MCCORMICK & CO INC
Form 10-Q
October 08, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

For Quarterly Period Ended August 31, 2009

Commission File Number 001-14920

McCORMICK & COMPANY, INCORPORATED

(Exact name of registrant as specified in its charter)

MARYLAND	**52-0408290**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

18 Loveton Circle, P. O. Box 6000, Sparks, MD	**21152-6000**
(Address of principal executive offices)	**(Zip Code)**

Registrant s telephone number, including area code (410) 771-7301

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 filing requirements for the past 90 days. Yes x No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months. Yes ¨ No ¨

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

Large Accelerated Filer x	Accelerated Filer ¨
Non-Accelerated Filer ¨	Smaller Reporting Company ¨

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

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Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date.

	Shares Outstanding August 31, 2009
Common Stock	12,384,704
Common Stock Non-Voting	118,510,979

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PART I FINANCIAL INFORMATION

ITEM 1 FINANCIAL STATEMENTS

McCORMICK & COMPANY, INCORPORATED

CONDENSED CONSOLIDATED INCOME STATEMENT (UNAUDITED)

(in millions except per share amounts)

	Three months ended August 31,		Nine months ended August 31,	
	2009	2008	2009	2008
Net sales	$ 791.7	$ 781.6	$ 2,267.5	$ 2,269.7
Cost of goods sold	472.7	473.2	1,362.0	1,377.6
Gross profit	319.0	308.4	905.5	892.1
Selling, general and administrative expense	201.5	212.9	608.3	639.6
Restructuring charges	.9	2.6	8.2	1.7
Operating income	116.6	92.9	289.0	250.8
Interest expense	12.8	12.8	40.2	40.3
Other income, net	(.3)	(10.0)	(1.8)	(16.4)
Income from consolidated operations before income taxes	104.1	90.1	250.6	226.9
Income taxes	32.1	26.8	77.2	68.5
Net income from consolidated operations	72.0	63.3	173.4	158.4
Income from unconsolidated operations	3.1	5.3	10.1	15.0
Net income	$ 75.1	$ 68.6	$ 183.5	$ 173.4
Earnings per common share basic	$ 0.57	$ 0.53	$ 1.40	$ 1.35
Average shares outstanding basic	130.9	129.3	130.6	128.7
Earnings per common share diluted	$ 0.57	$ 0.52	$ 1.39	$ 1.32
Average shares outstanding diluted	132.4	132.3	132.1	131.6
Cash dividends paid per common share	$ 0.24	$ 0.22	$ 0.72	$ 0.66

See notes to condensed consolidated financial statements (unaudited).

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McCORMICK & COMPANY, INCORPORATED

CONDENSED CONSOLIDATED BALANCE SHEET

(in millions)

	August 31, 2009 (unaudited)	August 31, 2008 (unaudited)	November 30, 2008
ASSETS			
Current Assets			
Cash and cash equivalents	$ 27.9	$ 30.3	$ 38.9
Trade accounts receivables, net	328.6	388.3	380.7
Inventories			
Finished products	245.8	239.9	230.7
Raw materials and work-in-process	201.6	222.4	208.3
	447.4	462.3	439.0
Prepaid expenses and other current assets	116.5	99.1	109.7
Total current assets	920.4	980.0	968.3
Property, plant and equipment	1,102.8	1,051.5	1,010.3
Less: accumulated depreciation	(630.1)	(574.9)	(549.2)
Total property, plant and equipment, net	472.7	476.6	461.1
Goodwill, net	1,450.2	1,328.3	1,230.2
Intangible assets, net	235.7	419.7	374.8
Prepaid allowances	36.5	42.0	32.9
Investments and other assets	190.9	183.7	153.0
Total assets	$ 3,306.4	$ 3,430.3	$ 3,220.3
LIABILITIES AND SHAREHOLDERS EQUITY			
Current Liabilities			
Short-term borrowings	$ 273.7	$ 422.9	$ 303.1
Current portion of long-term debt	14.9	50.6	50.9
Trade accounts payable	238.5	249.2	266.1
Other accrued liabilities	327.2	334.4	414.0
Total current liabilities	854.3	1,057.1	1,034.1
Long-term debt	870.9	878.2	885.2
Other long-term liabilities	249.5	279.8	245.7
Total liabilities	1,974.7	2,215.1	2,165.0
Shareholders Equity			
Common stock	231.4	224.8	223.1
Common stock non-voting	376.8	353.3	358.7
Retained earnings	542.3	403.3	425.4
Accumulated other comprehensive income	181.2	233.8	48.1

Total shareholders equity	1,331.7	1,215.2	1,055.3
Total liabilities and shareholders equity	$ 3,306.4	$ 3,430.3	$ 3,220.3

See notes to condensed consolidated financial statements (unaudited).

