Risk Factors Comparison 2023-06-23 to 2022-06-24 Form: 10-K

Legend: New Text ~~Removed Text~~ Unchanged Text Moved Text Section

We are dependent on the continued knowledge and efforts of our leadership team and other key Team Members. If, for any reason, our leadership team does not continue to be active in management, or we lose such persons, or other key Team Members, or we fail to identify and / or recruit for current or future leadership positions, our business, financial condition or results of operations could be adversely affected. We also rely on our ability to recruit, hire and retain qualified drivers, distribution center Team Members, field management and store Team Members. Recent difficulties and shortages in the general labor market for such individuals, in particular hourly Team Members and drivers, and the failure to continue to attract and retain these individuals, especially at reasonable compensation levels in the current rising wage environment, could have a material adverse effect on the operation of individual stores, distribution network, our business and results of operations. Any failure to anticipate and respond to changes in consumer preferences, or to introduce and promote innovative technology for guest interaction, could adversely affect our financial results. Our continued success depends on our ability to remain relevant with respect to consumer needs and wants, attitudes toward our industry, and our guests' preferences for ways of doing business with us, particularly with respect to digital engagement, contactless delivery, curbside pick- up and other non- traditional ordering and delivery platforms. We must continually work to develop, produce and market new products, maintain and enhance the recognition of our brands, offer a favorable mix of products, and refine our approach as to how and where we market, sell and deliver our products. This risk is compounded by the increasing use of digital media by consumers and the speed by which information and opinions are shared. **Further, changes in consumer preferences, trends or perceptions of certain items we sell, or the ingredients therein, could cause consumers to avoid such items in favor of those that are or are perceived as healthier, lower- calorie, or lower in carbohydrates or otherwise based on their ingredients or nutritional content.** If we are unable to anticipate and respond to sudden challenges that we may face in the marketplace, trends in the market for our products and changing consumer demands and sentiment, it could have a material adverse effect on our business, financial condition and results of operations. We rely on our information technology systems, and a number of third- party software providers, to manage numerous aspects of our business, and a disruption of these systems could adversely affect our business. We are ~~increasingly~~ dependent on our information technology (IT) systems, and a large number of third- party software providers and platforms, to manage and operate numerous aspects of our business, develop our financial statements, provide analytical information to management and serve as a platform for our business continuity plan. Our IT systems, and the software and other technology platforms provided by our vendors **and other third- parties**, are an essential component of our business operations and growth strategies, and a serious disruption to any of these could significantly limit our ability to manage and operate our business efficiently. These systems are vulnerable to, among other things, damage and interruption, computer system and network failures, loss of telecommunications services, physical and electronic loss of, or loss of access to, data and information, security breaches or other security **or cyber- related** incidents, computer viruses or attacks and obsolescence. Any disruption could cause our business and competitive position to suffer and cause our operating results to be reduced. Increased credit card expenses could lead to higher operating expenses and other costs for the Company. A significant percentage of our sales are made with ~~the use of~~ credit cards. Because the interchange and other fees we pay when credit cards are used to make purchases, which the Company has little control over, are based on transaction amounts, higher fuel prices at the pump, including record fuel prices that were seen **in recent** ~~at the end of our 2022 fiscal year~~ **years** ~~and beyond~~, higher gallon movement and other increases in price and sales **of fuel and other items we sell in our stores** directly result in higher credit card expenses. These additional fees directly increase operating expenses. Higher operating expenses that result from higher credit card fees may decrease our overall profit and have a material adverse effect on our business, financial condition and results of operations. Total credit card fees paid in fiscal **2023 and** 2022 ~~,~~ **exceeded $ 200 million. For fiscal** 2021, ~~and 2020,~~ **total credit card fees paid** were approximately $ ~~203~~ **150** million ~~, $ 147 million, and $ 145 million, respectively~~. In addition, credit card providers now mandate that any fraudulent activity and related losses at fuel dispensers that do not accept certain chip technology (referred to as EMV) be borne by the retailers accepting those cards. While the Company has invested, and will continue to invest, a significant amount of resources in upgrading its fuel dispensers to accept EMV, and has implemented other fraud mitigation strategies, not all of its fuel dispensers have, or in the near future may, be upgraded to such technology. As such, it is possible that credit card providers could attempt to pass the costs of