Risk Factors Comparison 2024-03-06 to 2023-03-08 Form: 10-K

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

Below are certain risk factors associated with our business. See also certain risk factors discussed in Item 7- " Management' s Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies and Estimates. " In addition to the potential effect of these risk factors, any risk factor which could result in reduced earnings or operating losses, or reduced liquidity, could in turn adversely affect our ability to service our liabilities or pay dividends on our common stock or adversely affect the quoted market prices for our securities. Operational Risk Factors Demand for, and prices of, certain of our products are influenced by changing market conditions for our products, which may result in reduced earnings or in operating losses. Our sales and profitability are largely dependent on the TiO2 industry. In ~~2022~~ **2023** , ~~92~~ **approximately 90** % of our sales were attributable to sales of TiO2. TiO2 is used in many " quality of life " products for which demand historically has been linked to global, regional and local gross domestic product and discretionary spending, which can be negatively impacted by regional and world events or economic conditions. Such events are likely to cause a decrease in demand for our products and, as a result, may have an adverse effect on our results of operations and financial condition. Pricing within the global TiO2 industry over the long term is cyclical and changes in economic conditions worldwide can significantly impact our earnings and operating cash flows. Historically, the markets for many of our products have experienced alternating periods of increasing and decreasing demand. Relative changes in the selling prices for our products are one of the main factors that affect the level of our profitability. In periods of increasing demand, our selling prices and profit margins generally will tend to increase, while in periods of decreasing demand our selling prices and profit margins generally tend to decrease. In addition, pricing may affect customer inventory levels as customers may from time to time accelerate purchases of TiO2 in advance of anticipated price increases or defer purchases of TiO2 in advance of anticipated price decreases. Our ability to further increase capacity without additional investment in greenfield or brownfield capacity may be limited and as a result, our profitability may become even more dependent upon the selling prices of our products. The TiO2 industry is concentrated and highly competitive and we face price pressures in the markets in which we operate, which may result in reduced earnings or operating losses. The global market in which we operate our business is concentrated, with the top five TiO2 producers accounting for approximately 52 % of the world' s production capacity and is highly competitive. Competition is based on a number of factors, such as price, product quality and service. **We face significant competition from international and regional competitors, including TiO2 producers in China, who have significant sulfate production process capacity. Chinese producers have also continued to develop chloride process technology, and the risk of substitution of our products with products made by Chinese producers could increase if Chinese producers increase the use of chloride process technology and improve the quality of their sulfate and chloride products.** Some of our competitors may be able to drive down prices for our products if their costs are lower than our costs **, including our competitors with vertically integrated sources of raw materials for the chloride process who may have a competitive advantage during periods of high or rising raw material costs or who operate in regions with less stringent regulatory requirements** . In addition, some of our competitors' financial, technological and other resources may be greater than our resources and such competitors may be better able to withstand changes in market conditions. Our competitors may be able to respond more quickly than we can to new or emerging technologies and changes in customer requirements. Further, consolidation of our competitors or customers may result in reduced demand for our products or make it more difficult for us to compete with our competitors. The occurrence of any of these events could result in reduced earnings or operating losses. Higher costs or limited availability of our raw materials may reduce our earnings and decrease our liquidity. In addition, many of our raw material contracts contain fixed quantities we are required to purchase. The number of sources for and availability of certain raw materials is specific to the particular geographical region in which our facilities are located. Titanium-containing feedstocks suitable for use in our TiO2 facilities are available from a limited number of suppliers around the world. Political and economic instability or increased regulations in the countries from which we purchase or mine our raw material supplies could adversely affect raw material availability. If we or our worldwide vendors are unable to meet our planned or contractual obligations and we are unable to obtain necessary raw materials, we could incur higher costs for raw materials or we may be required to reduce production levels. We experienced increases in feedstock costs in ~~2021 and~~ 2022 ~~,~~ and ~~we expect feedstock costs to continue to increase in~~ 