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McCORMICK & COMPANY, INCORPORATED

CONDENSED CONSOLIDATED CASH FLOW STATEMENT (UNAUDITED)

(in millions)

	Nine months ended	
	August 31, 2009	**August 31, 2008**
Cash flows from operating activities		
Net income	$ 183.5	$ 173.4
Adjustments to reconcile net income to net cash flow from operating activities:		
Depreciation and amortization	69.6	64.6
Losses/(Gains) on asset sales	.2	(21.3)
Stock-based compensation	10.5	15.0
Income from unconsolidated operations	(10.1)	(15.0)
Changes in operating assets and liabilities	(68.3)	(112.8)
Dividends from unconsolidated affiliates	9.7	11.4
Net cash flow provided by operating activities	195.1	115.3
Cash flows from investing activities		
Acquisition of business		(696.8)
Capital expenditures	(53.8)	(56.7)
Net proceeds from sale of Season-All		14.0
Proceeds from sale of property, plant and equipment	.5	14.8
Net cash flow used in investing activities	(53.3)	(724.7)
Cash flows from financing activities		
Short-term borrowings, net	(29.2)	524.4
Long-term debt borrowings		255.0

		Annual Compensation			Long-Term Compensation Awards		
Name and Principal Position	**Year**	**Salary**	**Bonus**	**Other Annual Compensation**	**Restricted Stock Awards**	**Securities Underlying Options(#)**	**All Other Compensation(1)**

John R. Bertucci		2005	$474,711	$136,901			$ 6,300
	Executive Chairman	2004	$443,154	$351,373			$ 6,150
	(former Chief Executive Officer)	2003	$391,430	$ 25,438		965	$ 6,000
Leo Berlinghieri		2005	$395,583	$113,873	37,500		
	Chief Executive	2004	$336,023	$216,220		65,000	
	Officer and President	2003	$233,599	$ 8,189		85,857	
Gerald G. Colella		2005	$281,046	$ 67,542			$ 6,300
	Vice President and	2004	$244,289	$132,445		42,000	$ 6,150
	Chief Business Officer	2003	$193,132	$ 6,797		35,107	$ 6,000
John A. Smith		2005	$250,718	$ 60,254			$ 5,988
	Vice President	2004	$244,325	$132,462		41,000	$ 5,033
	and Chief Technology Officer	2003	$196,248	$ 6,904		24,836	$ 4,450
William D. Stewart		2005	$234,796	$ 45,141		75,000	$ 6,300
	Vice President &	2004	$225,775	$ 96,775		36,000	$ 6,150
	General Manager, Vacuum Products Group	2003	$194,541	$ 6,709		24,871	$ 5,851
Ronald C. Weigner		2005	$240,538	$ 46,097			$ 6,300
	Vice President and	2004	$229,794	$ 99,960		36,000	$ 6,150
	Chief Financial Officer	2003	$202,846	$ 7,080		24,895	$ 6,000

(1) Represents amounts paid by MKS into a 401(k) plan. Other compensation in the form of perquisites and other personal benefits, securities or property has been omitted in those instances where the aggregate amount of such compensation constituted less than the lesser of $50,000 or 10 percent of the total annual salary and bonus for the respective Named Executive Officer for such year.

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Stock Option Grants

Option Grants in Fiscal Year 2005

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term(3)	
Name	Number of Securities Underlying Options Granted	% of Total Options Granted to Employees in Fiscal Year(1)	Exercise Price Per Share ($/Sh)	Expiration Date(2)	5%	10%
John R. Bertucci						
Leo Berlinghieri						
Gerald G. Colella						
John A. Smith						
William D. Stewart	37,500(4)		$17.74	2/14/2015	$418,372	$1,060,237
	37,500(5)	29.24%	$17.74	2/14/2015	$418,372	$1,060,237
Ronald C. Weigner						

(1) In the fiscal year ended December 31, 2005, options to purchase a total of 256,500 shares of Common Stock were granted to employees of MKS, including officers.

(2) The options are subject to earlier termination upon certain events related to termination of employment.

