

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q**

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended September 30, 2020

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number: 001-37763

TURNING POINT BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of Incorporation or organization)

20-0709285

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

5201 Interchange Way, Louisville, KY

(Address of principal executive offices)

40229

(Zip Code)

(502) 778-4421

(Registrant's telephone number, including area code)

Former name, former address and former fiscal year, if changed since last report: not applicable

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	TPB	New York Stock Exchange

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 every Interactive Data File required to be submitted 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 such files). Yes ☒ No ☐

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

Large accelerated filer ☐
Non-accelerated filer ☐
Emerging growth company ☒

Accelerated filer ☒
Smaller reporting company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

At October 19, 2020, there were 19,164,080 shares outstanding of the registrant's voting common stock, par value \$0.01 per share.

TURNING POINT BRANDS, INC.
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Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. Forward-looking statements may generally be identified by the use of words such as “anticipate,” “believe,” “expect,” “intend,” “plan,” and “will” or, in each case, their negative, or other variations or comparable terminology. These forward-looking statements include all matters that are not historical facts. By their nature, forward-looking statements involve risks and uncertainties because they relate to events, and depend on circumstances, that may or may not occur in the future. As a result, actual events may differ materially from those expressed in, or suggested by, the forward-looking statements. Any forward-looking statement made by Turning Point Brands, Inc. (“TPB”), in this Quarterly Report on Form 10-Q speaks only as of the date hereof. New risks and uncertainties come up from time to time, and it is impossible for TPB to predict these events or how they may affect it. TPB has no obligation, and does not intend, to update any forward-looking statements after the date hereof, except as required by federal securities laws. Factors that could cause these differences include, but are not limited to:

- declining sales of tobacco products, and expected continuing decline of sales, in the tobacco industry overall;
- our dependence on a small number of third-party suppliers and producers;
- the possibility that we will be unable to identify or contract with new suppliers or producers in the event of a supply or product disruption;
- the possibility that our licenses to use certain brands or trademarks will be terminated, challenged or restricted;
- failure to maintain consumer brand recognition and loyalty of our customers;
- our reliance on relationships with several large retailers and national chains for distribution of our products;
- uncertainty and continued evolution of markets containing our NewGen products;
- intense competition and our ability to compete effectively;
- competition from illicit sources;
- regulation of our products by the FDA, which has broad regulatory powers;
- our products are subject to developing and unpredictable regulation, for example, current court action moving forward certain substantial Pre Market Tobacco Application obligations;
- uncertainty related to the regulation and taxation of our NewGen products;
- possible significant increases in federal, state and local municipal tobacco- and vapor-related taxes;
- sensitivity of end-customers to increased sales taxes and economic conditions;
- substantial and increasing U.S. regulation;
- possible increasing international control and regulation;
- failure to comply with certain regulations;
- imposition of significant tariffs on imports into the U.S.;
- the scientific community’s lack of information regarding the long-term health effects of certain substances contained in some of our products;
- some of our products contain nicotine which is considered to be a highly addictive substance;
- contamination of our tobacco supply or products;
- requirement to maintain compliance with master settlement agreement escrow account;
- our amount of indebtedness;
- the terms of our credit facilities, which may restrict our current and future operations;
- significant product liability litigation;
- reduced disclosure requirements applicable to emerging growth companies may make our common stock less attractive to investors, potentially decreasing our stock price;
- failure to maintain our status as an emerging growth company before the five-year maximum time period a company may retain such status;
- our principal stockholders will be able to exert significant influence over matters submitted to our stockholders and may take certain actions to prevent takeovers;
- our certificate of incorporation and bylaws, as well as Delaware law and certain regulations, could discourage or prohibit acquisition bids or merger proposals, which may adversely affect the market price of our common stock;
- our certificate of incorporation limits the ownership of our common stock by individuals and entities that are Restricted Investors. These restrictions may affect the liquidity of our common stock and may result in Restricted Investors being required to sell or redeem their shares at a loss or relinquish their voting, dividend and distribution rights;
- our business may be damaged by events outside of our suppliers’ control, such as the impact of epidemics (e.g., coronavirus), political upheavals, or natural disasters;

