BWAY CORP
Form 10-Q
May 07, 2010
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

For the quarterly period ended:

March 31, 2010

	Registrant and State of Incorporation	
Commission File Number	**Address and Telephone Number**	**I.R.S. Employer Identification Number**
001-33527	**BWAY Holding Company** (Delaware) 8607 Roberts Drive, Suite 250 Atlanta, Georgia 30350-2237 (770) 645-4800	**55-0800054**
001-12415	**BWAY Corporation** (Delaware)	**36-3624491**

8607 Roberts Drive, Suite 250
Atlanta, Georgia 30350-2237
(770) 645-4800

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.

Registrant		
BWAY Holding Company	þ Yes	¨ No
BWAY Corporation	þ 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 (§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).

Registrant		
BWAY Holding Company	¨ Yes	¨ No
BWAY Corporation	¨ Yes	¨ No

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

Registrant	**Large Accelerated Filer**	**Accelerated Filer**	**Non-Accelerated Filer**	**Smaller Reporting Company**
BWAY Holding Company	¨	þ	¨	¨
BWAY Corporation	¨	¨	þ	¨

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

Registrant		
BWAY Holding Company	¨ Yes	þ No
BWAY Corporation	¨ Yes	þ No

Registrant	**Description of Common Stock**	**Shares Outstanding as of May 6, 2010**
BWAY Holding Company	Par Value $0.01 per share	**22,414,505**
BWAY Corporation	Par Value $0.01 per share	**1,000**

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BWAY HOLDING COMPANY

BWAY CORPORATION

Quarterly Report on Form 10-Q

For the quarterly period ended March 31, 2010

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PART I

FINANCIAL INFORMATION

Item 1. Financial Statements

UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS

BWAY Holding Company and Subsidiaries

($ in millions, except par value)

	March 31, 2010	September 27, 2009
Assets		
Current assets		
Cash and cash equivalents	$ 39.3	$ 88.7
Accounts receivable, net of allowance for doubtful accounts of $0.6 and $0.5	131.2	103.8
Inventories, net	107.8	87.0
Other current assets	24.4	15.6
Total current assets	302.7	295.1
Property, plant and equipment, net	166.0	160.9
Goodwill	272.1	259.0
Other intangible assets, net	130.3	129.4
Other assets	10.1	11.1
Total assets	$ 881.2	$ 855.5
Liabilities and Stockholders Equity		
Current liabilities		
Accounts payable	$ 123.4	$ 98.0
Other current liabilities	54.0	63.3
Current portion of long-term debt	1.0	6.5
Total current liabilities	178.4	167.8
Long-term debt	399.9	395.8
Deferred tax liabilities	46.5	46.5
Other liabilities	48.5	47.1
Total liabilities	673.3	657.2
Commitments and contingencies (Note 13)		
Stockholders equity		
Preferred stock, $0.01 par value, 20,000,000 shares authorized		
Common stock, $0.01 par value, 200,000,000 shares authorized; 22,414,505 and 22,198,718 shares issued and outstanding	0.2	0.2
Additional paid-in capital	140.5	137.9

Retained earnings	69.2	64.0
Accumulated other comprehensive loss	(2.0)	(3.8)
Total stockholders equity	207.9	198.3
Total liabilities and stockholders equity	$ 881.2	$ 855.5

The accompanying notes are an integral part of the condensed consolidated financial statements.

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UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

BWAY Holding Company and Subsidiaries

($ in millions, except per share amounts)

	Three Months Ended March 31, 2010	Three Months Ended March 29, 2009	Six Months Ended March 31, 2010	Six Months Ended March 29, 2009
Net sales	$ 248.0	$ 206.1	$ 467.0	$ 418.6
Costs and expenses				
Cost of products sold (excluding depreciation and amortization)	207.9	166.7	394.8	358.8
Depreciation and amortization	13.1	10.8	26.8	21.9
Selling and administrative	5.0	6.4	10.7	12.0
Restructuring	0.7	0.7	2.7	1.4
Interest, net	8.8	7.4	17.7	15.6
Merger transaction costs	5.0		5.0	
Business acquisition costs			0.5	
Other	0.4	0.2	0.8	(0.6)
Total costs and expenses	240.9	192.2	459.0	409.1
Income before income taxes	7.1	13.9	8.0	9.5
Provision for income taxes	2.7	5.2	2.8	3.5
Net income	$ 4.4	$ 8.7	$ 5.2	$ 6.0
Net income per share (Note 11)				
Basic	$ 0.20	$ 0.40	$ 0.23	$ 0.27
Diluted	0.18	0.38	0.21	0.26

The accompanying notes are an integral part of the condensed consolidated financial statements.