(3) The dollar gains under these columns result from calculations discussing hypothetical growth rates as set by the Commission and are not intended to forecast future price appreciation of the Common Stock.

(4) Options will become exercisable as follows: 25% of the shares become exercisable on the first anniversary of the date of issue. An additional 6.25% of the initial grant of options vests on each successive quarter.

(5) Vested upon issuance.

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

			Number of Securities Underlying Unexercised Options at Fiscal Year End		Value of Unexercised In-the-Money Options at Fiscal Year End(2)	
Name	Shares Acquired on Exercise(#)	Value Realized(1)	Exercisable	Unexercisable	Exercisable	Unexercisable
John R. Bertucci	13,804	$ 42,378	16,302	0	$ 38,446	$ 0
Leo Berlinghieri	20,000	253,280	394,453	63,750	1,044,493	122,888
Gerald G. Colella	7,000	69,472	268,828	33,813	75,448	83,855
John A. Smith			157,734	31,563	154,084	83,855
William D. Stewart			306,234	51,563	79,489	76,472

Ronald C. Weigner	52,200	633,693	386,623	28,125	1,627,716	72,956

(1) Value realized represents the difference between the closing price per share of Common Stock on the date of exercise and the exercise price per share multiplied by the number of shares acquired upon exercise.

(2) Total value of in-the-money unexercised options is based on the difference between the last sales price of the Company s Common Stock on the NASDAQ Stock Market on December 30, 2005, the last trading day of the fiscal year 2005 ($17.89 per share) and the exercise price of in-the-money options, multiplied by the number of shares subject to such options.

Retirement Benefits

MKS provides supplemental retirement benefits to certain officers, including Messrs. Berlinghieri, Weigner and Colella. Benefits become fully vested when the officer (i) has 25 years of service with MKS, and (ii) retires at Normal Retirement Age (set forth in the table below), with partial vesting at specified ages

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prior to Normal Retirement Age, as indicated below. When fully vested, the benefits provide for annual payments equal to 50% of the employee s final average compensation (defined below) for life, with 50% of such amount payable to his spouse for life after the employee s death, or a lump sum payment of an aggregate amount calculated in accordance with actuarial tables. Final annual compensation is equal to the average of officer s three highest years of compensation (salary plus bonus) during the 10 years prior to the officer s retirement (or other qualifying termination). The benefits listed above are not subject to any deduction for social security or other offset amounts.

The above-named officers have been credited with the following years of service and have the following Normal Retirement Age pursuant to the supplemental retirement benefits:

	Years of Service Credited (as of 12/31/05)	Normal Retirement Age (fully vested)	Estimated Annual Benefit Payable upon Retirement at Normal Retirement Age(1)
Leo Berlinghieri	25	62(2)	$302,530
Gerald G. Colella	22	62(2)	$204,335
Ronald C. Weigner	25	65(3)	$171,604

(1) These estimated annual benefits assume that each participant s salary plus bonus would remain unchanged from his 2005 levels until retirement.

(2) When fully vested, the amount payable to each of Messrs. Berlinghieri and Colella is equal to 50% of the average of his three years of highest compensation (salary plus bonus) during the 10 years prior to his retirement (or other qualifying termination). At age 61, this benefit becomes 90% vested; and at age 60, this benefit becomes 80% vested.

(3) When fully vested, the amount payable to Mr. Weigner is equal to 50% of the average of his three years of highest compensation (salary plus bonus) during the 10 years prior to his retirement (or other qualifying termination). At age 64, this benefit becomes 90% vested; at age 63, this benefit becomes 80% vested; at age 62, this benefit becomes 60% vested; at age 61, this benefit becomes 40% vested. Because Mr. Weigner is currently age 60, this benefit is currently 20% vested.

In addition, the Company provides Mr. Smith a retirement benefit, as described below under Employment Agreements.

Certain Relationships and Related Transactions

Mr. Bertucci, the Executive Chairman and a director of the Company, holds a 50% interest in a partnership that leases space to the Company in Santa Clara, California. In 2005, MKS paid the partnership approximately $95,000 for lease payments. This lease arrangement will be terminated effective March 15, 2006.

Mr. Chute, a director of MKS and MKS s secretary, provides legal services to MKS. In 2005, MKS paid him a retainer of $60,000 for these services.