- our reliance on information technology;
- security and privacy breaches;
- infringement on our intellectual property;
- third-party claims that we infringe on their intellectual property;
- failure to manage our growth;
- failure to successfully integrate our acquisitions or otherwise be unable to benefit from pursuing acquisitions;
- fluctuations in our results;
- exchange rate fluctuations;
- adverse U.S. and global economic conditions;
- departure of key management personnel or our inability to attract and retain talent;
- future sales of our common stock in the public market could reduce our stock price, and any additional capital raised by us through the sale of equity or convertible securities may dilute your ownership in us; and
- we may issue preferred stock whose terms could adversely affect the voting power or value of our common stock.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

Turning Point Brands, Inc. Consolidated Balance Sheets

(dollars in thousands except share data)

	(unaudited) September 30, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash	\$ 67,403	\$ 95,250
Accounts receivable, net of allowances of \$156 in 2020 and \$280 in 2019	8,783	6,906
Inventories	73,343	70,979
Other current assets	20,943	16,115
Total current assets	170,472	189,250
Property, plant, and equipment, net	14,003	13,816
Right of use assets	19,064	12,130
Deferred financing costs, net	715	890
Goodwill	154,282	154,282
Other intangible assets, net	79,900	33,469
Master Settlement Agreement (MSA) escrow deposits	32,074	32,074
Other assets	8,721	10,673
Total assets	<u>\$ 479,231</u>	<u>\$ 446,584</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 10,958	\$ 14,126
Accrued liabilities	32,009	26,520
Current portion of long-term debt	12,000	15,240
Total current liabilities	54,967	55,886
Notes payable and long-term debt	283,792	268,951
Deferred income taxes	1,875	1,572
Lease liabilities	17,073	11,067
Other long-term liabilities	4,190	2,523
Total liabilities	<u>361,897</u>	<u>339,999</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock; \$0.01 par value; authorized shares 40,000,000; issued and outstanding shares -0-	-	-
Common stock, voting, \$0.01 par value; authorized shares, 190,000,000; 19,483,861 issued shares, 19,144,901 outstanding shares at September 30, 2020, and 19,680,673 issued and outstanding shares at December 31, 2019	195	197
Common stock, nonvoting, \$0.01 par value; authorized shares, 10,000,000; issued and outstanding shares -0-	-	-
Additional paid-in capital	127,758	125,469
Cost of repurchased common stock (338,960 shares at September 30, 2020 and 0 shares at December 31, 2019)	(7,665)	-
Accumulated other comprehensive loss	(3,245)	(3,773)
Accumulated earnings (deficit)	291	(15,308)
Total stockholders' equity	<u>117,334</u>	<u>106,585</u>
Total liabilities and stockholders' equity	<u>\$ 479,231</u>	<u>\$ 446,584</u>

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

Turning Point Brands, Inc.
Consolidated Statements of Income
(dollars in thousands except share data)
(unaudited)

	Three Months Ended	
	September 30,	
	2020	2019
Net sales	\$ 104,174	\$ 96,800
Cost of sales	55,867	53,984
Gross profit	48,307	42,816
Selling, general, and administrative expenses	32,286	29,784
Operating income	16,021	13,032
Interest expense, net	5,224	3,641
Investment income	(3)	(265)
Loss on extinguishment of debt	-	1,158
Net periodic cost (income), excluding service cost	1,188	(12)
Income before income taxes	9,612	8,510
Income tax expense	1,816	2,236
Consolidated net income	<u>\$ 7,796</u>	<u>\$ 6,274</u>
Basic income per common share:		
Consolidated net income	<u>\$ 0.41</u>	<u>\$ 0.32</u>
Diluted income per common share:		
Consolidated net income	<u>\$ 0.40</u>	<u>\$ 0.31</u>
Weighted average common shares outstanding:		
Basic	19,240,187	19,659,217
Diluted	19,636,989	20,067,413