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UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

BWAY Holding Company and Subsidiaries

($ in millions)

	Six Months Ended March 31, 2010	Six Months Ended March 29, 2009
Cash Flows from Operating Activities		
Net income	$ 5.2	$ 6.0
Adjustments to reconcile net income to net cash used in operating activities		
Depreciation	18.9	14.5
Amortization of other intangible assets	7.9	7.4
Amortization of debt issuance costs	1.1	1.0
Accretion of debt discount	2.2	
Credit from doubtful accounts		(0.5)
Gain on disposition of property, plant and equipment	(0.1)	
Deferred income taxes		0.1
Stock-based compensation expense	0.4	1.2
Change in operating assets and liabilities, net of business acquisitions:		
Accounts receivable	(25.9)	14.0
Inventories	(17.1)	17.6
Accounts payable	24.0	(85.5)
Other assets	(2.2)	5.8
Accrued and other liabilities	(5.0)	(4.9)
Income taxes, net	(9.8)	2.3
Net cash used in operating activities	(0.4)	(21.0)
Cash Flows from Investing Activities		
Capital expenditures	(12.4)	(6.7)
Business acquisitions	(32.3)	
Other	0.2	
Net cash used in investing activities	(44.5)	(6.7)
Cash Flows from Financing Activities		
Repayments of other long-term debt	(6.6)	(18.1)
Principal repayments under capital lease obligations	(0.3)	(0.1)
Proceeds from stock option exercises	1.6	
Excess tax benefit related to share-based payments	0.2	
Net cash used in financing activities	(5.1)	(18.2)
Effect of exchange rate changes on cash and cash equivalents	0.6	(1.5)
Net decrease in cash and cash equivalents	(49.4)	(47.4)
Cash and cash equivalents, beginning of period	88.7	92.1
Cash and cash equivalents, end of period	$ 39.3	$ 44.7

The accompanying notes are an integral part of the condensed consolidated financial statements.

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UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS

	For	Against	Abstain	BNV
Beneficial common	6,201,002	32,615	15,287	0
Registered common	38,551	1,397	3,100	0

Item 5. Other Information

Entry into Material Definitive Agreements, Completion of Acquisition of Assets, and Unregistered Sales of Equity Securities

DESCRIPTION OF SERIES A CONVERTIBLE PREFERRED STOCK

On December 16, 2008, we filed with the Nevada Secretary of State a Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock (the "Certificate") designating a Series A Convertible Preferred Stock ("Preferred Stock"), par value $0.001 per share. Each share of Preferred Stock has a liquidating value of $100 per share, is convertible into 1,429 shares of Common Stock of the Company (subject to adjustment) and pays a cash dividend of 8% or a dividend in kind of 10%. The dividends are paid quarterly and are based on the original purchase price of the Preferred Stock. No dividends will accrue or be paid for any fiscal quarter where shares of our common stock, on a volume weighted average price, trade in excess of $0.14. Initially, each share of Preferred Stock will have the equivalent voting rights of 1,429 shares of our common stock and will vote with our existing common shareholders as a group on all matters subject to shareholder vote. However, the Preferred Stock shareholders will not be able to vote on issues involving redemption or a liquidation event until there has been an affirmative vote on such issues by our common stock shareholders. In that event, they will be allowed to vote as a group with our common stock shareholders on such issues, in effect, giving them a veto right. In the event of a liquidation of our assets, the Preferred Stock will have a liquidating preference and will participate in any remaining liquidating proceeds on an as-converted basis with our common shareholders after receiving the liquidating value of their Preferred Stock. Each share of Preferred Stock is convertible at the option of the holder at any time into shares of our common stock by dividing the liquidity value of $100 by a conversion price of $0.07 per share of common stock. The number of shares of common stock issuable upon conversion is subject to antidilution protections if we issue additional shares of common stock at less than $0.07 per share and upon stock splits, dividends and certain other events. The preceding description of the Preferred Stock is qualified in all respects by and reference is made to the Certificate which is filed as Exhibit 10.1 hereto, for a complete description of the terms of the Preferred Stock.

