TRIMAS CORP
Form S-3
August 03, 2010
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**As filed with the Securities and Exchange Commission on August 3, 2010**

**Registration No. 333-**

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

**Washington, DC 20549**

# FORM S-3

## REGISTRATION STATEMENT
## UNDER THE SECURITIES ACT OF 1933

# TRIMAS CORPORATION

(Exact name of registrant as specified in its charter)

| **Delaware** | **3452** | **38-2687639** |
|---|---|---|
| (State or other jurisdiction of incorporation or organization) | (Primary Standard Industrial Classification Code Number) | (I.R.S. Employer Identification No.) |

**39400 Woodward Avenue, Suite 130**
**Bloomfield Hills, Michigan 49304**
**(248) 631-5450**
(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)

**Joshua A. Sherbin, Esq.**
**General Counsel**

**TriMas Corporation**
**39400 Woodward Avenue, Suite 130**
**Bloomfield Hills, Michigan 49304**
**(248) 631-5450**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Please send copies of all communications to:**

**Jonathan A. Schaffzin, Esq.**

**Douglas S. Horowitz, Esq.**
Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

**Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: o

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. o

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. o

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

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

**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities to Be Registered (1) | Amount to be Registered(1) | Proposed Maximum Aggregate Price Per Unit(2) | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee |
|---|---|---|---|---|
| Common Stock, par value $0.01 per share | 5,000,000 | $ 11.76 | $ 58,800,000 | $ 4,193 |

(1) This registration statement also relates to an indeterminate number of shares of the registrant s common stock that may be issued upon stock splits, stock dividends or similar transactions in accordance with Rule 416 of the Securities Act of 1933, as amended (the Securities Act ).

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c), based upon the average of the high and low prices for the common stock of TriMas Corporation as reported on the Nasdaq Global Market on July 28, 2010.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.**

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The information in this prospectus is not complete and may be changed. The Company may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED August 3, 2010

**PROSPECTUS**

**5,000,000 Shares**

**COMMON STOCK**

We may sell from time to time in one or more offerings up to 5,000,000 shares of our common stock.

We will provide the specific terms of any such offering in one or more supplements to this prospectus each time we sell securities hereunder. We can only use this prospectus to offer and sell our common stock by also including a prospectus supplement relating to any such offer and sale.

We may sell the common stock directly to you, through agents that we select or through underwriters and broker-dealers that we select. If we use agents, underwriters or broker-dealers to sell the securities, we will name them and describe their compensation in a prospectus supplement.

Our common stock is listed on the NASDAQ Global Market under the symbol TRS. On August 2, 2010, the last reported sale price of our common stock on the NASDAQ Global Market was $12.10.

**You should consider carefully the risks that we have described in Risk Factors beginning on page 2 before deciding whether to invest in our common stock.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete.  Any representation to the contrary is a criminal offense.**

**The date of this prospectus is    , 2010.**

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You should read this prospectus and the information incorporated by reference carefully before you invest. Such documents contain important information you should consider when making your investment decision. See Information Incorporated by Reference on page 23. If you are in a jurisdiction where offers to sell, or solicitations of offers to purchase, the securities offered by this document are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this prospectus does not extend to you. You should rely only on the information provided in this prospectus or documents incorporated by reference in this prospectus. We have not authorized anyone to provide you with different information.

The information in this document may only be accurate on the date of this document. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospectus may have changed since that date.

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the SEC ) utilizing a shelf registration process or continuous offering process, which allows us to offer and sell our common stock in one or more offerings. Using this prospectus, we may offer up to a total of 5,000,000 shares of our common stock.

This prospectus provides you with a general description of our common stock. Each time we offer to sell common stock pursuant to this registration statement and the prospectus contained herein, we will provide a prospectus supplement that will contain specific information about the terms of that offering. That prospectus supplement may include additional risk factors about us and the terms of that particular offering. Prospectus supplements may also add to, update or change the information contained in this prospectus. To the extent that any statement that we make in a prospectus supplement is inconsistent with statements made in this prospectus, the statements made in this prospectus will be deemed modified or superseded by those made in such prospectus supplement. In addition, as we describe in the section entitled Information Incorporated by Reference, we have filed and plan to continue to file other documents with the SEC that contain information about us and the business conducted by us and our subsidiaries. Before you decide whether to invest in any of these securities, you should read this prospectus, the prospectus supplement that further describes the offering of these securities and the information we file with the SEC.

Unless the context otherwise requires, the terms TriMas, the Company, we, us and our refer to TriMas Corporation and its subsidiaries.

## ABOUT THE REGISTRANT

We are a global manufacturer and distributor of products for commercial, industrial and consumer markets. Most of our businesses share important characteristics, including leading market shares, strong brand names, broad product offerings, established distribution networks, relatively high operating margins, relatively low capital investment requirements, product growth opportunities and strategic acquisition opportunities. We believe that a majority of our 2009 net sales were in markets in which our products enjoy the number one or number two market position within their respective product categories. In addition, we believe that in many of our businesses, we are one of only a few manufacturers in the geographic markets where we currently compete.

Our principal executive offices are located at 39400 Woodward Avenue, Suite 130, Bloomfield Hills, Michigan 48304. Our telephone number is (248) 631-5450. Our web site address is www.trimascorp.com. The information on our website is not part of this prospectus.