certain fraudulent activity at the non- upgraded dispensers to the Company, which if significant, could have a material adverse effect on our business, financial condition and results of operations. Our operations present hazards and risks which may not be fully covered by insurance, if insured. The scope and nature of our operations present a variety of operational hazards and risks that must be managed through continual oversight and control. As protection against hazards and risks, we maintain insurance against many, but not all, potential losses or liabilities arising from such risks. Uninsured or underinsured losses and liabilities from operating risks could reduce the funds available to us for capital and investment spending and could have a material adverse impact on the results of operations. The dangers inherent in the storage and transport of fuel could cause disruptions and could expose to us potentially significant losses, costs or liabilities. We store fuel in storage tanks at our retail locations. Additionally, a significant portion of fuel is transported in our own trucks, instead of by third- party carriers. Our operations are subject to significant hazards and risks inherent in transporting and storing motor fuel. These hazards and risks include, but are not limited to, fires, explosions, traffic accidents, spills, discharges and other releases, any of which could result in distribution difficulties and disruptions, environmental pollution, governmentally- imposed fines or clean- up obligations, personal injury or wrongful death claims and other damage to our properties and the properties of others. As a result, any such event could have a material adverse effect on our business, financial condition and results of operations. Consumer or other litigation could adversely affect our financial condition and results of operations. Our retail operations are characterized by a high volume of guest traffic and by transactions involving a wide array of product selections, including prepared food. Retail operations, and in particular our distribution and food- related operations, carry a higher exposure to consumer litigation risk when compared to the operations of companies operating in many other industries. Consequently, we may become a party to personal injury, food safety, product liability, accessibility, data security and privacy and other legal actions in the ordinary course of our business. While these actions are generally routine in nature, incidental to the operation of our business and immaterial in scope, if our assessment of any action or actions should prove inaccurate, our financial condition and results of operations could be adversely affected. Additionally, we are occasionally exposed to industry- wide or class- action claims arising from the products we carry, industry- specific business practices or other operational matters, including wage- and- hour and other employment related individual and class- action claims. Our defense costs and any resulting damage awards or settlement amounts may be significant and not be covered, or in some instances fully covered, by our insurance policies. Thus, an unfavorable outcome or settlement of one or more of these lawsuits could have a material adverse effect on our **reputation,** financial position, liquidity and results of operations. **Pandemics or disease outbreaks, such as COVID- 19, responsive actions taken by governments and others to mitigate their spread, and guest behavior in response to these events, have, and may in the future, adversely affect our business operations, supply chain and financial results. Pandemics or disease outbreaks such as COVID- 19 and its variants (collectively, " COVID- 19 ") have had, and may continue to have, adverse impacts on the Company' s business. These include, but are not limited to, decreased store traffic and changed guest behavior, decreased demand for our fuel, prepared food and other convenience offerings, decreased or slowed unit / store growth, issues with our supply chain including difficulties delivering products to our stores and obtaining certain items sold at our stores, issues with respect to our Team Members' health, working hours and / or ability to perform their duties, and increased costs to the Company in response to these conditions and to protect the health and safety of our Team Members and guests. In addition, the general economic and other impacts related to responsive actions taken by governments and others to mitigate the spread of COVID- 19, or in the future other pandemics or disease outbreaks, including but not limited to stay- at- home, shelter- in- place and other travel restrictions, social distancing requirements, mask mandates, limitations on certain businesses' hours and operations, limits on public gatherings and other events, and restrictions on what, and in certain cases how, certain products can be sold and offered to our guests, have, and may continue to, result in similar declines in store traffic and overall demand, increased operating costs, and decreased or slower unit / store growth. Further, although the Company' s business was deemed an " essential service " by many public authorities throughout the COVID- 19 pandemic, allowing our operations to continue (in some cases in a modified manner), there are no guarantees the designation will continue, or be applied during a future pandemic or COVID- 19 outbreak, which would require us to reduce our operations and potentially close stores for an undetermined period of time.