We will not register the shares of Preferred Stock or shares of common stock into which it may be converted with the U.S. Securities and Exchange Commission so as to make them eligible for publicly trading, and have no obligation or plans to do so in the future. Such shares will only be eligible to be sold or traded pursuant to the requirements of Rule 144, promulgated by the U.S. Securities and Exchange Commission, and applicable state securities laws.

SALE OF SHARES OF PREFERRED STOCK TO INVESTORS

On January 13, 2009, we entered into a Purchase Agreement (the "Investor Purchase Agreement"), pursuant to which on January 14, 2009 we sold and issued 4,400 shares of Preferred Stock for $100 per share to a group of investors (the "Investors") in order to raise an aggregate of $440,000 of equity for working capital purposes. Participating in this transaction are our two senior executives and three key employees (together "employees"). Payment will be in the form of cash at closing, except for the employees who will purchase an aggregate amount of $100,000 of Preferred Stock. Four of these employees will purchase shares with a 20% cash payment at closing and by executing a non-interest bearing promissory note payable semimonthly with a maturity date of March 31, 2009. One of these employees will purchase shares with an 8% cash payment at closing and execute a non-interest bearing promissory note payable semimonthly with a maturity date of October 31, 2009. These notes are nonrecourse and collateralized solely by the employee's Preferred Stock.

The Preferred Stock sold herewith, is convertible at $0.07 per share into a total of 6,285,714 shares of the Company's common stock, and significantly dilutes our existing common stock shareholders.

In the Investor Purchase Agreement, we agree to indemnify investors against damages they may suffer as a result of our breach of certain representations and warranties we have made in that Agreement.

The preceding description is qualified in all respects by and reference is made to, the Certificate and the Investor Purchase Agreement, respectively filed as Exhibits 10.1 and 10.2 hereto.

SALE OF SHARES OF PREFERRED STOCK TO ACQUIRE NEW BUSINESS

On January 13, 2009, we entered into a Purchase Agreement (the "CFP Purchase Agreement"), pursuant to which on January 14, 2009 we sold and issued 20,000 shares of Preferred Stock for $100 per share to Cummins Family Limited Partnership, an Idaho limited partnership (the "Purchaser"). The Purchaser conveyed and transferred to us 100% of the outstanding stock of Cummins Family Produce, Inc., ("CFP") a potato packing business located in Idaho. The general partner and majority limited partner of the Purchaser is Cummins Family Holdings, LLC, an Idaho limited liability company controlled by Mr. Wes Cummins, a director of the Company. The consideration we are providing to the Purchaser also includes CFP's assumption of a bank promissory note in the amount of approximately $211,000 incurred and owed by Mr. Cummins in connection with the operations of CFP. Under a performance based earn-out provision, we are obligated to issue an additional number of shares of Preferred Stock, such that the total purchase price is equal to 4.25 times the yearly average EBITDA of CFP calculated over the next two years, less the value of the bank promissory note assumed.

Just prior to the closing of this transaction, CFP executed (a) a 5-year supply agreement with Southern Slope, Inc., and Black Rock Ag., Inc. (together the "Growers") who will provide their potato harvest to the potato packing facility operated by CFP and (b) a 5-year lease agreement whereby CFP will lease the packing facility and equipment from Cummins Family Holdings, LLC, an Idaho limited liability company, which is controlled by Mr. Cummins. We believe that both agreements reflect current pricing in the industry. We have no rights to renew these agreements. Mr. Cummins is a majority shareholder in Southern Slope, Inc. and family members of his are the majority shareholders in Black Rock Ag., Inc.

The Preferred Stock initially issued to the Purchaser in regard to this transaction is convertible at $0.07 per share into a total of 28,571,429 shares of our common stock and substantially dilutes our existing common shareholders. As a result of this transaction, Mr. Cummins will control over 60% of our voting shares.

In the CFP Purchase Agreement, we agree to indemnify the Purchaser against damages it may suffer as a result of our breach of certain representations and warranties we have made in that Agreement. The Purchaser also has agreed to indemnify us against damages that may result if it breaches certain representations and warranties it has made relating to CFP and the Purchaser.

The preceding description is qualified in all respects by and reference is made to, the Certificate, CFP Purchase Agreement, the Supply Agreement and the Lease Agreement, respectively filed as Exhibits 10.1, 10.3, 10.4 and 10.5 hereto, for a complete description of the terms of the CFP transactions.