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## RISK FACTORS

*Investment in our securities involves risks. Prior to making a decision about investing in our securities, you should consider carefully the risk factors, together with all of the other information contained or incorporated by reference in this prospectus and any prospectus supplement, including any additional specific risks described in the section entitled Risk Factors contained in any supplements to this prospectus, as well as any amendments thereto reflected in subsequent filings with the United States Securities and Exchange Commission (the SEC ), which are incorporated herein by reference in their entirety. The risks and uncertainties described below are those that we have identified as material, but are not the only risks and uncertainties facing us. Additional risks and uncertainties not currently known to us or that we currently believe are immaterial may also impact our business operations, financial results and liquidity.*

***Risks Related to Our Business***

***We have a history of net losses.***

We incurred net losses of $0.2 million, $136.2 million and $158.4 million for the years ended December 31, 2009, 2008 and 2007, respectively. The losses in 2008 and 2007 principally resulted from pre-tax, non-cash goodwill and indefinite-lived impairment charges of $166.6 million and $171.2 million, respectively, included in continuing operations. The losses in 2009 and 2008 were also impacted by losses from discontinued operations of $13.0 million and $12.1 million, respectively. In addition, interest expense associated with our highly leveraged capital structure, non-cash expenses such as depreciation and amortization of intangible assets and other asset impairments also contributed to our net losses. We may continue to experience net losses in the future.

***Our businesses depend upon general economic conditions and we serve some customers in highly cyclical industries; as such we are subject to the loss of sales and margins due to an economic downturn or recession.***

Our financial performance depends, in large part, on conditions in the markets that we serve in both the U.S. and global economies. Some of the industries that we serve are highly cyclical, such as the automotive, construction, industrial equipment, energy, aerospace and electrical equipment industries. We may experience a reduction in sales and margins as a result of a downturn in economic conditions or other macroeconomic factors. Lower demand for our products may also negatively affect the capacity utilization of our production facilities, which may further reduce our operating margins.

***Many of the markets we serve are highly competitive, which could limit the volume of products that we sell and reduce our operating margins.***

Many of our products are sold in competitive markets. We believe that the principal points of competition in our markets are product quality and price, design and engineering capabilities, product development, conformity to customer specifications, reliability and timeliness of delivery, customer service and effectiveness of distribution. Maintaining and improving our competitive position will require continued investment by us in manufacturing, engineering, quality standards, marketing, customer service and support of our distribution networks. We may have insufficient resources in the future to continue to make such investments and, even if we make such investments, we may not be able to maintain or improve our competitive position.  We also face the risk of lower-cost foreign manufacturers located in China, Southeast Asia and other regions competing in the markets for our products and we may be driven as a consequence of this competition to increase our investment overseas.  Making overseas investments can be highly complicated and we may not always realize the advantages we anticipate from any such investments.  Competitive pressure may limit the volume of products that we sell and reduce our operating margins.

***Increases in our raw material or energy costs or the loss of critical suppliers could adversely affect our profitability and other financial results.***

We are sensitive to price movements in our raw materials supply base.  Our largest material purchases are for steel, copper, aluminum, polyethylene and other resins and energy.  Prices for these products fluctuate with market conditions and we have experienced sporadic increases recently. We may be unable to completely offset the impact with price increases on a timely basis due to outstanding commitments to our customers, competitive considerations or our customers resistance to accepting such price increases and our financial performance may be adversely impacted by further price increases. A failure by our suppliers to continue to supply us with certain raw materials or component parts on commercially reasonable terms, or at all, could have a material adverse effect on us. To the extent there are energy supply disruptions or material fluctuations in energy costs, our margins could be materially adversely impacted.

***We may be unable to successfully implement our business strategies. Our ability to realize our business strategies may be limited.***

Our businesses operate in relatively mature industries and it may be difficult to successfully pursue our growth strategies and realize material benefits therefrom. Even if we are successful, other risks attendant to our businesses and the economy generally may substantially or entirely eliminate the benefits. While we have successfully utilized some of these strategies in the past, our growth has principally come through acquisitions.

***Our products are typically highly engineered or customer-driven and we are subject to risks associated with changing technology and manufacturing techniques that could place us at a competitive disadvantage.***

We believe that our customers rigorously evaluate their suppliers on the basis of product quality, price competitiveness, technical expertise and development capability, new product innovation, reliability and timeliness of delivery, product design capability, manufacturing expertise, operational flexibility, customer service and overall management. Our success depends on our ability to continue to meet our customers changing expectations with respect to these criteria. We anticipate that we will remain committed to product research and development, advanced manufacturing techniques and service to remain competitive, which entails significant costs. We may be unable to address technological advances, implement new and more cost-effective manufacturing techniques, or introduce new or improved products, whether in existing or new markets, so as to maintain our businesses competitive positions or to grow our businesses as desired.

***We depend on the services of key individuals and relationships, the loss of which could materially harm us.***

Our success will depend, in part, on the efforts of our senior management, including our chief executive officer. Our future success will also depend on, among other factors, our ability to attract and retain other qualified personnel. The loss of the services of any of our key employees or the failure to attract or retain employees could have a material adverse effect on us.

