0.72%; (3) expected volatility of 32% and 33%; and (4) risk-free interest rate of 4.46% and 5.21%, respectively. The total intrinsic value of stock options exercised during the three-month periods ended August 31, 2006 and 2005 were \$1.8 million and \$3.0 million, respectively. The following table summarizes stock option activity for the three-month period ended August 31, 2006:

|                              | Stock<br>Options | Weighted<br>Average<br>Exercise Price |
|------------------------------|------------------|---------------------------------------|
| Outstanding, June 1, 2006    | 9,162,956        | \$ 33.84                              |
| Granted                      | 167,800          | 33.97                                 |
| Exercised                    | (159,095)        | 23.50                                 |
| Terminated                   | (247,409)        | 33.57                                 |
| Outstanding, August 31, 2006 | 8,924,252        | \$ 33.99                              |

The following table summarizes information about the outstanding stock options as of August 31, 2006, that are vested and those that are expected to vest, and that are currently exercisable:

|   | Outstanding Stock<br>Options<br>Already Vested and<br>Expected to Vest | Options<br>that are<br>Exercisable |
|---|--|------------------------------------|
| Number of outstanding options               | 7,358,046  | 1,882,127                          |
| Weighted average remaining contractual life | 7.2 years  | 1 year                             |
| Weighted average exercise price per share   | \$ 33.99   | \$ 33.10                           |
| Intrinsic Value                             | \$ 16,416,000  | \$ 4,199,000                       |

**Note 2: Restatement of Consolidated Financial Statements.**

In accordance with FASB Statement No. 154, Accounting Changes and Error Corrections, the consolidated statements of income and cash flows for the three-months ended August 31, 2006 and 2005 and the consolidated balance sheets at August 31, 2006 and May 31, 2006 have been restated for certain errors related to the measurement of share-based compensation expense, distributor option expense and related payroll and withholding taxes, penalties and interest. In addition to this Note 2 (Restatement of Consolidated Financial Statements), Notes 1 (Basis of Presentation), 3 (Comprehensive Income), 8 (Contingencies) and 9 (Subsequent Events) have been revised as a result of the restatement. The restatement amounts as of May 31, 2006 and the three months ended August 31, 2005 were previously reported in the Company's amended annual report on Form 10-K/A filed May 29, 2007.





---

**BIOMET, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The Company's decision to restate its financial results was based on the results of an independent investigation of the Company's stock option grants for the period from March 1996 through May 2006 by a special committee (the *Special Committee*) formed by the Company's Board of Directors (the *Board*) following the publication of an analyst report suggesting that certain historical stock option grants took place on dates where the Company's stock price was trading at relatively low prices and the filing of two shareholder derivative lawsuits alleging improper backdating of stock options. The Special Committee retained independent counsel to advise it in connection with and to conduct its investigation. Counsel to the Special Committee also hired independent accountants to assist in the investigation.

During the period from March 1996 to May 2006, the Company granted stock option awards to purchase approximately 17,000,000 Biomet common shares. The Special Committee's review did not cover any periods subsequent to May 31, 2006. As a result, stock option awards granted during the three-months ended August 31, 2006 were not examined by the Special Committee.

In light of the Special Committee's findings relating to the Company's historical stock option practices over the 11-year period ending May 31, 2006, the Company performed a review of stock option awards granted during the three-months ended August 31, 2006. During the three-months ended August 31, 2006, the Company granted stock option awards to purchase 167,800 Biomet common shares, including stock option awards to purchase 4,500 Biomet common shares with exercise prices which did not equal the fair market value of the Company's common shares on the measurement date applicable to the award. The total intrinsic value of these mispriced awards to purchase 4,500 Biomet common shares was less than \$5,000 during the three-months ended August 31, 2006. There were no stock option awards made to Section 16 officers or to directors during the three-months ended August 31, 2006.

The accounting guidance for determining share-based compensation expense applicable to the Company's stock option awards (other than grants to non-employee distributors as discussed below) prior to June 1, 2006 was Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, or APB No. 25. APB No. 25 defines the measurement date of a stock option award as the first date on which are known both (1) the number of shares that an individual employee is entitled to receive and (2) the option or purchase price. Under APB No. 25 a measurement date is required to be selected for each stock option award and compensation expense must be recognized ratably over the vesting period of the option award for the excess, if any, of the quoted market price of the stock on the measurement date over the stated exercise price of the award. In many instances the Company selected option grant dates and corresponding option exercise prices with respect to awards accounted for under APB No. 25 that were before the date that both the number of shares that an individual was entitled to receive and the exercise price for the award had been finalized. The Company also deemed the stated grant date to be the measurement date resulting in no compensation expense for those options in the financial statements as previously reported. For purposes of establishing the measurement date for accounting purposes, the practice of using the stated grant date rather than the date that the number of shares that an individual is entitled to receive and exercise price were finalized resulted in incorrect measurement dates and financial statement errors. In connection with the restatement described in the Company's amended annual report on Form 10-K/A for the fiscal year ended May 31, 2006, the Company has selected alternative measurement dates for awards accounted for under APB No. 25 during the 11-year period under investigation to correct for those errors.

On June 1, 2006, the Company adopted SFAS No. 123(R) Share-Based Payment (SFAS 123(R)). SFAS 123(R) requires stock options to be expensed based on their fair value over the required award service period. For stock options granted prior to June 1, 2006, the unrecognized expense related to the unvested portion of a stock option award at the date of adoption is to be recognized based on original grant date fair values for the

---

**BIOMET, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

award. Using the stated grant date to determine those fair values rather than the date that the option grants were finalized resulted in financial statement errors subsequent to May 31, 2006. In addition, in determining expense during the three-months ended August 31, 2006 the Company did not estimate the percentage of forfeitures as required by SFAS 123(R) in the Original Filing. In connection with the restatement of the Company's financial statements described in this amended quarterly report on Form 10-Q/A, the Company has revised its fair value calculations and has estimated forfeitures to correct for these errors. For stock options granted subsequent to May 31, 2006 no adjustments were deemed necessary related to fair value calculations because any differences were deemed inconsequential.