** Covenants in our ~~senior~~ **Senior** ~~notes~~ **Notes** and credit facility agreements require us to comply with certain covenants and meet financial maintenance tests. Failure to comply with these requirements could have a material impact to us. We are required to comply with certain financial and non- financial covenants under our existing ~~senior~~ **Senior** ~~notes~~ **Notes** and credit facility agreements. A breach of any covenant, even if unintentional, could result in a default under such agreements, which could, if not timely cured, permit lenders to declare all amounts outstanding to be immediately due and payable, and to terminate such instruments, which in turn could have a material adverse effect on our business, liquidity, financial condition and results of operation. Risks Related to Governmental Actions, Regulations, and Oversight Compliance with and changes in tax laws could adversely affect our performance. We are subject to extensive tax liabilities imposed by multiple jurisdictions, including but not limited to state and federal income taxes, indirect taxes (excise, sales / use, and gross receipts taxes), payroll taxes, property taxes, and tobacco taxes. Tax laws and regulations are dynamic and subject to change as new laws are passed, new administrations are elected and new interpretations of existing laws are issued and applied. ~~For example, the current administration' s desire to raise the federal tax rate for corporations, or to impose additional taxes or surcharges on companies in the oil and gas industries, each of which could directly result in higher taxes being incurred by the Company and which could impact the prices of important inputs to the products we sell.~~ In addition, as the federal government and certain states face economic and other pressures, they may seek revenue in the form of additional income, sales and other taxes and related fees. These activities could result in increased expenditures for tax liabilities in the future. Many of these liabilities are subject to periodic audits by the respective taxing authorities. Subsequent changes to our tax liabilities as a result of these audits may subject us to interest and penalties. We are subject to extensive governmental regulations. Our business is subject to extensive governmental laws and regulations that include, but are not limited to, those relating to environmental protection and remediation; the preparation, transportation, storage, sale and labeling of food; minimum wage, overtime and other employment and labor laws and regulations; ~~compliance with the Patient Protection and Affordable Care Act and~~ the Americans with Disabilities Act; legal restrictions on the sale of alcohol, tobacco and nicotine products, money orders, lottery / lotto and other age- restricted products; compliance with the Payment Card Industry Data Security Standards and similar requirements; compliance with the Federal Motor Carriers Safety Administration regulations; and, securities laws and Nasdaq listing standards. These, and other laws and regulations, are dynamic and subject to change as new laws are passed, new interpretations of existing laws are issued and applied and as political administrations and majorities change over time. The effects created by these, including the costs of compliance with these laws and regulations, is substantial, and a violation of or change in such laws and / or regulations could have a material adverse effect on our business, financial condition, and results of operations. State laws regulate the sale of alcohol, tobacco and nicotine products, lottery / lotto products and other age- restricted products. A violation or change of these laws could adversely affect our business, financial condition, and results of operations because state and local regulatory agencies have the power to approve, revoke, suspend, or deny applications for and renewals of permits and licenses relating to the sale of certain of these products or to seek other remedies. Any appreciable increase in wages, overtime pay, or the statutory minimum salary requirements, minimum wage rate, mandatory scheduling or scheduling notification laws, or the adoption of additional mandated healthcare or paid- time- off benefits would result in an increase in our labor costs. For example, recent state-mandated minimum wage increases, along with general labor market shortages and wage pressures, have increased our operating expenses significantly. Such cost increases, or the penalties for failing to comply, could adversely affect our business, financial condition, and results of operations. State or federal lawmakers or regulators may also enact new laws or regulations applicable to us that may have a material adverse and potentially disparate impact on our business. Governmental action and campaigns to discourage tobacco and nicotine use and other tobacco products may have a material adverse effect on our revenues and gross profit. Congress has given the Food and Drug Administration (" FDA ") broad authority to regulate tobacco and nicotine products, including e- cigarettes and vapor products, and the FDA has enacted numerous regulations restricting the sale of such products. These governmental actions, as well as national, state and local campaigns and regulations to discourage tobacco and nicotine use and limit the sale of such products, including but not limited to tax increases related to such products and certain actions taken to increase the minimum age in order to purchase such products, have resulted or may in the future result in, reduced industry volume and consumption levels, and could materially affect the retail price of cigarettes, unit volume and revenues, gross profit, and overall guest traffic, which in turn could have a material adverse effect on our business, financial condition and results of operations. Wholesale cost and tax increases relating to tobacco and nicotine products could affect