Mr. Schneider, MKS s Vice President and General Manager, Ion Systems, was the President and Chief Executive Officer of Ion Systems, Inc., which was acquired by MKS on January 3, 2006. In connection with the acquisition, Mr. Schneider was entitled to receive payment out of the purchase price proceeds for a management incentive bonus arrangement that was in effect between him and Ion Systems, Inc. and for his stock options. Accordingly, he received $1,269,414 at the closing, and is entitled to receive up to an additional $1,751,136, payable out of escrow accounts, subject to certain indemnification obligations and employment conditions.

Mr. Stewart, MKS s Vice President and General Manager of the Vacuum Products Group, is the general partner of Aspen Industrial Park Partnership, LLLP and 5330 Sterling Drive LLC (collectively, Aspen). MKS leases from Aspen certain facilities occupied by MKS s Vacuum Products Group in Boulder, Colorado. MKS paid Aspen approximately $835,000 in 2005 to lease such facilities.

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Emerson Electric Co. is the beneficial owner of approximately 18% of the outstanding shares of Common Stock. During 2005, MKS purchased materials and administrative services from Emerson and its subsidiaries totaling approximately $800,000.

Equity Compensation Plan Information

The following table provides information about the securities authorized for issuance under MKS s equity compensation plans as of December 31, 2005:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights(1)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders	9,459,271	$20.36	3,745,998(2)(3)
Equity compensation plans not approved by security holders			
Total	9,459,271	$20.36	3,745,998(2)(3)

(1) Excludes an aggregate of 58,281 shares issuable upon exercise of outstanding options assumed by the Company in connection with an acquisition. The weighted average exercise price of the excluded options is $32.45.

(2) Securities available for future issuance under the 2004 Stock Incentive Plan increase on January 1 of each year by 5% of the issued and outstanding shares as of December 31 of the prior year up to the amount authorized by the shareholders.

(3) Includes 592,087 shares issuable under the Company s Second Restated 1999 Employee Stock Purchase Plan and 138,456 shares issuable under the Company s Restated International Employee Stock Purchase Plan as of December 31, 2005.

Employment Agreements

MKS has entered into employment agreements with each of Messrs. Bertucci, Berlinghieri, Colella, Smith, Stewart and Weigner. The terms of such employment agreements are included in the summary below.

Each agreement sets the base salary for each employee which is reviewed annually. Each employee is also entitled to standard benefits, including participation in a profit sharing and retirement savings plan, vacation days, insurance and medical/dental insurance.

Term and Termination

Mr. Bertucci s agreement provides that if Mr. Bertucci resigns from his employment, then, subject to applicable law, the Company s by-laws and articles of organization and the directors fiduciary duties, the Board of Directors shall nominate Mr. Bertucci for election as a Class III director and consider Mr. Bertucci for appointment as Chairman of the Board, subject to eligibility requirements. Mr. Bertucci s employment term shall continue until terminated by either party, or by death or disability. If Mr. Bertucci s employment is terminated by the Company without cause (as defined in the agreement), or by Mr. Bertucci for good reason, Mr. Bertucci shall continue to receive salary and bonus for 36 months after the date of such termination (which payments shall be in a lump sum and grossed up for applicable taxes if such termination occurs within 2 years of a change in control of the Company), and additional employment benefits for his lifetime. If Mr. Bertucci otherwise terminates his employment, in exchange for his agreement to provide consulting services for the Company, he shall continue to receive salary and bonus for 18 months after the date of such termination and additional employment benefits for his lifetime. All such termination payments shall be grossed up to cover any applicable excise tax. Mr. Bertucci and his spouse are also eligible to receive retiree medical for their lifetimes, upon meeting specified criteria. Retiree medical benefits are not available if Mr. Bertucci is terminated by the Company for cause.

All of the other employees employment terms are month to month, with termination upon death, disability, or at the election of MKS if the employee fails to perform his duties or commits any act not in MKS s best interest.

With respect to Mr. Berlinghieri, if his employment is terminated by the Company (other than for failure or refusal to perform his obligations, commitment of acts not in the Company s interest, commission of a felony or willful misconduct), Mr. Berlinghieri shall continue to receive salary and certain benefits for 12 months after the date of such termination; and, if Mr. Berlinghieri s employment is terminated by the Company without cause or by Mr. Berlinghieri for good reason (each as defined in the agreement), within two years after a change in control of the Company, and certain other criteria are met, Mr. Berlinghieri shall continue to receive salary and certain benefits for 36 months after the date of such termination.