2023 **, for example, which affected our margins** . We ~~may~~ **have** also ~~experience~~ **experienced** higher operating costs such as energy costs **. Future variations in the cost of energy** , which ~~could~~ **primarily reflect market prices for oil and natural gas, and for raw materials may significantly** affect our ~~profitability. We~~ **operating results and decrease liquidity as we** may not always be able to increase our selling prices to offset the impact of any higher costs or reduced production levels ~~, which could reduce earnings and decrease liquidity~~ . We have supply contracts that provide for our TiO2 feedstock requirements ~~that currently expire in 2023 and one contract that extends through 2026~~ . While we believe we will be able to renew these contracts **, as necessary** , we do not know if we will be successful in renewing them or in obtaining long- term extensions to them prior to expiration. Our current agreements ~~(including those entered into through February 2023)~~ require us to purchase certain minimum quantities of feedstock with minimum purchase commitments aggregating approximately $ **583** ~~1. 0 billion~~ **million** beginning in ~~2023~~ **2024** and extending through 2026. In addition, we have other long- term supply and service contracts that provide for various raw materials and services. These agreements require us to purchase certain minimum quantities or services with minimum purchase commitments aggregating approximately $ ~~84~~ **72** million at December 31, ~~2022~~ **2023** . Our commitments under these contracts could **15** adversely affect our financial results if we significantly reduce our production and we are unable to modify the contractual commitments. Financial Risk FactorsOur leverage may impair our financial condition or limit our ability to operate our businesses. We have a significant amount of debt, primarily related to our Senior **Secured** Notes issued in September 2017 **and February 2024** . As of December 31, ~~2022~~ **2023** , our total consolidated debt was approximately $ ~~425~~ **441** million. Our level of debt could have important consequences to our stockholders and creditors, including: ● making it more difficult for us to satisfy our obligations with respect to our liabilities; ~~15~~ ● increasing our vulnerability to adverse general economic and industry conditions; ● requiring that a portion of our cash flows from operations be used for the payment of interest on our debt, which reduces our ability to use our cash flow to fund working capital, capital expenditures, dividends on our common stock, acquisitions or general corporate requirements; ● limiting the ability of our subsidiaries to pay dividends to us; ● limiting our ability to obtain additional financing to fund future working capital, capital expenditures, acquisitions or general corporate requirements; ● limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate; and ● placing us at a competitive disadvantage relative to other less leveraged competitors. Indebtedness outstanding under our global revolving credit facility **(Global Revolver)** accrues interest at variable rates. To the extent market interest rates rise, the cost of our debt could increase **, even if the amount borrowed remains the same** , adversely affecting our financial condition, results of operations and cash flows. In addition to our indebtedness, we are party to various lease and other agreements (including feedstock purchase contracts and other long- term supply and service contracts, as discussed above) pursuant to which, along with our indebtedness, we are committed to pay approximately $ ~~689~~ **543** million in ~~2023~~ **2024** . Our ability to make payments on and refinance our debt and to fund planned capital expenditures depends on our ability to generate cash flow in the future. To some extent, this is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. In addition, our ability to borrow funds under our **Global Revolver** ~~revolving credit facility~~ in the future, in some instances, will depend in part on our ability to maintain specified financial ratios and satisfy certain financial covenants contained in the ~~applicable~~ credit agreement **governing the Global Revolver** . Our business may not generate cash flows from operating activities sufficient to enable us to pay our debts when they become due and to fund our other liquidity needs. As a result, we may need to refinance all or a portion of our debt before maturity **, as we have done in the past** . We may not be able to refinance any of our debt in a timely manner on favorable terms, if at all, in the current credit markets. Any inability to generate sufficient cash flows or to refinance our debt on favorable terms could have a material adverse effect on our financial condition. Changes in currency exchange rates and interest rates can adversely affect our net sales, profits and cash flows. We operate our businesses in several different countries and sell our products worldwide. For example, during 2022 **and 2023** , **approximately** 45 % **and 44 %, respectively,** of our sales volumes were sold into European markets. The majority (but not all) of our sales from our operations outside the United States are denominated in currencies other than the United States dollar, primarily the euro, other major European currencies and the Canadian dollar. Therefore, we are exposed to risks related to the need to convert currencies we receive from the