The accounting guidance for determining share-based expense applicable to awards made to the Company's non-employee distributors is based on Emerging Issues Task Force 96-18, Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquisition, or in Conjunction with Selling, Goods or Services, or *EITF 96-18*. Under EITF 96-18, additional share-based expense is evaluated based on the fair value of the distributor award at the date of grant and then remeasured at each subsequent reporting period over the vesting period of the award. Prior to fiscal 2003, the Company did not record expense for stock options granted to non-employee distributors. In fiscal 2003 and subsequently, the Company began recording expense based on EITF 96-18.

Additional information concerning the impact of the adjustments resulting from these errors is provided in the tables contained within this Note 2 (Restatement of Consolidated Financial Statements) below.

There are various negative tax consequences to employees as a result of the Company's historical stock option granting practices. As was recommended by the Special Committee, the Company is considering alternatives to potentially address some or all of these consequences.

The payroll and withholding tax treatment of a stock option granted to a U.S. employee or other service provider depends on whether the stock option qualifies as an Incentive Stock Option ( *ISO* ) or a Non-Qualified Stock Option ( *NQO* ). An ISO is a stock option that satisfies certain requirements set forth in Internal Revenue Code Section 422, including a requirement that the exercise price of the stock option may not be less than the fair market value of the underlying shares on the date of grant. An NQO is any stock option that does not satisfy the requirements to be treated as an ISO.

Upon exercise of an NQO, the Company is required, to the extent applicable, to (1) withhold the optionholder's share of social security, Medicare and other employment taxes (collectively referred to as payroll taxes ) and any federal, state or local income tax and (2) pay Biomet's share of payroll taxes. However, upon exercise of an ISO, the Company is not required to withhold any income taxes nor is the Company required to withhold or pay any payroll taxes.

The Company's stock options granted during the 11-year period were generally intended to qualify as ISOs and accordingly, except for federal withholding in certain instances with respect to same day sales, the Company did not withhold federal income taxes, state income taxes or the employee's share of social security, Medicare and other employment taxes upon exercise of these options, nor did the Company pay the employer's share of social security, Medicare and other employment taxes. However, as described above, approximately eighty percent of the Company's stock options granted during this 11-year period were subject to revised measurement dates. Any stock option that was granted with an exercise price less than the fair market value of the underlying shares on the revised measurement date would not have qualified as an ISO and should have been treated as an NQO for payroll and withholding tax purposes. In these cases, the Company has accrued payroll and withholding taxes, penalties and interest for stock options and included these amounts in the restated financial statements.

**BIOMET, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

In preparing the restatement described in the Company's amended annual report on Form 10-K/A the Company has assumed a normal statute of limitations on the assessment of payroll and withholding taxes. Thus, the Company has reversed expense recorded in prior periods and as a result recognized a benefit in the period in which the statute of limitations for the respective options exercise expires in an aggregate amount of \$14.3 million. However, the statute of limitations may not apply in the case of a false or fraudulent return with the intent to evade tax or in the case of a willful attempt in any manner to defeat or evade any employment or withholding tax. If the statute of limitations were determined not to have expired the benefit which the Company has recognized could be deemed to be payable. The Company believes there was no intent to evade paying taxes. During the three-months ended August 31, 2006 the Company did not reverse any expenses as a result of the expiration of the statute of limitations applicable to payroll and withholding taxes.

In most instances, ISOs which were exercised as a same-day sale were properly treated as a disqualifying disposition and the income was reported on the individuals' Form W-2. In these situations, the Company accrued payroll taxes, penalties and interest but did not accrue federal or state income taxes as the income from the disqualifying disposition of stock options was included on the employee's Form W-2 and applicable state and federal income taxes were paid by the employee. For certain ISOs which subsequently converted to a NQO stock option, the Company accrued federal and state income taxes, payroll taxes, penalties and interest at the applicable rates, if the income was not reported on the individuals' Form W-2.

The combination of taxes, penalties and interest resulted in a net compensation charge of \$0.3 million and \$0.4 million, respectively, for the three-months ended August 31, 2006 and August 31, 2005.

The Company believes that the unpaid employee portion of taxes represents joint and several obligations of both the Company and its employees. However, the change of status of employee option awards from an ISO to NQO was a result of flaws in the Company's stock option granting practices as discussed above. The Company believes that the employees would likely have a valid claim against us in the event the Company attempted to recover a portion of the additional taxes, penalties and interest from its employees. Accordingly, the Company believes it is appropriate to accrue both the employee and the employer portions of these taxes. In addition, the Company believes such additional taxes, penalties and interest should be recorded in the respective years in which the underlying in-the-money options were exercised.

The increase (decrease) in net income resulting from the above errors are presented below:

| Three-Months Ended<br>August 31, | Net<br>Income as<br>Previously<br>Reported | Additional<br>Share-Based<br>Compensation<br>Expense<br>(Pre-Tax)(1) | Additional<br>Distributor<br>Stock Options<br>Expense<br>(Pre-Tax)(2) | Additional<br>Payroll<br>and<br>Withholding<br>Taxes<br>(Pre-Tax) | Total<br>Additional<br>Expense<br>(Pre-Tax) | Income |            | Total<br>Adjustments | Net<br>Income as<br>Restated |
|----------------------------------|--|--|---|---|---|--------|------------|----------------------|------------------------------|
|                                  |  |  |   |   |   | Tax    | Benefit(3) |                      |                              |
| 2006                             | \$ 102,830                                 | \$ 790   | \$ 185  | \$ (313)  | \$ 662                                      | \$ 888 | \$ 1,550   | \$ 104,380           |                              |
| 2005                             | 100,299                                    | (610)  | 116   | (442)   | (936)                                       | 322    | (614)      | 99,685               |                              |

- (1) Share-based compensation expense for the three-months ended August 31, 2006 is based upon SFAS 123(R). Share-based compensation expense for the three-months ended August 31, 2005 is based upon APB No. 25. For the three-months ended August 31, 2006, the Company recorded a benefit of \$.8 million due to understatement of forfeitures in the Original Filing.
- (2) Distributor stock options expense or benefit is based upon EITF 96-18. The Company is recording a benefit for the three-months ended August 31, 2006 and 2005 due to an overstatement in the computation of expense in the Original Filing.
- (3) The Company is recording a tax benefit in the three-months ended August 31, 2006 due largely to the recharacterization of ISO's to NQO's.