DESCRIPTION OF NEW BUSINESS

Independent potato growers generally do not take their product directly to market. They contract with packers, such as Cummins Family Produce, Inc., the company we have acquired, which charges a packing fee to clean, grade, pack, and sell the potatoes to end users in the specific packing configurations requested by the customer. We believe the commodity risk to CFP is mitigated in that the amount it will pay to the grower generally will be the difference between the sales price of the potatoes to the customer and the packing fee paid to CFP. The more potatoes that CFP can bring into its operation and the better the quality of the potato, the more packing revenue it can generate. This operation is highly automated and we believe can handle significant growth in its business without additional capital outlays, by extending or adding additional shifts of processing labor. We anticipate that this business can generate between $700,000 and $900,000 of free cash flow per year, as currently configured, although realization of revenue will depend on many factors and we can make no assurance as to the ultimate amount of revenue or cash flow that CFP will generate for us.

Our basic goal is to acquire cash flow, not hard assets, that CFP generates over a five year period, since the facility and equipment for the packing operation are being leased to us under a five (5) year lease and we have no renewal rights. Primarily all of the purchase price will be accounted for as goodwill. CFP has four full time salaried employees and approximately twenty hourly employees. We anticipate that all current employees of CFP will remain with CFP, including the current employee who manages its day-to-day operations.

RATIONALE FOR ACQUISTION OF NEW BUSINESS

We consider our acquisition of CFP strictly as a financial transaction by which we intend to procure cash flow from CFP over a five year period that will support development, marketing and sales of the atmospheric glow plasma technology we licensed from the University of Tennessee Research Foundation. As we have previously indicated, we need approximately $2.5 million over a period of time in order to execute our business plan with respect to the acquired atmospheric glow plasma technology. It became apparent that we would not be able to raise that amount of equity in a single transaction as a result of the deterioration of our financial condition, the delisting from Amex, the decline of our share price and the current state of the financial markets. Our management and directors therefore explored other means to provide the needed capital.

The cash provided by our sale of $440,000 of Preferred Stock will provide us with the initial capital to continue product development and start sales and marketing effort in our plasma business. We anticipate the cash provided by the CFP packing facility acquisition will supplement the initial capital as well as continue to supplement our monthly cash needs into our fourth fiscal quarter that begins March 1, 2009 so as to enable us to continue to operate and enable our wholly owned subsidiary, APP, to continue to develop the atmospheric plasma glow technology. However, we anticipate that by the middle of our fiscal 4th quarter, i.e., approximately April 15, 2009, we will need to secure additional working capital financing, until product revenues and cash flow from the packing facility create a sustainable operation. We anticipate the amount of such additional working capital could be in the range of approximately $350,000 to $ 500,000 but cannot predict or estimate such amount with certainty as the ultimate amount will depend on many variables, such as potential third party development or licensing fees, the pace and success of our product development and sales, and cash generated by CFP. **In the event we are unable to secure additional working capital we will have to curtail our operations accordingly, thus slowing down our product development and marketing efforts. Any curtailment of our operations could have a material adverse effect on our operations and financial position.**

OTHER ISSUANCES OF SHARES OF OUR COMMON STOCK

To complete the licensing of the atmospheric glow technology, we issued 260,417 shares of our unregistered common stock to UTRF on January 7, 2009. We also are issuing 20,000 shares of our common stock to a former employee as part of a severance and transition assistance package.

CERTAIN RISK FACTORS

CFP acquired its packing business in May, 2008. As part of its diligence, our management has visited the operations of CFP and reviewed its books and records and unaudited financial statements. CFP has only been in operation since May 2008 and does not have audited financial statements.

Because of cash constraints, we have not received a third party evaluation or fairness opinion on the foregoing transactions. Our management and board of directors has evaluated and discussed these transactions both with the input of Mr. Cummins and outside of his presence, and in view of the alternatives, believe they are fair and in the best interests of our shareholders. Mr. Cummins recused himself from all director votes required to approve these transactions.