***We have substantial debt and interest payment requirements that may restrict our future operations and impair our ability to meet our obligations.***

We continue to have indebtedness that is substantial in relation to our shareholders equity. As of June 30, 2010, we have approximately $500.2 million of outstanding debt and approximately $81.2 million of shareholders equity. Approximately 50% of our debt bears interest at variable rates and we may experience material increases in our interest expense as a result of increases in interest rate levels generally. Our annual debt service payment obligations in 2009 were approximately $46.2 million based on amounts outstanding as of December 31, 2009.

Our degree of leverage and level of interest expense may have important consequences, including:

- our leverage may place us at a competitive disadvantage as compared with our less leveraged competitors and make us more vulnerable in the event of a downturn in general economic conditions or in any of our businesses;

- our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate may be limited;

- our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, business development efforts, general corporate or other purposes may be impaired;

- a substantial portion of our cash flow from operations will be dedicated to the payment of interest and principal on our indebtedness, thereby reducing the funds available to us for other purposes, including our operations, capital expenditures, future business opportunities or obligations to pay rent in respect of our operating leases; and

- our operations are restricted by our debt instruments, which contain material financial and operating covenants, and those restrictions may limit, among other things, our ability to borrow money in the future for working capital, capital expenditures, acquisitions, rent expense or other purposes.

Our ability to service our debt and other obligations will depend on our future operating performance, which will be affected by prevailing economic conditions and financial, business and other factors, many of which are beyond our control. Our business may not generate sufficient cash flow, and future financings may not be available to provide sufficient net proceeds, to meet these obligations or to successfully execute our business strategies.

***Restrictions in our debt instruments and accounts receivable facility limit our ability to take certain actions and breaches thereof could impair our liquidity.***

Our credit facility and the indenture governing our senior secured notes contain covenants that restrict our ability to:

- pay dividends or redeem or repurchase capital stock;

- incur additional indebtedness and grant liens;

- make acquisitions and joint venture investments;

- sell assets; and

- make capital expenditures.

Our credit facility also requires us to comply with financial covenants relating to, among other things, interest coverage and leverage. Our accounts receivable facility contains covenants similar to those in our credit facility and includes additional requirements regarding our receivables. We may not be able to satisfy these covenants in the future or be able to pursue our strategies within the constraints of these covenants. Substantially all of our assets and the assets of our domestic subsidiaries (other than our special purpose receivables subsidiary) are pledged as collateral pursuant to the terms of our credit facility. A breach of a covenant contained in our debt instruments could result in an event of default under one or more of our debt instruments, our accounts receivable facility and our lease financing arrangements. Such breaches would permit the lenders under our credit facility to declare all amounts borrowed thereunder to be due and payable, and the commitments of such lenders to make further extensions of credit could be terminated. In addition, such breach may cause a termination of our accounts receivable facility. Each of these circumstances could materially and adversely impair our liquidity.

***We have significant goodwill and intangible assets, and future impairment of our goodwill and intangible assets could have a material negative impact on our financial results.***

We test goodwill and indefinite-lived intangible assets for impairment on an annual basis as of October 1, and more frequently if we experience changes in our business conditions that indicate an interim test may be required, by comparing the estimated fair values with their respective carrying values. We estimate the fair value of our goodwill and indefinite-lived intangible assets utilizing a combination of a discounted cash flow approach, which is based upon management s operating budget and internal five-year forecast, and market-based valuation measures that consider earnings multiples (for goodwill testing) and royalty rates (for indefinite-lived intangible

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asset testing). We test goodwill for impairment by comparing the estimated fair value of each of our reporting units, determined using a combination of the aforementioned techniques, to its respective carrying value on our balance sheet. If carrying value exceeds fair value, then a possible impairment of goodwill exists and further evaluation is performed. We test indefinite-lived intangible assets by comparing the estimated fair value of the assets, determined based on discounted future cash flows related to the net amount of royalty expenses avoided due to the existence of the trademark or trade name, to the carrying value. If the carrying value exceeds fair value, an impairment charge is recorded.

The utilization of a discounted cash flow approach in the impairment test for both goodwill and indefinite-lived intangible assets requires us to make significant estimates regarding future revenues and expenses, projected capital expenditures, changes in working capital and the appropriate discount rate. The projections also take into account several factors including current and estimated economic trends and outlook, costs of raw materials, consideration of our market capitalization in comparison to the estimated fair value of our reporting units determined using discounted cash flow analyses and other factors that are beyond our control.

At June 30, 2010, our goodwill and intangible assets were approximately $349.4 million and represented approximately 40.4% of our total assets. Our net losses of $136.2 million and $158.4 million for the years ended December 31, 2008 and 2007, respectively, included $166.6 million and $171.2 million, respectively of pre-tax charges for impairment of goodwill and indefinite-lived intangible assets in continuing operations, and $0.9 million and $17.9 million of such charges in discontinued operations in 2009 and 2008, respectively. If we experience declines in sales and operating profit or do not meet our current and forecasted operating budget, we may be subject to future goodwill impairments. In addition, while the fair value of our remaining goodwill exceeds its carrying value, significantly different assumptions regarding future performance of our businesses or significant declines in our stock price could result in additional impairment losses. Because of the significance of our goodwill and intangible assets, any future impairment of these assets could have a material adverse effect on our financial results.