## BIOMET, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The impact of the adjustments resulting from the above errors on the Company's consolidated balance sheets as of August 31, 2006 and May 31, 2006 and the Company's consolidated statements of income and consolidated statements of cash flows for the three-months ended August 31, 2006 and 2005 are presented below. The restatement of amounts as of May 31, 2006 and the three-months ended August 31, 2005 were previously reported in the Company's amended annual report on Form 10-K/A filed on May 29, 2007.

|  | August 31, 2006, unaudited |                 |                     | May 31, 2006        |                  |                     |
|--|----------------------------|-----------------|---------------------|---------------------|------------------|---------------------|
|  | As Reported                | Adjustments     | As Restated         | As Reported         | Adjustments      | As Restated         |
| <b>Current assets:</b>                 |                            |                 |                     |                     |                  |                     |
| Cash and cash equivalents              | \$ 190,502                 | \$              | \$ 190,502          | \$ 160,963          | \$               | \$ 160,963          |
| Investments                            | 6,386                      |                 | 6,386               | 6,380               |                  | 6,380               |
| Accounts and notes receivable, net     | 493,639                    |                 | 493,639             | 507,883             |                  | 507,883             |
| Inventories                            | 559,985                    |                 | 559,985             | 534,515             |                  | 534,515             |
| Refundable income taxes                |                            |                 |                     |                     | 16,880           | 16,880              |
| Deferred income taxes                  | 73,786                     | 2,424           | 76,210              | 73,345              | 1,845            | 75,190              |
| Prepaid expenses and other             | 36,715                     |                 | 36,715              | 32,342              |                  | 32,342              |
| <b>Total current assets</b>            | <b>1,361,013</b>           | <b>2,424</b>    | <b>1,363,437</b>    | <b>1,315,428</b>    | <b>18,725</b>    | <b>1,334,153</b>    |
| Property, plant and equipment, at cost | 682,260                    |                 | 682,260             | 655,432             |                  | 655,432             |
| Less, accumulated depreciation         | 318,710                    |                 | 318,710             | 297,800             |                  | 297,800             |
| Property, plant and equipment, net     | 363,550                    |                 | 363,550             | 357,632             |                  | 357,632             |
| Investments                            | 60,688                     |                 | 60,688              | 58,128              |                  | 58,128              |
| Goodwill                               | 442,118                    |                 | 442,118             | 441,397             |                  | 441,397             |
| Intangible assets, net                 | 77,485                     |                 | 77,485              | 79,498              |                  | 79,498              |
| Other assets                           | 16,107                     |                 | 16,107              | 11,839              |                  | 11,839              |
| <b>Total assets</b>                    | <b>\$ 2,320,961</b>        | <b>\$ 2,424</b> | <b>\$ 2,323,385</b> | <b>\$ 2,263,922</b> | <b>\$ 18,725</b> | <b>\$ 2,282,647</b> |
| <b>Current liabilities:</b>            |                            |                 |                     |                     |                  |                     |
| Short-term borrowings                  | \$ 272,894                 | \$              | \$ 272,894          | \$ 276,561          | \$               | \$ 276,561          |
| Accounts payable                       | 57,165                     |                 | 57,165              | 62,276              |                  | 62,276              |
| Accrued income taxes                   | 37,754                     | (23,923)        | 13,831              | 6,356               | (6,356)          |                     |
| Accrued wages and commissions          | 58,668                     | 21,699          | 80,367              | 63,279              | 21,386           | 84,665              |
| Other accrued expenses                 | 113,856                    |                 | 113,856             | 111,960             |                  | 111,960             |
| <b>Total current liabilities</b>       | <b>540,337</b>             | <b>(2,224)</b>  | <b>538,113</b>      | <b>520,432</b>      | <b>15,030</b>    | <b>535,462</b>      |
| <b>Long term liabilities:</b>          |                            |                 |                     |                     |                  |                     |
| Deferred income taxes                  | 27,450                     |                 | 27,450              | 26,991              |                  | 26,991              |
| <b>Total liabilities</b>               | <b>567,787</b>             | <b>(2,224)</b>  | <b>565,563</b>      | <b>547,423</b>      | <b>15,030</b>    | <b>562,453</b>      |
| <b>Shareholders' equity:</b>           |                            |                 |                     |                     |                  |                     |
| Common shares                          | 209,740                    |                 | 209,740             | 206,633             |                  | 206,633             |
| Additional paid-in capital             | 73,130                     | 43,092          | 116,222             | 72,839              | 43,689           | 116,528             |
| Retained earnings                      | 1,445,554                  | (38,444)        | 1,407,110           | 1,419,297           | (39,994)         | 1,379,303           |

Edgar Filing: BIOMET INC - Form 10-Q/A

|  |              |          |              |              |           |              |
|--|--------------|----------|--------------|--------------|-----------|--------------|
| Accumulated other comprehensive income     | 24,750       |          | 24,750       | 17,730       |           | 17,730       |
| Total shareholders' equity                 | 1,753,174    | 4,648    | 1,757,822    | 1,716,499    | 3,695     | 1,720,194    |
| Total liabilities and shareholders' equity | \$ 2,320,961 | \$ 2,424 | \$ 2,323,385 | \$ 2,263,922 | \$ 18,725 | \$ 2,282,647 |