sale of our products into the currencies required to pay for certain of our operating costs and expenses and other liabilities (including indebtedness), all of which could result in future losses depending on fluctuations in currency exchange rates and affect the comparability of our results of operations between periods. **16** Legal, Compliance and Regulatory Risk FactorsWe may be subject to litigation, the disposition of which could have a material adverse effect on our results of operations. The nature of our operations exposes us to possible litigation claims, including disputes with customers and suppliers and matters relating to, among other things, antitrust, product liability, intellectual property, employment and environmental claims. It is possible that judgments could be rendered against us in these or other types of cases for which we could be uninsured or not covered by indemnity, or which may be beyond the amounts that we currently have reserved or anticipate incurring for such matters. Some of the lawsuits may seek fines or penalties and damages in large amounts or seek to restrict our business activities. Because of the uncertain nature of litigation and coverage decisions, we cannot predict the outcome of these matters or whether insurance claims may mitigate any damages ultimately determined to be ~~16~~ owed by us. Any liability we might incur in the future could be material. In addition, litigation is very costly, and the costs associated with defending litigation matters could have a material adverse effect on our results of operations. Environmental, health and safety laws and regulations may result in increased regulatory scrutiny which could decrease demand for our products, increase our manufacturing and compliance costs or obligations and result in unanticipated losses which could negatively impact our financial results or limit our ability to operate our business. From time to time, new environmental, health and safety regulations are passed or proposed in the countries in which we operate or sell our products, seeking to regulate our operations or to restrict, limit or classify TiO_2, or its use. Increased regulatory scrutiny could affect consumer perception of TiO_2 or limit the marketability and demand for TiO_2 or products containing TiO_2 ~~and~~ **or** increase our manufacturing and regulatory compliance obligations and costs. Increased compliance obligations and costs or restrictions on operations, raw materials and certain TiO_2 applications could negatively impact our future financial results through increased costs of production, or reduced sales which may decrease our liquidity, operating income and results of operations. If **some or all of** our intellectual property were to be declared invalid, **held to be unenforceable** or copied by **competitors or some or all of** ~~or~~ **our confidential information** become known to competitors, or if our competitors were to develop similar or superior intellectual property or technology, our ability to compete could be adversely impacted. Protection of our intellectual property rights, including patents, **copyrights,** trade secrets, confidential information, trademarks and tradenames, is important to our business and our competitive position. We endeavor to protect our intellectual property rights in key jurisdictions in which our products are produced **, sold** or used and in jurisdictions into which our products are imported. However, we may be unable to obtain protection for our intellectual property in key jurisdictions. Although we own and have applied for numerous patents and trademarks throughout the world, we may have to ~~rely on~~ **engage in** judicial enforcement ~~of~~ **in order to protect** our ~~patents~~ - **patent rights** and other proprietary rights. Our patents and other intellectual property rights may be challenged, invalidated, circumvented ~~and~~ **,** rendered unenforceable or otherwise compromised. A failure to protect, defend or enforce our intellectual property could have an adverse effect on our financial condition and results of operations. Similarly, third parties may assert claims against us and our customers and distributors alleging our products infringe upon third- party intellectual property rights. **In the event that any such third- party prevails against us on such claims, there could be an adverse effect on our financial condition and results of operations.** Although it is our practice to enter into confidentiality agreements with our employees and third parties to protect our proprietary expertise and other trade secrets, these agreements may not provide sufficient protection for our trade secrets or proprietary know- how, or adequate remedies for breaches of such agreements may not be available in the event of an unauthorized use or disclosure of such trade secrets and know- how. We also may not be able to readily detect breaches of such agreements. The failure of our ~~patents or~~ confidentiality agreements to protect our proprietary technology, know- how or trade secrets could result in a material loss of our competitive position, which could lead to significantly lower revenues, reduced profit margins or loss of market share. If we must take legal action to protect, defend or enforce our intellectual property rights, any suits or proceedings could result in significant costs **, including attorney' s fees** and diversion of resources and management' s attention, and we may not prevail in any such suits or proceedings ~~. A failure to protect, defend or enforce our intellectual property rights could have an adverse effect on our financial condition and results of operations~~ . 