Non-Competition and Non-Solicitation

Each of the employment agreements contains a non-competition provision. With respect to Messrs. Colella, Smith, Stewart and Weigner, such employees may not during the term of their employment and for the period of one year after termination of employment (or, in the case of Messrs. Stewart and Weigner, two years if employment was terminated by such employee other than for good reason (as defined in the agreement)):

- engage in any competitive business or activity;
- work for, employ, become a partner with, or cause to be employed, any employee, officer or agent of MKS;
- give, sell or lease any competitive services or goods to any customer of MKS; or
- have any material financial interest in or be a director, officer, partner, employee or consultant to or exceed specified shareholding limitations in, any competitor of MKS.

With respect to Mr. Berlinghieri s agreement, during the term of employment and for a period of one year thereafter (or two years, if employment was terminated by Mr. Berlinghieri other than for good reason), Mr. Berlinghieri may not (i) engage in any competitive business or activity, (ii) work for or become a partner with any employee, officer or agent of the Company, or (iii) have any financial interest in or be a director, officer, 1% shareholder, partner, employee or consultant to any competitor of the Company.

With respect to Mr. Bertucci s agreement, during the term of employment and for a period of one year thereafter (or two years, if employment was terminated by Mr. Bertucci other than for good reason , as defined in the agreement), Mr. Bertucci may not (i) manage or participate in a competing business or (ii) maintain an ownership of more than 1% in any competing business.

All of the employment agreements contain non-solicitation provisions. During the term of employment and for a period of two years after termination of employment (one year for Messrs. Colella and Smith, and one to two years for Mr. Bertucci), the employees may not (i) solicit any customer to become a customer, distributor or supplier of any other person or entity or to cease doing business with the Company or (ii) solicit or hire any employee or agent of the Company to terminate such person s employment or engagement with the Company or to work for a third party.

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Supplemental Retirement Benefits

The employment agreements for each of Messrs. Berlinghieri, Weigner and Colella provide for supplemental retirement benefits. The benefits:

- vest upon the employee reaching both (i) specified ages and (ii) 25 years of service with the Company, in each case while employed with the Company, or upon the employee s earlier death, disability, termination without cause (as defined in the agreement) or a qualifying termination in connection with a change in control (as defined in the agreement);

- are forfeited in the event of termination for cause; and

- provide for, upon retirement in accordance with the terms of the plan, annual payments equal to 50% of the employee s final average pay (as defined in the agreement) for life, with 50% of such amount payable to his spouse for life after the employee s death, or a lump sum payment of such aggregate amount, in accordance with actuarial tables.

Mr. Smith s agreement provides for supplemental retirement benefits. These benefits:

- vest upon his reaching specified ages while employed with the Company, or upon his earlier death, disability, termination without cause (as defined in the agreement) or a qualifying termination in connection with a change in control (as defined in the agreement);

- are forfeited in the event of termination for cause or upon Mr. Smith s voluntary termination for any reason other than retirement;

- provide for a payment to Mr. Smith, upon his retirement in accordance with the terms of his agreement, of an amount equal to the aggregate of 15% of Mr. Smith s annual compensation for each year during the period beginning 2004 until termination of employment, as if such amount were invested in investment instruments previously specified by Mr. Smith; and

- provide that the Company may make additional discretionary contributions to Mr. Smith s retirement plan, and Mr. Smith may contribute up to 25% of his current salary and up to 100% of his bonus to the retirement plan.

In addition, the Company also provides retiree medical benefits to Messrs. Weigner and Stewart and their respective spouses, for their lifetimes, upon meeting specified criteria. Retiree medical benefits are not available if the employee terminates his employment with the Company prior to age 62 (unless such termination is for good reason, as defined in the employment agreement) or is terminated by the Company for cause. Upon receipt of the benefits, Messrs. Weigner and Stewart will each be responsible for paying $1,500 in costs annually, and, until they reach age 65, an additional portion of the costs.

Management Incentive Bonus Plan

In addition to the rights set forth in the employment agreements, each of the employees described above is entitled, under the Company s Management Incentive Bonus Plan, to a bonus equal to a specified percentage of his base salary, ranging from 75% for Mr. Berlinghieri, to 40% for other participants. The amounts to be distributed pursuant to the plan are generally determined by the pro-forma pre-tax earnings per share target for the Company, and in some instances, are also partially based on the performance of a particular product group.