***We may face liability associated with the use of products for which patent ownership or other intellectual property rights are claimed.***

We may be subject to claims or inquiries regarding alleged unauthorized use of a third party s intellectual property. An adverse outcome in any intellectual property litigation could subject us to significant liabilities to third parties, require us to license technology or other intellectual property rights from others, require us to comply with injunctions to cease marketing or using certain products or brands, or require us to redesign, reengineer, or rebrand certain products or packaging, any of which could affect our business, financial condition and operating results. If we are required to seek licenses under patents or other intellectual property rights of others, we may not be able to acquire these licenses on acceptable terms, if at all. In addition, the cost of responding to an intellectual property infringement claim, in terms of legal fees and expenses and the diversion of management resources, whether or not the claim is valid, could have a material adverse effect on our business, results of operations and financial condition.

***We may be unable to adequately protect our intellectual property.***

While we believe that our patents, trademarks and other intellectual property have significant value, it is uncertain that this intellectual property or any intellectual property acquired or developed by us in the future, will provide a meaningful competitive advantage. Our patents or pending applications may be challenged, invalidated or circumvented by competitors or rights granted thereunder may not provide meaningful proprietary protection. Moreover, competitors may infringe on our patents or successfully avoid them through design innovation. Policing unauthorized use of our intellectual property is difficult and expensive, and we may not be able to, or have the resources to, prevent misappropriation of our proprietary rights, particularly in countries where the laws may not protect such rights as fully as in the U.S. The cost of protecting our intellectual property may be significant and have a material adverse effect on our financial condition and future results of operations.

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***We may incur material losses and costs as a result of product liability, recall and warranty claims that may be brought against us.***

We are subject to a variety of litigation incidental to our businesses, including claims for damages arising out of use of our products, claims relating to intellectual property matters and claims involving employment matters and commercial disputes.

We currently carry insurance and maintain reserves for potential product liability claims. However, our insurance coverage may be inadequate if such claims do arise and any liability not covered by insurance could have a material adverse effect on our business. Although, we have been able to obtain insurance in amounts we believe to be appropriate to cover such liability to date, our insurance premiums may increase in the future as a consequence of conditions in the insurance business generally or our situation in particular. Any such increase could result in lower net income or cause the need to reduce our insurance coverage. In addition, a future claim may be brought against us that could have a material adverse effect on us. Any product liability claim may also include the imposition of punitive damages, the award of which, pursuant to certain state laws, may not be covered by insurance. Our product liability insurance policies have limits that, if exceeded, may result in material costs that could have an adverse effect on our future profitability. In addition, warranty claims are generally not covered by our product liability insurance. Further, any product liability or warranty issues may adversely affect our reputation as a manufacturer of high-quality, safe products, divert management s attention, and could have a material adverse effect on our business.

In addition, one of our Energy segment subsidiaries is a party to lawsuits related to asbestos contained in gaskets formerly manufactured by it or its predecessors. Some of this litigation includes claims for punitive and consequential as well as compensatory damages. We are not able to predict the outcome of these matters given that, among other things, claims may be initially made in jurisdictions without specifying the amount sought or by simply stating the minimum or maximum permissible monetary relief, and may be amended to alter the amount sought. Of the 8,071 claims pending at June 30, 2010, 64 set forth specific amounts of damages (other than those stating the statutory minimum or maximum). 47 of the 64 claims sought between $1.0 million and $5.0 million in total damages (which includes compensatory and punitive damages), 13 sought between $5.0 million and $10.0 million in total damages (which includes compensatory and punitive damages) and 4 sought over $10.0 million (which includes compensatory and punitive damages). Solely with respect to compensatory damages, 48 of the 64 claims sought between $50,000 and $600,000, 13 sought between $1.0 million and $5.0 million and 3 sought over $5.0 million. Solely with respect to punitive damages, 47 of the 64 claims sought between $1.0 million and $2.5 million, 13 sought between $2.5 million and $5.0 million and 4 sought over $5.0 million. Total defense costs from January 1, 2010 to June 30, 2010 were approximately $1.5 million and total settlement costs (exclusive of defense costs) for all asbestos cases since inception have been approximately $5.7 million through June 30, 2010. To date, approximately 50% of our costs related to defense and settlement of asbestos litigation have been covered by our primary insurance. Effective February 14, 2006, we entered into a coverage-in-place agreement with our first level excess carriers regarding the coverage to be provided to us for asbestos-related claims when our primary insurance is exhausted. The coverage-in-place agreement makes asbestos defense costs and indemnity insurance coverage available to us that might otherwise be disputed by the carriers and provides a methodology for the administration of such expenses. Nonetheless, there may be a period prior to the commencement of coverage under this agreement and following exhaustion of our primary insurance coverage during which we would be solely responsible for defense costs and indemnity payments, the duration of which would be subject to the scope of damage awards and settlements paid. We also may incur significant litigation costs in defending these matters in the future. We may be required to incur additional defense costs and pay damage awards or settlements or become subject to equitable remedies that could adversely affect our businesses.