## BIOMET, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

|   | Three-Months Ended August 31, 2006 |             |             | Three-Months Ended August 31, 2005 |             |             |
|---|------------------------------------|-------------|-------------|------------------------------------|-------------|-------------|
|   | As Reported                        | Adjustments | As Restated | As Reported                        | Adjustments | As Restated |
| Net sales   | \$ 508,161                         | \$          | \$ 508,161  | \$ 484,903                         | \$          | \$ 484,903  |
| Cost of sales   | 138,747                            | (44)        | 138,703     | 134,495                            | 86          | 134,581     |
| Gross profit  | 369,414                            | 44          | 369,458     | 350,408                            | (86)        | 350,322     |
| Selling, general and administrative expenses          | 190,010                            | (544)       | 189,466     | 178,182                            | 581         | 178,763     |
| Research and development expense                      | 24,361                             | (88)        | 24,273      | 20,816                             | 172         | 20,988      |
| Operating income                                      | 155,043                            | 676         | 155,719     | 151,410                            | (839)       | 150,571     |
| Other income, net                                     | 1,113                              | (14)        | 1,099       | 558                                | (97)        | 461         |
| Income before income taxes                            | 156,156                            | 662         | 156,818     | 151,968                            | (936)       | 151,032     |
| Provision for income taxes                            | 53,326                             | (888)       | 52,438      | 51,669                             | (322)       | 51,347      |
| Net income  | \$ 102,830                         | \$ 1,550    | \$ 104,380  | \$ 100,299                         | \$ (614)    | \$ 99,685   |
| Earnings per share:                                   |                                    |             |             |                                    |             |             |
| Basic   | \$ 0.42                            | \$ 0.01     | \$ 0.43     | \$ 0.40                            | \$          | \$ 0.40     |
| Diluted   | \$ 0.42                            | \$ 0.01     | \$ 0.43     | \$ 0.40                            | \$          | \$ 0.40     |
| Shares used in the computation of earnings per share: |                                    |             |             |                                    |             |             |
| Basic   | 244,881                            |             | 244,881     | 249,582                            |             | 249,582     |
| Diluted   | 244,881                            |             | 244,881     | 250,656                            |             | 250,656     |
| Cash dividends per common share                       | \$ 0.30                            | \$          | \$ 0.30     | \$ 0.25                            | \$          | \$ 0.25     |

## BIOMET, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

|   | Three-Months Ended<br>August 31, 2006 |             |             | Three-Months Ended<br>August 31, 2005 |             |             |
|---|---------------------------------------|-------------|-------------|---------------------------------------|-------------|-------------|
|   | As Reported                           | Adjustments | As Restated | As Reported                           | Adjustments | As Restated |
| Cash flows from (used in) operating activities:                           |                                       |             |             |                                       |             |             |
| Net Income  | \$ 102,830                            | \$ 1,550    | \$ 104,380  | \$ 100,299                            | \$ (614)    | \$ 99,685   |
| Adjustments to reconcile net income to net cash from operating activities |                                       |             |             |                                       |             |             |
| Depreciation  | 20,311                                |             | 20,311      | 15,277                                |             | 15,277      |
| Amortization  | 2,237                                 |             | 2,237       | 2,236                                 |             | 2,236       |
| Share-based expense   | 4,226                                 | (811)       | 3,415       |                                       | 494         | 494         |
| Gain on sale of investments, net  | (375)                                 |             | (375)       | (47)                                  |             | (47)        |
| Deferred income taxes   | (1,039)                               | (578)       | (1,617)     | (1,425)                               | 71          | (1,354)     |
| Tax benefit from exercise of stock options                                |                                       | (404)       | (404)       |                                       | 156         | 156         |
| Changes in current assets and liabilities:                                |                                       |             |             |                                       |             |             |
| Accounts and notes receivable   | 13,995                                |             | 13,995      | 15,276                                |             | 15,276      |
| Inventories   | (20,593)                              |             | (20,593)    | (15,201)                              |             | (15,201)    |
| Prepaid expenses  | (3,613)                               |             | (3,613)     | (4,547)                               |             | (4,547)     |
| Accounts payable  | (3,830)                               |             | (3,830)     | 3,034                                 |             | 3,034       |
| Accrued income taxes  | 37,396                                | (474)       | 36,922      | 23,633                                | (548)       | 23,085      |
| Other   | (14,399)                              | 313         | (14,086)    | (6,705)                               | 441         | (6,264)     |
| Net cash provided by operating activities                                 | 137,146                               | (404)       | 136,742     | 131,830                               |             | 131,830     |
| Cash flows from (used in) investing activities:                           |                                       |             |             |                                       |             |             |
| Proceeds from sales and maturities of investments                         | 2,627                                 |             | 2,627       | 11,854                                |             | 11,854      |
| Purchases of investments  | (3,718)                               |             | (3,718)     | (8,454)                               |             | (8,454)     |
| Capital expenditures  | (24,170)                              |             | (24,170)    | (25,984)                              |             | (25,984)    |
| Other   | (2,445)                               |             | (2,445)     | 247                                   |             | 247         |
| Net cash used in investing activities                                     | (27,706)                              |             | (27,706)    | (22,337)                              |             | (22,337)    |
| Cash flows from (used in) financing activities:                           |                                       |             |             |                                       |             |             |
| Increase (decrease) in short-term borrowings, net                         | (1,605)                               |             | (1,605)     | 6,823                                 |             | 6,823       |
| Issuance of shares  | 3,284                                 |             | 3,284       | 2,798                                 |             | 2,798       |
| Cash dividends  | (73,526)                              |             | (73,526)    | (62,473)                              |             | (62,473)    |
| Purchase of commons shares  | (7,268)                               |             | (7,268)     | (35,447)                              |             | (35,447)    |
| Tax benefit from exercise of stock options                                |                                       | 404         | 404         |                                       |             |             |
| Net cash used in financing activities                                     | (79,115)                              | 404         | (78,711)    | (88,299)                              |             | (88,299)    |
| Effect of exchange rate changes on cash                                   | (786)                                 |             | (786)       | (1,507)                               |             | (1,507)     |
| Increase in cash and cash equivalents                                     | 29,539                                |             | 29,539      | 19,687                                |             | 19,687      |
| Cash and cash equivalents, beginning of year                              | 160,963                               |             | 160,963     | 104,706                               |             | 104,706     |
| Cash and cash equivalents, end of period                                  | \$ 190,502                            | \$          | \$ 190,502  | \$ 124,393                            | \$          | \$ 124,393  |