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CODE OF ETHICS

Pursuant to Section 406 of the Sarbanes Oxley Act of 2002, MKS has adopted a written code of business conduct and ethics that applies to all of the Company s directors, officers and employees (including the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions), which is posted in the Investors link on the Company s website, www.mksinstruments.com, under the heading Corporate Governance. MKS intends to disclose any amendments to, or waivers from, the Company s code of business conduct and ethics on MKS s website.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act (Section 16(a)) requires executive officers, directors, and shareholders who beneficially own more than ten percent (10%) of the Company s stock to file initial reports of ownership on Form 3 and reports of changes in ownership on Form 4 with the Commission and any national securities exchange on which the Company s securities are registered. Executive officers, directors and greater than ten percent (10%) beneficial owners are required by the Commission s regulations to furnish the Company with copies of all Section 16(a) forms they file.

Based solely on a review of the copies of such forms furnished to the Company and written representations from the executive officers and directors, pursuant to Item 405 of Regulation S-K, the Company believes that all Section 16(a) filing requirements applicable to its officers, directors and greater than ten percent (10%) shareholders were complied with, except that Mr. Stewart failed to timely report a grant of an option to purchase 37,500 shares of Common Stock on his Form 4 that was filed on February 16, 2005. This grant was subsequently reported on an amendment to the original filing.

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COMPARATIVE STOCK PERFORMANCE

The following graph compares the cumulative total shareholder return (assuming reinvestment of dividends) from investing $100 on December 31, 2000, and plotted at the last trading day of each of the fiscal years ended December 31, 2001, 2002, 2003, 2004 and 2005, in each of (i) the Company s Common Stock; (ii) a Peer Group Index of semiconductor equipment/material manufacturers (the Hemscott Industry Group , which index was formerly known as the Coredata Group Index), compiled by Hemscott, Inc. (Hemscott); and (iii) the NASDAQ Market Index of companies (the NASDAQ Market Index). The graph was compiled by Hemscott. The stock price performance on the graph below is not necessarily indicative of future price performance. The Company s Common Stock is listed on the NASDAQ National Market under the ticker symbol MKSI.

Performance Graph

COMPARISON OF CUMULATIVE TOTAL RETURN OF ONE OR MORE COMPANIES, PEER GROUPS, INDUSTRY INDEXES AND/OR BROAD MARKETS

	2001	2002	2003	2004	2005
MKS Instruments, Inc.	$ 174.39	$ 106.00	$ 187.10	$ 119.68	$ 115.42
Hemscott Group Index	$ 109.48	$ 65.50	$ 118.84	$ 93.26	$ 98.06
NASDAQ Market Index	$ 79.71	$ 55.60	$ 83.60	$ 90.63	$ 92.62

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PROPOSAL TWO
RATIFICATION OF APPOINTMENT OF INDEPENDENT AUDITORS

On February 2, 2006, the Audit Committee appointed PwC as the Company s independent auditors for the fiscal year ending December 31, 2006. PwC was the Company s independent auditors for the fiscal year ended December 31, 2005.

Representatives of PwC are expected to be present at the Annual Meeting and will have the opportunity to make a statement if they so desire and will be available to respond to appropriate questions from shareholders. In the event that the ratification of the appointment of PwC as the independent auditors for the Company is not obtained at the Annual Meeting, the Board of Directors will reconsider its appointment.

THE BOARD OF DIRECTORS BELIEVES THAT THE PROPOSAL TO RATIFY THE APPOINTMENT OF PRICEWATERHOUSECOOPERS LLP AS INDEPENDENT AUDITORS OF THE COMPANY FOR THE FISCAL YEAR ENDING DECEMBER 31, 2006 IS IN THE BEST INTERESTS OF MKS AND ITS SHAREHOLDERS AND THEREFORE RECOMMENDS A VOTE FOR THIS PROPOSAL.

OTHER MATTERS

The Board of Directors does not know of any other matters which may come before the meeting. However, if any other matters are properly presented to the meeting, it is the intention of the persons named in the accompanying proxy to vote, or otherwise act, in accordance with their judgment on such matters.