***Our business may be materially and adversely affected by compliance obligations and liabilities under environmental laws and regulations.***

We are subject to federal, state, local and foreign environmental laws and regulations which impose limitations on the discharge of pollutants into the ground, air and water and establish standards for the generation, treatment, use, storage and disposal of solid and hazardous wastes, and remediation of contaminated sites. We may be legally or contractually responsible or alleged to be responsible for the investigation and remediation of contamination at various sites, and for personal injury or property damages, if any, associated with such contamination. We

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have been named as potentially responsible parties under CERCLA (the federal Superfund law) or similar state laws in several sites requiring clean-up related to disposal of wastes we generated. These laws generally impose liability for costs to investigate and remediate contamination without regard to fault and under certain circumstances liability may be joint and several resulting in one responsible party being held responsible for the entire obligation. Liability may also include damages to natural resources. We have entered into consent decrees relating to two sites in California along with the many other co-defendants in these matters. We have incurred substantial expenses for each of these sites over a number of years, a portion of which has been covered by insurance. In addition to the foregoing, our businesses have incurred and likely will continue to incur expenses to investigate and clean up existing and former company owned or leased property, including those properties made the subject of sale-leaseback transactions for which we have provided environmental indemnities to the lessors. Additional sites may be identified at which we are a potentially responsible party under the federal Superfund law or similar state laws. We must also comply with various health and safety regulations in the U.S. and abroad in connection with our operations.

We believe that our business, operations and facilities are being operated in compliance in all material respects with applicable environmental and health and safety laws and regulations, many of which provide for substantial fines and criminal sanctions for violations. Based on information presently known to us and accrued environmental reserves, we do not expect environmental costs or contingencies to have a material adverse effect on us. The operation of manufacturing plants entails risks in these areas, however, and we may incur material costs or liabilities in the future that could adversely affect us. There can be no assurance that we have been or will be at all times in substantial compliance with environmental health and safety laws. Failure to comply with any of these laws could result in civil, criminal, monetary and non-monetary penalties and damage to our reputation. In addition, potentially material expenditures could be required in the future. For example, we may be required to comply with evolving environmental and health and safety laws, regulations or requirements that may be adopted or imposed in the future or to address newly discovered information or conditions that require a response.

***Our growth strategy includes the impact of acquisitions. If we are unable to identify attractive acquisition candidates, successfully integrate acquired operations or realize the intended benefits of our acquisitions, we may be adversely affected.***

One of our principal growth strategies is to pursue strategic acquisition opportunities. Since our separation from Metaldyne in June 2002, we have completed thirteen acquisitions. Certain of these acquisitions required integration expense and actions that negatively impacted our results of operations and that could not have been fully anticipated beforehand. In addition, attractive acquisition candidates may not be identified and acquired in the future, financing for acquisitions may be unavailable on satisfactory terms and we may be unable to accomplish our strategic objectives in effecting a particular acquisition. We may encounter various risks in acquiring other companies, including the possible inability to integrate an acquired business into our operations, diversion of management s attention and unanticipated problems or liabilities, some or all of which could materially and adversely affect our business strategy and financial condition and results of operations.

***We have significant operating lease obligations and our failure to meet those obligations could adversely affect our financial condition.***

We lease many of our manufacturing facilities and certain capital equipment. Our annualized rental expense in 2009 under these operating leases was approximately $14.7 million. A failure to pay our rental obligations would constitute a default allowing the applicable landlord to pursue any remedy available to it under applicable law, which would include taking possession of our property and, in the case of real property, evicting us. These leases are categorized as operating leases and are not considered indebtedness for purposes of our debt instruments.

***We may be subject to further unionization and work stoppages at our facilities or our customers may be subject to work stoppages, which could seriously impact the profitability of our business.***

As of June 30, 2010, approximately 27 % of our work force in our continuing operations was unionized under several different unions and bargaining agreements. If our unionized workers were to engage in a strike, work stoppage or other slowdown in the future, we could experience a significant disruption of our operations. In addition,

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if a greater percentage of our work force becomes unionized, our labor costs and risks associated with strikes, work stoppages or other slowdowns may increase.

On July 10, 2009, we reached a mutually agreeable settlement with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ( Union ) regarding the duration of a neutrality agreement we have with the Union. The agreement commits us to remain generally neutral in Union organizing drives through the duration of the agreement. On August 17, 2009, the Union began an organizing drive under the terms of the neutrality agreement at our facility located in Houston, Texas, which is included in our Energy segment. Since the Union obtained a simple majority of authorization cards during the organizing drive, on November 4, 2009 we recognized the Union at this facility. The recognition requires us and the Union to negotiate a first collective bargaining agreement. Negotiations are ongoing. Under the neutrality agreement, there is no threat of strike or work slowdown during the first collective bargaining agreement.

On December 4, 2009, we received a notice of filing petition for union representation election filed by the International Association of Machinists and Aerospace workers with regard to our Engineered Components facility located in Plymouth, Massachusetts. On January 15, 2010, a vote was held according to the rules of the National Labor Relations Board. The union was unsuccessful in receiving the simple majority of the required votes; therefore, the Plymouth, Massachusetts facility remains in a union free status.

On December 10, 2009, we received a notice of filing petition for union decertification at the Houston, Texas facility. The hearing on the petition has not yet been scheduled. The decertification petition is still pending with the National Labor Relations Board.