our operating results. Sales of tobacco and nicotine products have averaged approximately ~~11~~ **10** % of our total revenue over the past three fiscal years, and our tobacco and nicotine revenue less cost of goods sold **(** excluding depreciation and amortization **)** accounted for approximately ~~10~~ **9** % of the total revenue less cost of goods sold **(** excluding depreciation and amortization **)** for the same period. Any significant increases in wholesale cigarette and related product costs or tax increases on tobacco or nicotine products may have a materially adverse effect on unit demand for cigarettes (or related products). Currently, major cigarette and tobacco and nicotine manufacturers offer significant rebates to retailers, although there can be no assurance that such rebate programs will continue. We include these rebates as a component of cost of goods sold, which affects our gross margin from sales of cigarettes and related products. In the event these rebates are no longer offered or decreased, our wholesale cigarette and related product costs will increase accordingly. In general, we attempt to pass price increases on to our guests. Due to competitive pressures in our markets, however, we may not always be able to do so. These factors could adversely affect our retail price of cigarettes and related products, cigarette or related product unit volume and revenues, merchandise revenue less cost of goods sold **(** excluding depreciation and amortization **)** , and overall guest traffic, and in turn have a material adverse effect on our business, financial condition and results of operations. Risks Related to Our Industry General economic and political conditions that are largely out of the Company' s control may adversely affect the Company' s financial condition and results of operations. General economic and political conditions, including social and political causes and movements, higher interest rates, higher fuel and other energy costs, inflation, increases or fluctuations in commodity prices such as cheese and coffee, higher levels of unemployment, unemployment benefits and related stimulus provided as a result of the COVID- 19 pandemic **(including the rollback of certain payment relief programs introduced during the pandemic such as delayed or deferred rent, student loan payments, etc.)** , higher consumer debt levels and lower consumer discretionary spending, higher tax rates and other changes in tax laws or other economic factors may affect the operations of our stores, input costs, consumer spending, buying habits and labor markets generally, and could adversely affect **the discretionary income and spending levels of our guests,** the costs of the products we sell in our stores, the consumer demand for such products and the labor costs of transporting, storing and selling those products. For example, the recent conflict in Ukraine has resulted in historically high oil and other commodity prices, which, coupled with a recent period of high inflation, has significantly increased the cost of fuel and other products we sell. These events and their impacts can be unpredictable, and we may not always be able to recapture these higher input costs through pricing strategies or otherwise. In addition, unfavorable economic conditions, especially those affecting the agricultural industry, higher fuel prices, and unemployment levels can affect consumer confidence, spending patterns, and miles driven, and can cause guests to " trade down " to lower priced products in certain categories when these conditions exist. These factors can lead to sales declines, and in turn have an adverse impact on our business, financial condition and results of operations. Developments related to fuel efficiency, fuel conservation practices, climate change, and changing consumer preferences may decrease the demand for motor fuel. Technological advances and consumer behavior in reducing fuel use, governmental mandates to improve fuel efficiency and consumer desire or regulations to lower carbon emissions could lessen the demand for our largest revenue product, petroleum- based motor fuel, which may have a material adverse effect on our business, financial condition, and results of operation. Changes in our climate, including the effects of carbon emissions in the environment, may lessen demand for fuel or lead to additional government regulation. In addition, a shift toward electric, hydrogen, natural gas or other alternative fuel- powered vehicles, including driverless motor vehicles, could fundamentally change the shopping and driving habits of our guests or lead to new forms of fueling destinations or new competitive pressures. Any of these outcomes could potentially result in fewer guest visits to our stores, decreases in sales revenue across all categories or lower profit margins, which could have a material adverse effect on our business, financial condition and results of operations. Unfavorable weather conditions can adversely affect our business. The vast majority of our stores are located in the Midwest region of the United States, which is susceptible to tornadoes, thunderstorms, extended periods of rain or unseasonably cold temperatures, flooding, ice storms, and heavy snow. Inclement weather conditions could damage our facilities or could have a significant impact on consumer behavior, travel, and convenience store traffic patterns as well as our ability to operate our locations. In addition, we typically generate higher revenues and gross margins during warmer weather months, which fall within our first and second fiscal quarters. When weather conditions are not favorable during a particular period, our operating results and cash flow from operations could be