All costs of solicitation of proxies will be borne by the Company. In addition to solicitations by mail, the Company s directors, officers and regular employees, without additional remuneration, may solicit proxies by telephone and personal interviews and the Company reserves the right to retain outside agencies for the purpose of soliciting proxies. Brokers, custodians and fiduciaries will be requested to forward proxy soliciting material to the owners of stock held in their names, and the Company will reimburse them for their reasonable out-of-pocket expenses incurred in connection with the distribution of proxy materials.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

For the years ended December 31, 2005 and 2004, aggregate fees for professional services rendered by the Company s independent auditors, PwC, in the following categories were as follows:

	2005	2004(1)
Audit Fees	$ 2,054,400	$ 2,309,000
Audit-Related Fees		67,000
Tax Fees	456,820	391,174
All Other Fees	4,200	
Total	$ 2,515,420	$ 2,767,174

(1) 2004 Tax Fees and Total have been adjusted from previously disclosed amounts to include fees incurred in 2004 which were paid in 2005.

Audit Fees for the years ended December 31, 2005 and 2004 were for professional services provided for the audit of the Company s consolidated financial statements and of the Company s internal control over financial reporting, statutory and subsidiary audits, consents and assistance with review of documents filed with the Commission.

Audit-Related Fees for the year ended December 31, 2004 were for advice related to accounting and reporting standards.

Tax Fees for the year ended December 31, 2005 were for services related to tax compliance, including the preparation of tax returns; and tax planning and tax advice, including assistance with acquisitions, mergers and foreign operations. Tax Fees for the year ended December 31, 2004 were for services related to tax compliance, including the preparation of tax returns and claims for refund; and tax planning and tax advice, including assistance with acquisitions, foreign sales and foreign subsidiaries.

All Other Fees for the year ended December 31, 2005 were for research software and a study on fringe related costs.

In 2005, $2,700 (or 0.1% of total 2005 fees) of all Other Fees were provided under the de minimis exception to the audit committee pre-approval requirements. In 2004, no fees were provided under the de-minimus exception.

Pre-Approval Policy and Procedures

The Audit Committee has adopted policies and procedures relating to the approval of all audit and non-audit services that are to be performed by the Company s independent auditors. This policy generally provides that the Company will not engage its independent auditors to provide audit or non-audit services unless the service is specifically approved in advance by the Audit Committee or the engagement is entered into pursuant to one of the pre-approval procedures described below.

From time to time, the Audit Committee may pre-approve specified types of services that are expected to be provided to the Company by its independent auditors during the next 12 months. Any such pre-approval is detailed as to the particular service or type of service to be provided and is also generally subject to a maximum dollar amount.

The Audit Committee has also delegated to the chairman of the Audit Committee the authority to approve any audit or non-audit services to be provided to the Company by its independent auditors. Any approval of services by the Chairman of the Audit Committee pursuant to this delegated authority is reported on at the next meeting of the Audit Committee.

The Audit Committee has considered and determined that the provision of the non-audit services noted in the foregoing table is compatible with maintaining PwC s independence.

DEADLINE FOR SUBMISSION OF SHAREHOLDER PROPOSALS FOR THE 2007 ANNUAL MEETING

Proposals of shareholders intended to be presented at the 2007 Annual Meeting of Shareholders must be received by the Company at its principal office in Wilmington, Massachusetts not later than November 21, 2006, for inclusion in the proxy statement for that meeting.

In addition, the Company s By-Laws (which are on file with the Commission) require that MKS be given advance notice of matters that shareholders wish to present for action at an Annual Meeting of shareholders (other than matters included in MKS s proxy statement in accordance with Rule 14a-8 of the Exchange Act). The required written notice must be delivered to the Secretary of the Company at the principal offices of the Company at least 60 days prior to the Annual Meeting, but no more than 90 days prior to such meeting or it will be considered untimely. However, if less than 40 days notice of the Annual Meeting is provided to the shareholders, the written notice of the shareholder must be received by the Secretary of the Company no later than 10 days after the notice of the Annual Meeting was mailed or publicly disclosed. The advance notice provisions of the Company s By-Laws contain the requirements of the written notice of shareholders and supersede the notice requirement contained in Rule 14a-4(c)(1) under the Exchange Act.

IMPORTANT NOTICE REGARDING DELIVERY OF SECURITY HOLDER DOCUMENTS

Some banks, brokers and other nominee record holders are already householding proxy statements and annual reports. This means that only one copy of the Company s proxy statement or annual report may have been sent to multiple shareholders in your household. We will promptly deliver a separate copy of either document to you if you call or write us at the following address or phone number: **MKS Instruments, Inc., 90 Industrial Way, Wilmington, Massachusetts 01887, (978) 284-4000, Attn: Investor Relations.** If you want to receive separate copies of the annual report and proxy statement in the future, or if you are receiving multiple copies and would like to receive only one copy for your household, you should contact your bank, broker, or other nominee record holder, or you may contact us at the above address and phone number.