Other than as described above, we are not aware of any present active union organizing drives at any of our other facilities. We cannot predict the impact of any further unionization of our workplace.

Many of our direct or indirect customers have unionized work forces. Strikes, work stoppages or slowdowns experienced by these customers or their suppliers could result in slowdowns or closures of assembly plants where our products are included. In addition, organizations responsible for shipping our customers products may be impacted by occasional strikes or other activity. Any interruption in the delivery of our customers products could reduce demand for our products and could have a material adverse effect on us.

***Our healthcare costs for active employees and future retirees may exceed our projections and may negatively affect our financial results.***

We maintain a range of healthcare benefits for our active employees and a limited number of retired employees pursuant to labor contracts and otherwise. Healthcare benefits for active employees and certain retirees are provided through comprehensive hospital, surgical and major medical benefit provisions or through health maintenance organizations, all of which are subject to various cost-sharing features. Some of these benefits are provided for in fixed amounts negotiated in labor contracts with the respective unions. If our costs under our benefit programs for active employees and retirees exceed our projections, our business and financial results could be materially adversely affected. Additionally, foreign competitors and many domestic competitors provide fewer benefits to their employees and retirees, and this difference in cost could adversely impact our competitive position.

***A growing portion of our sales may be derived from international sources, which exposes us to certain risks which may adversely affect our financial results and impact our ability to service debt.***

Approximately 18.0% of our net sales for the six months ended June 30, 2010 were derived from sales by our subsidiaries located outside of the U.S.  We may significantly expand our international operations through internal growth and acquisitions.  Sales outside of the U.S., particularly sales to emerging markets, and manufacturing in non-US countries are subject to various other risks which are not present within U.S. markets, including governmental embargoes or foreign trade restrictions such as antidumping duties, changes in U.S. and foreign governmental regulations, tariffs and other trade barriers, the potential for nationalization of enterprises, foreign exchange risk and other political, economic and social instability.  In addition, there are tax inefficiencies in repatriating cash flow from non-U.S. subsidiaries that could affect our financial results and reduce our ability to service debt.

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***Our stock price may be subject to significant volatility due to our own results or market trends.***

If our revenue, earnings or cash flows in any quarter fail to meet the investment community s expectations, there could be an immediate negative impact on our stock price. Our stock price could also be impacted by broader market trends and world events unrelated to our performance.

***If we do not meet the continued listing requirements of the NASDAQ our common stock may be delisted.***

Our common stock is listed on the NASDAQ. The NASDAQ requires us to continue to meet certain listing standards, including standards related to our shareholders equity and stock price. In instances where we do not meet the NASDAQ s continued listing standards, we may be notified by the NASDAQ and we may be required to take corrective action to meet the continued listing standards; otherwise, our common stock may be delisted from the NASDAQ. A delisting of our common stock on the NASDAQ would reduce the liquidity and market price of our common stock and the number of investors willing to hold or acquire our common stock, which could negatively impact our ability to access the public capital markets. A delisting would also reduce the value of our equity compensation plans, which could negatively impact our ability to retain key employees.

***Risks Related to Our Common Stock***

***Future sales of our common stock in the public market could cause our stock price to fall.***

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We have 400,000,000 shares of common stock authorized for issuance under our certificate of incorporation and 34,029,885 shares of common stock outstanding as of June 30, 2010. All of the shares of common stock sold in this offering will be freely tradeable without restrictions or further registration under the Securities Act. In addition, certain parties to our shareholders agreement have the right, subject to the limitations in the shareholders agreement, to exercise certain piggyback registration rights in connection with other registered offerings. Substantial sales by Heartland or the perception that these sales will occur may materially and adversely affect the price of our common stock.

***If we sell or issue additional shares of common stock to finance future acquisitions, your stock ownership could be diluted.***

Part of our growth strategy is to expand into new markets and enhance our position in existing markets through acquisitions. In order to successfully complete acquisitions we may target or fund our other activities, we may issue additional equity securities that could be dilutive to our earnings per share and to your stock ownership. The timing and quantity of the shares of our common stock that will be sold may have a negative impact on the market price of our common stock. Sales of substantial amounts of our common stock (including shares issued upon the exercise of stock options or in connection with acquisition financing), or the perception that such sales could occur, may materially and adversely affect prevailing market prices for our common stock.

***Possible volatility in our stock price could negatively affect our stockholders.***

The trading price of our common stock may be volatile in response to a number of factors, many of which are beyond our control, including actual or anticipated variations in quarterly financial results; changes in financial estimates or recommendations by securities analysts; changes in accounting standards, policies, guidance, interpretations or principles; sales of common stock by us or members of our management team; and announcements by our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments. In addition, our financial results may be below the expectations of securities analysts and investors. If this were to occur, the market price of our common stock could decrease, possibly significantly.

In addition, the U.S. securities markets have experienced significant price and volume fluctuations. These fluctuations often have been unrelated to the operating performance of companies in these markets. Broad market and industry factors may negatively affect the price of our common stock, regardless of our operating performance.

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In the past, following periods of volatility in the market price of an individual company s securities, securities class action litigation often has been instituted against that company. The institution of similar litigation against us could result in substantial costs and a diversion of our management s attention and resources, which could negatively affect our financial results.