adversely affected. The volatility of wholesale petroleum costs could adversely affect our operating results. Our net income is significantly affected by changes in the margins we receive on our retail fuel sales. Over the past three fiscal years, on average our fuel revenues accounted for approximately ~~61~~ **63** % of total revenue and our fuel revenue less cost of goods sold **(** excluding depreciation and amortization **)** accounted for approximately ~~32~~ **34** % of the total revenue less cost of goods sold **(** excluding depreciation and amortization **)**. Crude oil and domestic wholesale petroleum markets are currently, and in the recent past have been, marked by significant volatility, starting with the onset of the COVID-19 pandemic and its effects and more recently with the conflict in Ukraine. General political conditions, threatened or actual acts of war or terrorism, instability or other changes in oil producing regions, historically in the Middle East and South America but recently in Europe with the conflict in Ukraine, and trade, economic or other disagreements between oil producing nations, can, and recently have, significantly affected crude oil supplies and wholesale petroleum costs. In addition, the supply of fuel and wholesale purchase costs could be adversely affected in the event of a shortage, which could result from, among other things, severe weather events in oil producing regions, the lack of capacity at United States oil refineries or, in our case, the level of fuel contracts that we have that guarantee an uninterrupted, unlimited supply of fuel. Increases in the retail price of petroleum products have resulted and could in the future adversely affect consumer demand for fuel and other discretionary purchases. This volatility makes it difficult to predict the impact that future wholesale cost fluctuations will have on our operating results and financial condition in future periods. Any significant change in one or more of these factors could materially affect the number of fuel gallons sold, fuel revenue less cost of goods sold excluding depreciation and amortization and overall guest traffic, which in turn could have a material adverse effect on our business, financial condition and results of operations. The convenience store industry is highly competitive. The convenience store and retail fuel industries in which we operate are highly competitive and characterized by ease of entry and constant change in the number and type of retailers offering the products and services found in our stores. We compete with many other convenience store chains, gasoline stations, supermarkets, drugstores, discount stores, club stores, fast food outlets, and mass merchants, and a variety of other retail companies, including retail gasoline companies that have more extensive retail outlets, greater brand name recognition and more established fuel supply arrangements. Several non- traditional retailers such as supermarkets, club stores, and mass merchants have affected the convenience store industry by entering the retail fuel business and have obtained a share of the fuels market. Certain of these non- traditional retailers may use more extensive promotional pricing or discounts, both at the fuel pump and in the store, to encourage in- store merchandise sales and gasoline sales. In some of our markets, our competitors have been in existence longer and have greater financial, marketing, and other resources than we do. As a result, our competitors may have a greater ability to bear the economic risks inherent in our industry and may be able to respond better to changes in the economy and new opportunities within the industry, including those related to electric vehicle charging stations. This intense competition could adversely affect our revenues and profitability and have a material adverse impact on our business and results of operations. Risks Related to Our Growth Strategies We may ~~experience difficulties implementing and realizing the results of our long- term strategic plan. In January 2020, the Company unveiled an updated, long- term / strategic plan, centered around four strategic objectives: reinvent hospitality and the guest experience; be where the guest is; best- in- class efficiencies; and, invest in our people and culture. While we have invested, and will continue to invest, significant resources in our team and in planning, development, project management, and implementation of the plan, it is possible that we may experience significant delays, increased costs and other difficulties that are not presently contemplated. Further, the intended results of the plan may not be realized as anticipated. Any such issues could adversely affect our operations and negatively impact our business, results of operations and financial condition. We may~~ not be able to identify, acquire, and integrate new properties and stores, which could adversely affect our ability to grow our business. An important part of our growth strategy has been to purchase properties on which to build our stores, and in other instances, acquire other convenience stores that complement our existing stores or broaden our geographic presence. We expect to continue pursuing acquisition opportunities, which involve risks that could cause our actual growth or operating results to differ materially from our expectations or the expectations of **our shareholders and** securities analysts. These risks include, but are not limited to, the inability to identify and acquire suitable sites at advantageous prices; competition in targeted market areas; difficulties in obtaining favorable financing for larger acquisitions or construction projects; difficulties during the acquisition process in discovering