**BIOMET, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****Note 3: Comprehensive Income.**

Other comprehensive income (loss) includes foreign currency translation adjustments and unrealized appreciation of available-for-sale securities, net of taxes. Other comprehensive income (loss) for the three-months ended August 31, 2006 and 2005 was \$7,020,000 and \$(25,304,000), respectively. Total comprehensive income combines reported net income and other comprehensive income (loss). Total comprehensive income, as restated, for the three-months ended August 31, 2006 and 2005 was \$111,400,000 and \$74,381,000, respectively.

**Note 4: Inventories.**

Inventories at August 31, 2006 and May 31, 2006 are as follows:

|                       | August 31,<br>2006 | May 31,<br>2006 |
|-----------------------|--------------------|-----------------|
|                       | (in thousands)     |                 |
| Raw materials         | \$ 72,248          | \$ 71,126       |
| Work-in-process       | 57,169             | 48,416          |
| Finished goods        | 258,002            | 225,997         |
| Consigned distributor | 172,566            | 188,976         |
|                       | \$ 559,985         | \$ 534,515      |

**Note 5: Common Shares.**

During the three-months ended August 31, 2006, the Company issued 152,767 common shares upon the exercise of outstanding stock options for proceeds aggregating \$3,284,000. Purchases of common shares pursuant to the common share repurchase programs aggregated 210,000 shares for \$7,268,000 during the three-months ended August 31, 2006.

**Note 6: Earnings Per Share.**

Earnings per common share amounts ( basic EPS ) are computed by dividing net income by the weighted average number of common shares outstanding and excludes any potential dilution. Earnings per common share amounts assuming dilution ( diluted EPS ) are computed by reflecting potential dilution from the exercise of stock options.

**Note 7: Income Taxes.**

The difference between the reported provision for income taxes and a provision computed by applying the federal statutory rate to pre-tax accounting income is primarily attributable to state income taxes, tax benefits relating to operations in Puerto Rico, tax-exempt income, tax credits and lack of a tax benefit associated with Incentive Stock Options under hare-based payment expense. For additional information concerning the income tax effect related to the Company's restatement of certain historical financial statements see Note 2 (Restatement of Consolidated Financial Statements).

**Note 8: Contingencies.**

## Edgar Filing: BIOMET INC - Form 10-Q/A

**Medical Insurance Plan** The Company maintains a self-insurance program for covered medical expenses for all Team Members within the continental U.S. The Company is liable for claims up to \$200,000 per insured annually, as well as an additional annual aggregate of \$60,000. Self-insurance costs are accrued based upon the aggregate of the liability for reported claims and a management-determined estimated liability for claims incurred but not reported.

---

**BIOMET, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Liability Insurance** Since 1989, the Company has self-insured against product liability risks, with excess coverage on a claims-made basis from various insurance carriers in excess of the self-insured amounts and subject to certain policy limits. Self-insurance costs are accrued based on reserves set in consultation with the insurance carrier for reported claims and a management-determined estimated liability for claims incurred but not reported. Based on historical experience, management does not anticipate that incurred but unreported claims would have a material impact on the Company's consolidated financial position.

**Litigation** On March 30, 2005 the Company announced that it had received a subpoena from the U.S. Department of Justice through the U.S. Attorney for the District of New Jersey requesting documents related to any consulting and professional service agreements with orthopedic surgeons using or considering the use of Biomet's hip or knee implants for the period January 2002 through March 29, 2005. The Company is aware that similar inquiries were directed to other companies in the orthopedics industry. On July 19, 2006 Biomet received a letter from the U.S. Department of Justice through the U.S. Attorney for the District of New Jersey requesting additional documents further to the subpoena issued in March 2005. This letter requested additional documents related to consulting and service agreements for the time period January 1998 through the present, as well as research and other grant agreements for that same time period. Further, the letter requested that the Company provide copies of the agreements identified in the supplemental request on an on-going basis. In addition, the requested information related to Company-sponsored training events, the selection process used by the Company to identify consultants and researchers, the Company's product design process for hip and knee implants and information on the Company's orthopedic sales force. The Company has cooperated and intends to continue to fully cooperate with the Department of Justice inquiry. The results of this inquiry may not be known for several years.

In February 2006, SDGI Holdings, Inc. and Medtronic Sofamor Danek, Inc. (collectively referred to herein as **Medtronic**) brought an action against BTBS and Biomet alleging infringement of seven patents. Specifically, Medtronic alleges that the patents are infringed by certain components of the Company's **Vuelock** Anterior Cervical Plate System, as well as instruments and surgical implantation methods associated with the Company's **Arroyo** Spinal System. Medtronic's complaint did not seek a specific amount of damages, but does seek to enjoin the Company from manufacturing, selling and/or distributing the allegedly infringing products. The Company has filed a counterclaim seeking a finding of noninfringement of the patents at issue and a finding that certain of the patents are invalid and unenforceable. The litigation is in the early stages of discovery. The Company is vigorously defending this matter and intends to continue to do so.