***Heartland owns approximately 42.6% of our voting common equity.***

Heartland Industrial Partners ( Heartland ) beneficially owns approximately 42.6% of our outstanding voting common equity. As a result, Heartland has the power to substantially influence all matters submitted to our stockholders, exercise significant influence over our decisions to enter into any corporate transaction and any transaction that requires the approval of stockholders regardless of whether other stockholders believe that any such transactions are in their own best interests. For example, Heartland could cause us to make acquisitions that increase the amount of our indebtedness, sell revenue-generating assets or cause us to undergo a going private transaction with it or one of its affiliates based on its ownership without a legal requirement of unaffiliated shareholder approval. In addition, Heartland has the power to control the election of a majority of our directors. So long as Heartland continues to own a significant amount of the outstanding shares of our common stock, it will continue to be able to strongly influence or effectively control our decisions. Its interests may differ from other stockholders and it may vote in a way with which other stockholders disagree. In addition, this concentration of ownership may have the effect of preventing, discouraging or deterring a change of control. One of our directors is the Managing Member of Heartland s general partner. Heartland also has the right to require us to file one or more registration statements with the SEC for purposes of registering for sale to the public some or all of the common stock of ours that it owns. We have filed a registration statement with the SEC (Registration No. 333-165219) registering 3,500,000 shares of our common stock for sale by Heartland to the public. If Heartland sells all of the shares of our common stock registered under such registration statement, it will beneficially own approximately 33.5% of our outstanding voting common equity.

***We are party to certain transactions with Heartland and its affiliates which may continue in the future.***

While we have no current plans with respect to additional related party transactions with Heartland or its affiliates, apart from those existing and ordinary course matters we may enter into such transactions in the future. Our debt instruments currently require that, principles of corporate law may recommend that and we intend to, enter into such transactions only on arm s length third party terms. However, we cannot assure you that, should we enter into any such transactions, they would not be detrimental to us and to shareholders other than the relevant affiliated party or that there will be relevant arm s length third party transactions to which we may compare.

Total liabilities and shareholders’ equity
195,168 173,279

NOVA MEASURING INSTRUMENTS LTD.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(U.S. dollars in thousands, except per share data) - (Unaudited)

| | Three months ended | | Six months ended | |
|---|---|---|---|---|
| | June 30, 2015 | June 30, 2014 | June 30, 2015 | June 30, 2014 |
| Revenues: | | | | |
| Products | 30,861 | 26,015 | 50,185 | 54,791 |
| Services | 9,691 | 6,770 | 17,861 | 12,654 |
| Total revenues | 40,552 | 32,785 | 68,046 | 67,445 |
| | | | | |
| Cost of revenues: | | | | |
| Products | 13,343 | 11,050 | 21,982 | 23,847 |
| Services | 5,598 | 4,139 | 10,030 | 8,279 |
| Amortization of acquired intangible assets in cost of products | 2,442 | - | 2,442 | - |
| Total cost of revenues | 21,383 | 15,189 | 34,454 | 32,126 |
| | | | | |
| Gross profit | 19,169 | 17,596 | 33,592 | 35,319 |
| | | | | |
| Operating expenses: | | | | |
| Research and Development expenses, net | 10,904 | 7,152 | 17,903 | 14,053 |
| Sales and Marketing expenses | 4,260 | 3,505 | 7,066 | 6,911 |
| General and Administration expenses | 1,413 | 1,316 | 2,637 | 2,380 |
| Acquisition related expenses | 1,549 | - | 2,655 | - |
| Amortization of acquired intangible assets | 569 | - | 569 | - |
| Total operating expenses | 18,695 | 11,973 | 30,830 | 23,344 |
| | | | | |
| Operating income | 474 | 5,623 | 2,762 | 11,975 |
| | | | | |
| Financing income, net | 154 | 202 | 365 | 377 |
| | | | | |
| Income before tax on income | 628 | 5,825 | 3,127 | 12,352 |
| | | | | |
| Income tax expenses (benefit) | (1,522 ) | 131 | (2,000 ) | 260 |
| | | | | |
| Net income for the period | 2,150 | 5,694 | 5,127 | 12,092 |
| | | | | |
| Earnings per share: | | | | |
| Basic | 0.08 | 0.21 | 0.19 | 0.44 |
| Diluted | 0.08 | 0.20 | 0.19 | 0.43 |
| | | | | |
| Shares used for calculation of earnings per share: | | | | |
| Basic | 27,291 | 27,592 | 27,250 | 27,512 |
| Diluted | 27,677 | 28,138 | 27,426 | 27,983 |