17 Global climate change laws and regulations could negatively impact our financial results or limit our ability to operate our businesses. We operate production facilities in several countries and many of our facilities require large amounts of energy, including electricity and natural gas, in order to conduct operations. The U. S. government and various non- U. S. governmental agencies of countries in which we operate have determined the consumption of energy derived from fossil fuels is a major contributor to climate change and have ~~introduced~~ **adopted** or are contemplating regulatory changes in response to the potential impact of climate change, including laws and regulations requiring enhanced reporting (such as the Corporate Social Responsibility Directive adopted by the European Union on November 28, 2022) as well as legislation regarding carbon emission costs, GHG emissions and renewable energy targets. International treaties or agreements may also result in increasing regulation of GHG emissions, including emissions permits and / or energy taxes or the introduction of carbon emissions trading mechanisms. To date, the existing GHG laws and regulations in effect in the various countries in which we operate have not had a material adverse effect on our financial results. Until the timing, scope and extent of any new or future regulation becomes known, we cannot predict the effect on our business, results of operations or financial condition. However, if further GHG laws and regulations were to be enacted in one or more countries, it could negatively impact our future results of operations through increased costs of production, particularly as it relates to our energy requirements or our need to obtain emissions permits. If such increased costs of production were to materialize, we may be unable to pass price increases on to our customers to compensate for increased production costs, which may decrease our liquidity, operating income and results of operations. In addition, any adopted future laws and regulations focused on climate change and / or GHG emissions could negatively impact our ability (or that of our customers and suppliers) to compete with companies situated in areas not subject to such laws and regulations. General Risk FactorsOperating as a global business presents risks associated with global and regional economic, political and regulatory environments. We have significant international operations which, along with our customers and suppliers, could be substantially affected by a number of risks arising from operating a multi- national business, including trade barriers, tariffs, economic sanctions, exchange controls, global and regional economic downturns, terrorism, armed conflict (such as the current ~~conflict~~ **conflicts** between Russia and Ukraine **and Israel and Hamas**), natural disasters, **pandemics or other** health crises ~~(such as COVID- 19)~~ and political conditions. We may encounter difficulties enforcing agreements or other legal rights and our effective tax rate may fluctuate based on the variability of geographic earnings and statutory tax rates. TiO_2 production requires significant energy input, and economic sanctions or supply disruptions resulting from armed conflict could lead to additional volatility in global energy prices and energy supply disruptions. These risks, individually or in the aggregate, could have an adverse effect on our results of operations and financial condition. Technology failures or cybersecurity breaches could have a material adverse effect on our operations. We rely on integrated information technology systems to manage, process and analyze data, including to facilitate the manufacture and distribution of products to and from our ~~plants~~ **facilities** , receive, process and ship orders, manage the billing of and collections from customers and manage payments to vendors. Although we have systems and procedures in place to protect our information technology systems, there can be no assurance that such systems and procedures will be sufficiently effective. Therefore, any of our information technology systems may be susceptible to outages, disruptions or destruction from power outages, telecommunications failures, employee error, cybersecurity breaches or attacks and other similar events. This could result in a disruption of our business operations, injury to people, harm to the environment or our assets, and / or the inability to access our information technology systems and could adversely affect our results of operations and financial condition. We have in the past experienced, and we expect to continue to experience, cyber- attacks, including phishing and other attempts to breach, or gain unauthorized access to, our systems, and vulnerabilities introduced into our systems by trusted third- party vendors who have experienced cyber- attacks. To date we have not suffered breaches in our systems, either directly or through a trusted third- party vendor, which have led to material losses. Due to the increase in global cybersecurity incidents it has become increasingly difficult to obtain insurance coverage on reasonable pricing terms to mitigate some risks associated with technology failures or cybersecurity breaches, and we are experiencing such difficulties in obtaining insurance coverage. 18