On June 26, 2006 the Company announced that it had received a federal grand jury subpoena issued at the request of the U.S. Department of Justice, Antitrust Division, requesting documents regarding possible violations of federal criminal law, including possible violations of the antitrust laws, relating to the manufacture and sale of orthopedic implant devices (the **Subpoena**). The Subpoena requests documents from January 1, 2001 through the present date. The Company is aware of similar subpoenas directed to other companies in the orthopedics industry. The Company has cooperated and intends to continue to fully cooperate with the Department of Justice investigation. The result of this investigation may not be known for several years. However, the scope of the Subpoena has currently been narrowed to a specific geographic region and specific product lines. It is the Company's belief that the other orthopedic companies that received similar subpoenas have received similar guidance. It is the Company's belief that the investigation was prompted by an unsolicited e-mail sent by a representative of one of the Company's competitors that proposed a common pricing strategy in connection with a particular hospital. This e-mail was received by an independent sales representative of an independent distributor for Biomet Orthopedics, but it was never transmitted to the Company. Neither the Company, its independent distributor, nor its independent sales representative took any action in response to the e-mail, and the Company believes that no anticompetitive activity took place as a result of it. The Company requires compliance by its employees and its independent distributors with its Code of Business Conduct and Ethics and with

---

**BIOMET, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

applicable antitrust laws. The information provided herein is limited to the information available to the Company at the present time and the Company cannot offer any assurances as to the scope and final outcome of this investigation.

On an issue related to the subpoena received from the Antitrust Division of the U.S. Department of Justice, the Company has received two complaints in Class Action lawsuits alleging violations of the Sherman Antitrust Act. In addition, the Company is aware of other complaints that have been filed, but not served on the Company. The complaints also named various other companies in the orthopedics industry as defendants. The Company intends to vigorously defend this matter and believes that it has meritorious defenses to the claims being asserted.

There are various other claims, lawsuits, disputes with third parties, investigations and pending actions involving various allegations against the Company incident to the operation of its business, principally product liability and intellectual property cases. Each of these matters is subject to various uncertainties, and it is possible that some of these matters may be resolved unfavorably to the Company. The Company establishes accruals for losses that are deemed to be probable and subject to reasonable estimate. Based on the advice of counsel to the Company in these matters, management believes that the ultimate outcome of these matters and any liabilities in excess of amounts provided will not have a material adverse impact on the Company's consolidated financial statements taken as a whole.

**Note 9: Subsequent Events**

On September 21, 2006, two shareholder-derivative complaints were filed against certain of Biomet's current and former directors and officers in Kosciusko Superior Court I in Kosciusko County, in the State of Indiana. The complaints, captioned Long v. Hann, et al., and Thorson v. Hann, et al., alleged violations of state law relating to the issuance of certain stock option grants by the Company dating back to 1996. Both complaints sought unspecified money damages as well as other equitable and injunctive relief. These two cases were consolidated under the caption In re Biomet, Inc. Derivative Litigation, and on January 19, 2007, plaintiffs filed an amended complaint that made additional allegations based on the Company's December 18, 2006 disclosures related to stock option grants, including allegations that the defendants sought to sell the company in order to escape liability for their conduct, and that they did so at a devalued price, thus further breaching their fiduciary duties to shareholders. On February 16, 2007, defendants filed a motion to dismiss plaintiffs' amended complaint, which is currently pending with the court.

On December 11, 2006, a third shareholder-derivative complaint captioned International Brotherhood of Electrical Workers Local 98 Pension Fund v. Hann, et al., No. 06 CV 14312, was filed in federal court in the Southern District of New York. The IBEW case makes allegations and claims similar to those made in the Indiana litigation, in addition to purporting to state three derivative claims for violations of the federal securities laws. On February 15, 2007, defendants filed a motion to dismiss the plaintiff's complaint. On April 11, 2007, plaintiffs filed a motion for partial summary judgment claiming that the disclosures in the Company's April 2, 2007 8-K filing and press release regarding the Company's historical stock options granting practices constitute admissions sufficient to establish defendants' liability on certain of plaintiffs' claims. Both motions are currently pending with the court.

Pursuant to Indiana law and provisions of the Company's articles of incorporation, the Company is advancing reasonable expenses, including attorneys' fees, incurred by the current and former Biomet directors and officers in defending these lawsuits.

On May 25, 2007, the Board received and discussed an updated report from its Special Committee which concluded that pursuing these three shareholder-derivative complaints was not in the best interests of the Company. Under Indiana law, the Special Committee's determination may be binding on the pending shareholder-derivative claims and result in the dismissal of these complaints.

---

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**  
**FINANCIAL CONDITION AS OF AUGUST 31, 2006**

**The discussion and analysis set forth in this Item 2 has been amended to reflect the restatement of the Company's financial results, which is more fully described in the Explanatory Note immediately preceding Part I, Item 1 and in Note 2, Restatement of Consolidated Financial Statements in the notes to the consolidated financial statements of this amended quarterly report on Form 10-Q/A.**

This discussion should be read in conjunction with the Company's consolidated financial statements and the corresponding notes contained herein. The Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that are subject to certain risk factors, as discussed elsewhere in this amended report under the caption Risk Factors.

The Company's cash and investments increased \$32,105,000 to \$257,576,000 at August 31, 2006. This increase resulted from positive cash flow from operations offset by the \$73,526,000 dividend paid during this quarter and the \$7,268,000 used to purchase shares during this quarter pursuant to the Company's share repurchase programs.

Cash flows provided by operating activities were \$136,742,000 for the first three-months of fiscal 2007 compared to \$131,830,000 in 2006. The primary sources of fiscal year 2007 cash flows from operating activities were net income, depreciation, a decrease in accounts receivable and an increase in accrued income taxes. The primary use was an increase in inventories. Accounts receivable normally decreases in Europe during the summer months as sales decrease slightly due to the vacation period, but cash receipts continue. Accrued income taxes increased during the quarter due to the first quarter tax estimates being due after the quarter end. Inventories increased primarily in three areas: Europe, where a normal inventory build is planned during the summer months; 3i, where the Company is working to resolve a back-order situation; and Japan where the Company is launching the Bi-metric XR and the Vanguard RP. Accounts and notes receivable and inventory balances increased during the three-month period by \$.25 million and \$5.3 million, respectively, due to currency exchange rates.