In addition to the risks described above and those set forth in our Annual Report of Form 10-KSB for the year ended May 31, 2008 and in our quarterly report of Form 10-Q for the quarter ended August 31, 2008, which are hereby incorporated by reference, there will be other risks associated with our acquisition of CFP such as:

1. Falling demand for potatoes
2. Poor potato harvests
3. Loss of key employees of CFP
4. Increase in operating costs of CFP
5. Failure to achieve the expected cash flow levels
6. Failure of potato growers to maintain required acreage resulting in supply shortages
7. Poor quality potato product
8. Competition from other potato packers
9. Inability to keep the potato packing schedule full
10. Catastrophic breakdown in equipment and software relating to the automated potato packing processes
11. Failure to raise the additional working capital projected to be needed in our fiscal 4th quarter

RELATED PARTY TRANSACTIONS

As previously stated, Mr. Wesley Cummins, who is a director and shareholder of the Company, and holds a controlling interest in Cummins Family Limited Partnership, Cummins Family Holdings, LLC and Southern Slope, Inc., is a principal and affiliate of CFP, the company we are purchasing and a principal or affiliate of the other parties to the Supply Agreement and Lease Agreement. Mr. Wesley Cummins' family members hold a controlling interest in Black Rock Ag., Inc.

Mr. James Schwartz, a director of the Company, is the managing member of Harvey Partners, LLC, a Delaware limited liability company that is the manager of Harvey SMidCap Fund LP, a Delaware limited partnership, and Harvey SMidCap Offshore Fund, Ltd., a Cayman Islands exempted company, which are participating in the Preferred Stock offering.

Mr. Kenneth Wood, President and Chief Executive Officer and a director of the Company is participating in the Preferred Stock offering.

Mr. Richard S. Rosenfeld, Chief Financial Officer, Vice President of Operations, Secretary/Treasurer is participating in the Preferred Stock offering.

Changes in Control of Registrant

As previously described, as a result of the transactions that occurred on January 14, 2009 as previously described in this report, Mr. Cummins, or his affiliates, own approximately 60% of our outstanding equity securities, comprised of our common shares and shares of Preferred Stock, and, subject to the rights and limitations contained in the Certificate, can cast approximately 60% of the votes attributable to all of our outstanding securities.

In addition, Mr. Cummins' voting the Preferred Stock as a class effectively can veto fundamental transactions, such as a sale of assets or merger.

This change in control will also create limitations to the use of our existing net operating tax loss carryforwards.

Amendment to Bylaws

Effective on December 15, 2008, we amended our bylaws by a unanimous vote of our board of directors, with Mr. Cummins abstaining, to add a new Section 6.11 that makes Sections 78.378 through and including Section 78.3793 of the Nevada Revised Statutes inapplicable to us.

Item 6. Exhibits

The following is a list of exhibits filed as part of the quarterly report on Form 10-Q. Where so indicated by footnote, exhibits which were previously filed are incorporated by reference. For exhibits incorporated by reference, the location of the exhibit in the previous filing is indicated.

Exhibit Number	***Description***
3ii	*Amended and Restated Bylaws of Flight Safety Technologies, Inc.
3.1	Amended and Restated Articles of Incorporation (1)
10.1	*Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock for Flight Safety Technologies, Inc. dated December 15, 2008
10.2	*Purchase Agreement dated as of January 13, 2009
10.3	*Investor Purchase Agreement dated January 13, 2009
10.4	*Supply Agreement dated as of January 13, 2009
10.5	*Lease Agreement dated as of January 13, 2009
10.6	*UTRF License Agreement dated as of September 10, 2008
10.9	Agreement between Flight Safety Technologies, Inc. and Advanced Acoustics Concepts, Inc., dated January 14, 2000 (2)
10.11	Phase IV Contract issued by U.S. Department of Transportation/RITA/Volpe Center, dated September 1, 2005 (3)
31.1	

	*Chief Executive Officer Certification as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350)
31.2	*Chief Financial Officer Certification as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350)
32.1	*Certification of Chief Executive Officer and Chief Financial Officer as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350)

*Submitted herewith

(1) Incorporated by reference to Exhibit 3.1 on our Form 10-QSB, which was filed on April 6, 2004.

(2) Incorporated by reference to Exhibit 10.9 on our Form SB-2/A, which was filed on November 26, 2003.

(3) Incorporated by reference to Exhibit 10.11 on our Form 10-QSB, which was filed on September 7, 2006.

SIGNATURES

Pursuant to the requirements 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.

Date: January 16, 2009	Flight Safety Technologies, Inc. a Nevada corporation By:/s/ Kenneth Wood
	Kenneth S. Wood Chief Executive Officer
Date: January 16, 2009	By:/s/ Richard S. Rosenfeld
	Richard S. Rosenfeld Chief Financial Officer