some of the liabilities of the businesses that we acquire; difficulties associated with our existing financial controls, information systems, management resources and human resources needed to support our future growth; difficulties with hiring, training and retaining skilled personnel; difficulties in adapting distribution and other operational and management systems to an expanded network of stores; difficulties in adopting, adapting to or changing the business practices, models or processes of stores or chains we acquire; difficulties in obtaining governmental and other third- party consents, permits and licenses needed to operate additional stores; difficulties in obtaining the cost savings and financial improvements we anticipate from future acquired stores; the potential diversion of our management' s attention from focusing on our core business due to an increased focus on acquisitions; and, challenges associated with the consummation and integration of any future acquisition. Risks Relating to Our Common Stock The market price for our common stock has been and may in the future be volatile, which could cause the value of your investment to decline. Securities markets worldwide experience significant price and volume fluctuations. This market volatility could significantly affect the market price of our common stock without regard to our operating performance. In addition, the price of our common stock could be subject to wide fluctuations in response to these, and other factors: a deviation in our results from the expectations of public market analysts and investors; statements by research analysts about our common stock, company, or industry; changes in market valuations of companies in our industry and market evaluations of our industry generally; additions or departures of key personnel; actions taken by our competitors; sales or repurchases of common stock by the Company or other affiliates; and, other general economic, political, or market conditions, many of which are beyond our control. The market price of our common stock will also be affected by our quarterly operating results and same store sales results, which may be expected to fluctuate. Some of the factors that may affect our quarterly results and same store sales include general, regional, and national economic conditions; competition; unexpected costs; changes in retail pricing, consumer trends, and the number of stores we open and / or close during any given period; and the costs of compliance with corporate governance and other legal requirements. Other factors are discussed throughout Management' s Discussion and Analysis of Financial Condition and Results of Operations. You may not be able to resell your shares of our common stock at or above the price you pay. Any issuance of shares of our common stock in the future could have a dilutive effect on your investment. We could issue additional shares for investment, acquisition, or other business purposes. Even if there is not an immediate need for capital, we may choose to issue securities to sell in public or private equity markets, if and when conditions are favorable. Raising funds by issuing securities would dilute the ownership interests of our existing shareholders. Additionally, certain types of equity securities we may issue in the future could have rights, preferences, or privileges senior to the rights of existing holders of our common stock. Iowa law and provisions in our charter documents may have the effect of preventing or hindering a change in control and adversely affecting the market price of our common stock. Our articles of incorporation give the Company' s board of directors the authority to issue up to one million shares of preferred stock and to determine the rights and preferences of the preferred stock without obtaining shareholder approval. The existence of this preferred stock could make it more difficult or discourage an attempt to obtain control of the Company by means of a tender offer, merger, proxy contest, or otherwise. Furthermore, this preferred stock could be issued with other rights, including economic rights, senior to our common stock, thereby having a potentially adverse effect on the market price of our common stock. In addition, provisions of Iowa corporate law could make it more difficult for a third party to acquire us or remove our directors by means of a proxy contest, even if doing so would be beneficial to our shareholders. For example, the Iowa Business Corporation Act (the " Act ") prohibits publicly held Iowa corporations to which it applies from engaging in a business combination with an interested shareholder for a period of three years after the date of the transaction in which the person became an interested shareholder unless the business combination is approved in a prescribed manner. Further, the Act permits a board of directors, in the context of a takeover proposal, to consider not only the effect of a proposed transaction on shareholders, but also on a corporation' s Team Members, suppliers, guests, creditors, and on the communities in which the corporation operates. These provisions could discourage others from bidding for our shares and could, as a result, reduce the likelihood of an increase in our stock price that would otherwise occur if a bidder sought to buy our stock. We may, in the future, adopt other measures (such as a shareholder rights plan or " poison pill ") that could have the effect of delaying, deferring, or preventing an unsolicited takeover, even if such a change in control were at a premium price or favored by a majority of unaffiliated shareholders. These measures may be adopted without any further vote or action by our shareholders. ITEM 1B. UNRESOLVED STAFF COMMENTS