By Order of the Board of Directors

Richard S. Chute
Secretary

March 20, 2006

THE BOARD OF DIRECTORS ENCOURAGES SHAREHOLDERS TO ATTEND THE MEETING. WHETHER OR NOT YOU PLAN TO ATTEND, YOU ARE URGED TO COMPLETE, DATE, SIGN AND RETURN THE ENCLOSED PROXY IN THE ACCOMPANYING ENVELOPE. A PROMPT RESPONSE WILL GREATLY FACILITATE ARRANGEMENTS FOR THE MEETING AND YOUR COOPERATION WILL BE APPRECIATED. SHAREHOLDERS WHO ATTEND THIS MEETING MAY VOTE THEIR STOCK PERSONALLY EVEN THOUGH THEY HAVE SENT IN THEIR PROXIES.

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APPENDIX A

ANNUAL MEETING OF SHAREHOLDERS OF
MKS INSTRUMENTS, INC.
MAY 8, 2006
Please detach and mail in the envelope provided.

MKS INSTRUMENTS, INC.
2006 ANNUAL MEETING OF SHAREHOLDERS
MAY 8, 2006
THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The undersigned shareholder of MKS Instruments, Inc., a Massachusetts corporation (the Company), hereby acknowledges receipt of the Notice of Annual Meeting of Shareholders and Proxy Statement, each dated March 20, 2006, and hereby appoints Leo Berlinghieri, Richard S. Chute and Ronald C. Weigner, and each of them acting singly, proxies and attorneys-in-fact, with full power to each of substitution, on behalf and in the name of the undersigned, to represent the undersigned at the 2006 Annual Meeting of Shareholders of the Company to be held on May 8, 2006, at 10:00 a.m. at the Andover Country Club, 60 Canterbury Street, Andover, Massachusetts 01810, and at any adjournment(s) thereof, and to vote all shares of Common Stock which the undersigned would be entitled to vote if then and there personally present, on the matters set forth on the reverse side, and, in their discretion, upon any other matters which may properly come before the meeting.

This proxy, when properly executed, will be voted as directed on the reverse side, or, if no contrary direction is indicated, will be voted FOR the election of the three (3) nominees listed on the reverse side as Class I Directors of the Company, FOR proposal 2 and as said proxies deem advisable on such matters as may properly come before the meeting.

Address
Changes/Comments:
(If you noted any Address Changes/Comments above, please mark corresponding box on the reverse side.)

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MKS INSTRUMENTS, INC.

PLEASE DATE, SIGN AND MAIL YOUR PROXY CARD IN THE ENVELOPE PROVIDED AS SOON AS POSSIBLE.

(CONTINUED AND TO BE SIGNED ON THE REVERSE SIDE)

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ELECTION OF DIRECTORS AND FOR PROPOSAL 2.

Vote on Directors

1. To elect three (3) Class I Directors for a term of three (3) years.

Nominees:

01) Leo Berlinghieri
02) Hans-Jochen Kahl
03) Louis P. Valente

o FOR ALL
o WITHHOLD FOR ALL
o FOR ALL EXCEPT

To withhold authority to vote for any individual nominee(s), mark For All Except and write the nominee s number on the line below.

____

Vote on Proposals

2. To ratify the selection of PricewaterhouseCoopers LLP as the Company s independent auditors for the year ending December 31, 2006.

FOR	AGAINST	ABSTAIN
o	o	o

TO ENSURE YOUR REPRESENTATION AT THE ANNUAL MEETING, PLEASE MARK, SIGN AND DATE THIS PROXY AND RETURN IT AS PROMPTLY AS POSSIBLE.

NOTE: Please sign exactly as your name or names appear on this Proxy. When shares are held jointly, each holder should sign. When signing as executor, administrator, attorney, trustee or guardian, please give full title as such. If the signer is a corporation, please sign full corporate name by duly authorized officer, giving full title as such. If signer is a partnership, please sign in partnership name by authorized person.

For address changes and/or comments, please check this box and write them on the back where indicated. o

Please indicate if you plan to attend this meeting. o Yes No o

Signature [PLEASE SIGN WITHIN BOX] Date:

Signature (Joint Owners) Date: