

SYMS CORP
Form 10-K/A
December 27, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A
Amendment No. 1

(Mark one)

T ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended February 26, 2011

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 1-8546

SYMS CORP

(Exact name of registrant as specified in its charter)

NEW JERSEY

No. 22-2465228

(State or Other Jurisdiction of
Incorporation or Organization)

(I.R.S. Employer Identification No.)

One Syms Way, Secaucus, New Jersey
(Address of Principal Executive Offices)

07094
(Zip Code)

Registrant's telephone number, including area code (201) 902-9600

Securities registered pursuant to Section 12(b) of the Act:

Title of Each class

Common Stock, \$0.05 Par Value Per Share

Securities registered pursuant to Section 12 (g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T

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(§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No Not Applicable

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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 Accelerated Filer Non-Accelerated Filer Smaller Reporting Company
(Do not check if smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of August 28, 2010, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$50,548,000 based on the closing sale price as reported on the NASDAQ Global Select Market.

As of May 6, 2011, 14,448,188 shares of Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for the 2011 Annual Meeting of Shareholders are incorporated by reference into Part III of this Annual Report.

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (the “Amendment”) amends our Form 10-K for the fiscal year ended February 26, 2011, which was originally filed with the U.S. Securities and Exchange Commission on May 13, 2011 (the “Original 10-K”). The sole purpose of this Amendment is to file amended Exhibits 2.2 (a Purchase and Sale Agreement and associated exhibits) and 10.5 (our 2009 Credit Agreement and associated exhibits and schedules).

Exhibit 10.5 was originally filed as Exhibit 10.1 to our Current Report dated September 1, 2009 and then re-filed with the Original 10-K to include its associated exhibits and schedules. Both amended exhibits now include certain portions of information that was omitted from exhibits and schedules to the agreements when they were filed with our Original 10-K pursuant to a request for confidential treatment under Rule 24b-2. Consistent with this change, Item 15(a)(3) of Part IV and new Exhibits 31.1 and 31.2 are being filed, as required by the Commission regulations. The complete un-redacted exhibits have been filed separately with the U.S. Securities and Exchange Commission.

Except as set forth above, the Original 10-K is not amended, updated, or otherwise modified. This Amendment does not reflect events occurring after May 13, 2011, the date of the Original 10-K, or modify or update those disclosures that may have been affected by subsequent events.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(3) List of Exhibits:

The following exhibits that are marked with an asterisk are filed herewith. Other exhibits set forth below are incorporated by reference from (i) the Company's Registration Statement on Form S-1 under the Securities Act of 1933 (Registration No. 2-85554) filed August 2, 1983 and declared effective September 23, 1983 (the "Registration Statement") or (ii) where indicated, the Company's reports on Form 8-K, Form 10-Q or Form 10-K or the Company's Proxy Statement (Commission File No. 1-8564).

2.1 Purchase Agreement, dated as of June 18, 2009, by and among SYL, LLC, a wholly owned subsidiary of Syms Corp, Filene's Basement, Inc. and FB Leasing Services (exhibit 10.1 to Current Report on Form 8-K dated June 24, 2009).

2.2*+Purchase and Sale Agreement, dated as of February 28, 2011, with Hines Interests Limited Partnership, a Delaware limited partnership, as Purchaser, for the sale of property located at 1900 Chapman Avenue, Rockville, Maryland

3.1 Certificate of Incorporation of Syms Corp and amendment to the Certificate of Incorporation (exhibit 3.1 to to the Registrant's Annual Report on Form 10-K for the year ended February 26, 2011)

3.2 Amended and Restated By-laws of Syms Corp (exhibit 3.1 to Current Report on Form 8-K dated January 12, 2009).

4.1 Specimen Certificate of Common Stock as filed in the Registration Statement.

10.1 Ground Lease at One Emerson Lane, Township of Secaucus, Hudson County, New Jersey Assignment and Assumption of Ground Lease, dated May 8, 1986, to Registrant (exhibit 28.1 to Current Report on Form 8-K dated May 1986)

10.4 Syms Corp 2005 Stock Option Plan, as amended (exhibit 10.4 to Current Report on Form 8-K dated August 5, 2005)

10.4.1 Form of Nonqualified Stock Option Award Agreement for 2005 Stock Option Plan (exhibit 10.1 to Current Report on Form 8-K dated August 5, 2005)

10.4.2 Form of Incentive Option Award for 2005 Stock Option Plan (exhibit 10.2 to Current Report on Form 8-K dated August 5, 2005)

10.4.3 Form of Restricted Stock Award for 2005 Stock Option Plan (exhibit 10.3 to Current Report on Form 8-K dated August 5, 2005)

10.5*+Credit Agreement, dated as of August 27, 2009, by and among Syms Corp, SYL LLC, the guarantors party thereto from time to time, the lenders party thereto from time to time and Bank of America, N.A., as

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administrative agent, collateral agent and letter of credit issuer (the “Credit Agreement”) (re-filed; formerly filed as exhibit 10.1 to Current Report on Form 8-K dated September 1, 2009)

10.6 First Amendment to the Credit Agreement, dated as of January 7, 2011 (Exhibit 10.1 to the Registrant’s Current Report on Form 8-K dated January 7, 2011)

10.7 Second Amendment to the Credit Agreement, dated as of March 8, 2011 (exhibit 10.7 to the Registrant’s Annual Report on Form 10-K for the year ended February 26, 2011)

21.1 List of Subsidiaries (exhibit 21.1 to the Registrant’s Annual Report on Form 10-K for the year ended February 26, 2011)

23.1 Consent of BDO USA, LLP (exhibit 23.1 to the Registrant’s Annual Report on Form 10-K for the year ended February 26, 2011)

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31.1*Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

31.2*Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

32.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(b) under the Securities and Exchange Act of 1934 and 18.U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (exhibit 32.1 to the Registrant's Annual Report on Form 10-K for the year ended February 26, 2011)

32.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(b) under the Securities and Exchange Act of 1934 and 18.U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (exhibit 32.2 to the Registrant's Annual Report on Form 10-K for the year ended February 26, 2011)

* Filed herewith

+Portions of these exhibits have been omitted pursuant to a request for confidential treatment. The omitted portions have been filed with the Commission.

SYMS CORP

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SYMS CORP

By: /s/ Gary Binkoski
Gary Binkoski
Chief Financial Officer
(Principal Financial Officer)

Date: December 27, 2011