Cash flows used in investing activities were \$27,706,000 for the first three-months of fiscal 2007 compared to \$22,337,000 in 2006. The primary use of cash flows from investing activities in fiscal 2007 was capital expenditures. The Company continues to upgrade its instruments used in various international markets and to support the new implant systems being launched.

Cash flows used in financing activities were \$78,711,000 for the first three-months of fiscal 2007 compared to \$88,299,000 in 2006. The primary uses were the cash dividend paid and the share repurchase programs. In July 2006, the Company's Board of Directors declared a cash dividend of thirty cents (\$0.30) per share payable to shareholders of record at the close of business on July 15, 2006. Over the last nineteen quarters, the Company has used \$1,064,000,000 to purchase its common stock.

Currently available funds, together with anticipated cash flows generated from future operations are believed to be adequate to cover the Company's anticipated cash requirements, including capital expenditures, research and development costs and share repurchases.

**RESULTS OF OPERATIONS FOR THE THREE-MONTHS ENDED AUGUST 31, 2006 AS COMPARED TO THE THREE-MONTHS ENDED AUGUST 31, 2005**

Net sales increased 5% to \$508,161,000 for the first quarter ended August 31, 2006, from \$484,903,000 for the same period last year. Excluding the positive impact of foreign currency, net sales growth for the first quarter was 4%. The Company's U.S.-based revenue increased 3% to \$325,947,000 during the first quarter of fiscal 2007, while foreign sales increased 9% to \$182,214,000. Excluding the positive foreign exchange adjustment, foreign revenue increased 7%.

The Company's worldwide sales of reconstructive products during the first quarter of fiscal 2007 were \$351,737,000, representing a 9% increase compared to the first quarter of last year. This increase came through balanced growth in all of the reconstructive product categories.

Sales of fixation products were \$60,873,000 for the first quarter of fiscal 2007, representing a 5% decrease as compared to the same period in fiscal 2006. Sales of spinal products were \$51,933,000 for the first quarter of fiscal 2007, representing a 6% decrease as compared to the same period in fiscal 2006. EBI L.P., now operating as Biomet Trauma and Biomet Spine ( BTBS ), has continued to underperform management's expectations. During the quarter, the Company has continued to make numerous changes at BTBS, including the appointment of Chuck Niemier, former COO International Operations, as president and the appointment of a new vice president of finance and vice president of sales. The Company is also making significant progress with the implementation of a new computer system, sales support system, the in-sourcing of the manufacture of spinal hardware products and expanding the research and development team. We believe that the new management team and infrastructure changes at BTBS will allow the Company to provide greater focus on the spine and trauma markets and to our customers.

The Company's sales of other products totaled \$43,618,000, representing a 5% increase over the first quarter of fiscal year 2006.

Cost of sales decreased as a percentage of net sales to 27.3%, for the first quarter of fiscal 2007 from 27.8% during the same period last year. This decrease was primarily a result of higher growth rates in reconstructive products where gross margins are higher. Selling, general and administrative expenses, as a percentage of net sales, increased to 37.3% compared to 36.9% for the first quarter last year. This increase is a result of the adoption of SFAS 123(R) Share-Based payment, which increased selling, general and administrative expenses by .5% and research and development expense by .1%. Research and development expenditures increased 16% during the first quarter to \$24,273,000 reflecting the Company's continued emphasis on new product introductions and the aforementioned Share-Based payment expense. Operating income increased 3% from \$150,571,000 for the first quarter of fiscal 2006, to \$155,719,000 for the first quarter of fiscal 2007.

Other income, net increased from \$461,000 last year to \$1,099,000 this year. Other income has been positively impacted by an increase in cash available for investments and an increase in interest rates.

The effective income tax rate decreased to 33.4% for the first quarter of fiscal year 2007 from 34.0% last year primarily as a result of the new Section 199 Qualified Production Activities Deduction in the U.S. and continued expansion of operations in lower tax jurisdictions, partially offset by the lack of a tax benefit associated with SFAS 123(R) related to Incentive Stock Options.

These factors resulted in a 5% increase in net income to \$104,380,000 for the first quarter of fiscal 2007 as compared to \$99,685,000 for the same period in fiscal 2006, while basic and diluted earnings per share increased 8%, from \$0.40 to \$0.43 for the periods presented.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risks.**

There have been no material changes from the information provided in the Company's amended annual report on Form 10-K/A for the year ended May 31, 2006.

### **Item 4. Controls and Procedures.**

The following has been amended to reflect the restatement of the consolidated financial statements as discussed in the Explanatory Note immediately preceding Part I, Item I of this amended Quarterly Report on Form 10-Q/A and Note 2 (Restatement of Consolidated Financial Statements) to the consolidated financial statements included herein. The required certifications of the Company's current Chief Executive Officer and Interim Chief Financial Officer are included as exhibits to this amended Quarterly Report on Form 10-Q/A. The disclosures set forth in this Item 4A contain information concerning the evaluation of the Company's disclosure

controls and procedures, internal control over financial reporting and changes in internal control over financial reporting referred to in those certifications. Those certifications should be read in conjunction with this Item 4A for a more complete understanding of the matters covered by the certifications.

*(a) Evaluation of Disclosure Controls and Procedures (Revised).* In connection with the restatement discussed in the Explanatory Note immediately preceding Part I, Item 1 of this amended quarterly report on Form 10-Q/A and Note 2 (Restatement of Consolidated Financial Statements) to the consolidated financial statements included herein, the Company reevaluated, under the supervision and with the participation of its management, the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934) as of August 31, 2006 and, based on this reevaluation, the Company's current Chief Executive Officer and Interim Chief Financial Officer concluded that, as a result of the material weakness in the Company's internal control over financial reporting discussed below and the restatement, the Company's disclosure controls and procedures were not effective as of August 31, 2006.