NOVA MEASURING INSTRUMENTS LTD.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(U.S. dollars in thousands) - (Unaudited)

| | Three months ended June 30, 2015 | Three months ended June 30, 2014 | Six months ended June 30, 2015 | Six months ended June 30, 2014 |
|---|---|---|---|---|
| Cash flows from operating activities: | | | | |
| Net income for the period | 2,150 | 5,694 | 5,127 | 12,092 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | | |
| Depreciation | 1,146 | 972 | 2,206 | 1,874 |
| Amortization of acquired intangible assets | 3,011 | - | 3,011 | - |
| Amortization of deferred stock-based compensation | 613 | 472 | 1,130 | 994 |
| Decrease in liability for employee termination benefits, net | 100 | 74 | 84 | 48 |
| Deferred tax assets, net | (1,921) | (58) | (2,487) | (49) |
| Gain on securities | (110) | - | (68) | - |
| Decrease (increase) in trade accounts receivable | (1,887) | (3,898) | (4,383) | 1,843 |
| Decrease (increase) in inventories | (1,380) | 688 | (1,263) | (672) |
| Decrease (increase) in other current assets | (373) | 257 | (43) | (460) |
| Increase (decrease) in trade accounts payable and other long-term liabilities | 2,428 | (2,456) | 2,563 | (3,505) |
| Increase (decrease) in other current liabilities | 207 | (787) | 682 | 446 |
| Increase (decrease) in short and long term deferred revenues | 259 | 1,247 | (843) | 2,330 |
| Net cash provided by operating activities | 4,243 | 2,205 | 5,716 | 14,941 |
| Cash flow from investment activities: | | | | |
| Decrease (increase) in short-term interest-bearing bank deposits | (11) | (1,943) | 48,486 | (11,984) |
| Investment in short-term available for sale securities | - | (19) | - | (18) |
| Acquisition of subsidiary, net of acquired cash | 1,156 | - | (45,344) | - |
| Additions to property and equipment | (767) | (1,228) | (1,524) | (1,753) |
| Net cash provided by (used in) investment activities | 378 | (3,190) | 1,618 | (13,755) |
| Cash flows from financing activities: | | | | |
| Purchases of treasury shares | (1,389) | (1,103) | (1,389) | (1,103) |
| Shares issued under employee stock-based plans | 857 | 961 | 1,949 | 2,274 |
| Net cash provided by (used in) financing activities | (532) | (142) | 560 | 1,171 |
| Increase (decrease) in cash and cash equivalents | 4,089 | (1,127) | 7,894 | 2,357 |
| Cash and cash equivalents – beginning of period | 17,454 | 21,026 | 13,649 | 17,542 |
| Cash and cash equivalents – end of period | 21,543 | 19,899 | 21,543 | 19,899 |

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NOVA MEASURING INSTRUMENTS LTD.
RECONCILIATION OF GAAP TO NON-GAAP RESULTS
(U.S. dollars in thousands, except percentage) - (Unaudited)

| | Three months ended | | |
|---|---|---|---|
| | June 30, 2015 | March 31, 2015 | June 30, 2014 |
| GAAP cost of revenues | 21,383 | 13,071 | 15,189 |
| Amortization of acquired intangible assets in cost of products | (2,442) | - | - |
| Stock-based compensation in cost of products | (89) | (81) | (80) |
| Stock-based compensation in cost of services | (46) | (32) | (30) |
| Non-GAAP cost of revenues | 18,806 | 12,958 | 15,079 |
| | | | |
| GAAP gross profit | 19,169 | 14,423 | 17,596 |
| Gross profit adjustments | 2,577 | 113 | 110 |
| Non-GAAP gross profit | 21,746 | 14,536 | 17,706 |
| GAAP gross margin as a percentage of revenues | 47 % | 52 % | 54 % |
| Non-GAAP gross margin as a percentage of revenues | 54 % | 53 % | 54 % |
| | | | |
| GAAP operating expenses | 18,695 | 12,135 | 11,973 |
| Stock-based compensation in Research and Development | (254) | (190) | (199) |
| Stock-based compensation in Sales and Marketing | (166) | (160) | (111) |
| Stock-based compensation in General and Administrative | (58) | (54) | (52) |
| Acquisition related expenses | (1,549) | (1,106) | - |
| Amortization of acquired intangible assets | (569) | - | - |
| Non-GAAP operating expenses | 16,099 | 10,625 | 11,611 |
| Non-GAAP operating income | 5,647 | 3,911 | 6,095 |
| GAAP operating margin as a percentage of revenues | 1 % | 8 % | 17 % |
| Non-GAAP operating margin as a percentage of revenues | 14 % | 14 % | 19 % |
| | | | |
| GAAP tax on income | (1,522) | (478) | 131 |
| Deferred tax assets adjustments, net | 1,921 | 566 | 58 |
| Non-GAAP tax on income | 399 | 88 | 189 |
| | | | |
| GAAP net income | 2,150 | 2,977 | 5,694 |
| Amortization of acquired intangible assets | 3,011 | - | - |
| Stock-based compensation expenses | 613 | 517 | 472 |
| Deferred tax assets adjustments, net | (1,921) | (566) | (58) |
| Acquisition related expenses | 1,549 | 1,106 | - |
| Non-GAAP net income | 5,402 | 4,034 | 6,108 |
| | | | |
| GAAP basic earnings per share | 0.08 | 0.11 | 0.21 |
| Non-GAAP basic earnings per share | 0.20 | 0.15 | 0.22 |
| | | | |
| GAAP diluted earnings per share | 0.08 | 0.11 | 0.20 |
| Non-GAAP diluted earnings per share | 0.20 | 0.15 | 0.22 |
| | | | |
| Shares used for calculation of earnings per share: | | | |
| Basic | 27,291 | 27,210 | 27,592 |

| | | | |
|---|---|---|---|
| Diluted | 27,677 | 27,552 | 28,138 |

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