As described in more detail in Part II, Item 9A Controls and Procedures of the Company's amended annual report on Form 10-K/A filed with the SEC on May 29, 2007, as of May 31, 2006 the Company did not have an effective control designed and in place over the establishment of the appropriate grant date or the measurement date for determining share-based expense. These deficiencies resulted in the misstatement of the Company's share-based expense, payroll and other employee taxes, additional paid-in capital accounts, related income tax accounts, retained earnings, related financial disclosures and other accounts and resulted in the restatements discussed in Note 2 (Restatement of Consolidated Financial Statements) to this amended quarterly report on Form 10-Q/A. As a result of these deficiencies, the Company's current management concluded that the Company had a material weakness as of May 31, 2006 and, therefore, the Company's internal control over financial reporting was not effective as of such date.

For additional information about the material weakness and the Company's remedial measures related thereto, see Part II, Item 9A Controls and Procedures of the Company's amended annual report on Form 10-K/A filed with the SEC on May 29, 2007.

*(b) Changes in Internal Control.* During the first quarter of fiscal 2007, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. However, to begin addressing the material weakness described above, subsequent to August 31, 2006, the Company's management has taken actions that are reasonably likely to materially affect the Company's internal control over financial reporting. These changes are described in detail in Part II, Item 9A Controls and Procedures of the Company's amended annual report on Form 10-K/A filed with the SEC on May 29, 2007.

---

**Part II. Other Information**
**Item 1. Legal Proceedings.**

Information with respect to legal proceedings can be found in Notes 8 (Contingencies) and 9 (Subsequent Events) to the financial statements contained in Part I, Item 1 of this amended report. Except as discussed in Notes 8 (Contingencies) and 9 (Subsequent Events) to the financial statements contained in Part I, Item 1 of this amended report as of August 31, 2006 there were no material developments in the legal proceedings disclosed by the Company in Part 1, Item 3 of the Company's amended annual report on Form 10-K/A filed with the Securities and Exchange Commission on May 29, 2007.

**Item 1A. Risk Factors.**

As of August 31, 2006 there were no material changes in the Company's risk factors from those disclosed in Part I, Item 1A to the Company's amended annual report on Form 10-K/A filed with the Securities and Exchange Commission on May 29, 2007.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

(c) Stock Repurchases. During the quarter ended August 31, 2006, the Company had two publicly-announced share repurchase programs outstanding. The first, announced June 30, 2005, approved the purchase of 2,500,000 shares to be automatically purchased daily in equal increments over a twelve-month period. The remaining shares available under this plan have been purchased during the quarter. The second, announced December 21, 2005, approved the purchase of shares up to \$100 million in open market or privately negotiated transactions expiring December 20, 2006. The shares repurchased in the first quarter of fiscal 2007, the average price paid, and dollar value remaining available for purchase are as follows:

| Period      | Total Number of Shares Purchased | Average Price Paid Per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans | Maximum Number of Shares (or Approximate Dollar Value) that may yet be Purchased Under the Plans |
|-------------|----------------------------------|------------------------------|--|--|
| June 1-30   | 210,000                          | \$ 34.61                     | 210,000  | \$ 45,861,743  |
| July 1-31   | None                             |                              | None   | \$ 45,861,743  |
| August 1-31 | None                             |                              | None   | \$ 45,861,743  |
| Total       | 210,000                          | \$ 34.61                     | 210,000  | \$ 45,861,743  |

**Item 4. Submission of Matters to a Vote of Security Holders.**

The Annual Meeting of Shareholders of the Company was held on September 20, 2006. At the Annual Meeting:

1. The following persons were elected as Directors of the Company for a three-year term expiring in 2009.

| Name                  | Votes For   | Votes Withheld |
|-----------------------|-------------|----------------|
| Jerry L. Ferguson     | 204,185,902 | 14,804,822     |
| Thomas F. Kearns, Jr. | 195,546,688 | 23,444,036     |
| Daniel P. Hann*       | 210,559,827 | 8,430,897      |

---



Edgar Filing: BIOMET INC - Form 10-Q/A

\* In light of the Special Committee's findings described in the Explanatory Note immediately preceding Part I, Item 1 of this amended quarterly report on Form 10-Q/A, on March 30, 2007 Daniel P. Hann resigned from his position as a director and retired from his position as Executive Vice President of Administration (his then current position with the Company).

The following directors will continue in office until their term expires at the 2007 Annual Meeting of shareholders: M. Ray Harroff; Jerry L. Miller; Charles E. Niemier; and L. Gene Tanner.

The following directors will continue in office until their term expires at the 2008 Annual Meeting of shareholders: C. Scott Harrison, M.D.; Sandra A. Lamb; Niles L. Noblitt; Kenneth V. Miller; and Marilyn Tucker Quayle.

2. The Biomet, Inc. 2006 Equity Incentive Plan was approved by the shareholders as follows: Votes For 155,003,361; Votes Against 15,109,872; and Abstentions and Broker Non-Votes 2,360,011.

3. The appointment of Ernst & Young LLP as independent accountants for the Company for the fiscal year ending May 31, 2007 was ratified by the shareholders, as follows: Votes For 215,878,971; Votes Against 1,439,805; and Abstentions and Broker Non-Votes 1,671,946.

**Item 6. Exhibits.**

(a) Exhibits. See Index to Exhibits.

**Signatures**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Form 10-Q/A to be signed on its behalf by the undersigned, thereunto duly authorized.

**BIOMET, INC.**

Date: June 4, 2007

By: /s/ JEFFREY R. BINDER  
**Jeffrey R. Binder**

**President and Chief Executive Officer**

**BIOMET, INC.**

**FORM 10-Q/A**

**Index to Exhibits**

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 31.1               | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002  |
| 31.2               | Certification of Interim Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.                                 |
| 32.1               | Written Statement of Chief Executive Officer and Interim Chief Financial Officer Pursuant to Sections 906 of the Sarbanes-Oxley Act of 2002 |