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

Turning Point Brands, Inc.
Consolidated Statements of Income
(dollars in thousands except share data)
(unaudited)

	Nine Months Ended September 30,	
	2020	2019
Net sales	\$ 299,826	\$ 281,767
Cost of sales	161,996	157,304
Gross profit	137,830	124,463
Selling, general, and administrative expenses	95,436	79,455
Operating income	42,394	45,008
Interest expense, net	15,198	11,233
Investment income	(128)	(527)
Loss on extinguishment of debt	-	1,308
Net periodic cost (income), excluding service cost	997	(34)
Income before income taxes	26,327	33,028
Income tax expense	6,029	6,989
Consolidated net income	<u>\$ 20,298</u>	<u>\$ 26,039</u>
Basic income per common share:		
Consolidated net income	<u>\$ 1.04</u>	<u>\$ 1.33</u>
Diluted income per common share:		
Consolidated net income	<u>\$ 1.02</u>	<u>\$ 1.32</u>
Weighted average common shares outstanding:		
Basic	19,478,297	19,613,868
Diluted	19,858,691	19,777,163

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

Turning Point Brands, Inc.
Consolidated Statements of Comprehensive Income
(dollars in thousands)
(unaudited)

	Three Months Ended September 30,	
	2020	2019
Consolidated net income	\$ 7,796	\$ 6,274
Other comprehensive income, net of tax		
Amortization of unrealized pension and postretirement gain (loss), net of tax of \$62 in 2020 and \$1 in 2019	1,816	(4)
Unrealized gain on investments, net of tax of \$0 in 2020 and \$88 in 2019	-	263
Unrealized gain (loss) on derivative instruments, net of tax of \$84 in 2020 and \$70 in 2019	238	(208)
	<u>2,054</u>	<u>51</u>
Consolidated comprehensive income	<u>\$ 9,850</u>	<u>\$ 6,325</u>
	Nine Months Ended September 30,	
	2020	2019
Consolidated net income	\$ 20,298	\$ 26,039
Other comprehensive income (loss), net of tax		
Amortization of unrealized pension and postretirement gain (loss), net of tax of \$57 in 2020 and \$4 in 2019	1,830	(11)
Unrealized gain on investments, net of tax of \$0 in 2020 and \$351 in 2019	-	1,174
Unrealized loss on derivative instruments, net of tax of \$516 in 2020 and \$563 in 2019	(1,302)	(1,616)
	<u>528</u>	<u>(453)</u>
Consolidated comprehensive income	<u>\$ 20,826</u>	<u>\$ 25,586</u>

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

Turning Point Brands, Inc.
Consolidated Statements of Cash Flows
(dollars in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2020	2019
Cash flows from operating activities:		
Consolidated net income	\$ 20,298	\$ 26,039
Adjustments to reconcile net income to net cash provided by operating activities:		
Loss on extinguishment of debt	-	1,308
Pension settlement and curtailment loss	1,188	-
Impairment loss	149	-
Loss (gain) on sale of property, plant, and equipment	36	(12)
Depreciation expense	2,482	1,855
Amortization of other intangible assets	1,304	1,079
Amortization of debt discount and deferred financing costs	6,725	1,018
Deferred income taxes	876	(4)
Stock compensation expense	1,986	2,480
Noncash lease expense	179	-
Changes in operating assets and liabilities:		
Accounts receivable	(1,877)	(3,556)
Inventories	(2,364)	(6,704)
Other current assets	(829)	(801)
Other assets	1,941	106
Accounts payable	(3,200)	1,069
Accrued postretirement liabilities	(54)	(125)
Accrued liabilities and other	4,359	(3,739)
Net cash provided by operating activities	<u>\$ 33,199</u>	<u>\$ 20,013</u>
Cash flows from investing activities:		
Capital expenditures	\$ (3,420)	\$ (4,060)
Acquisitions, net of cash acquired	(37,735)	(7,703)
Restricted cash, MSA deposits	-	29,713
Proceeds on the sale of property, plant and equipment	3	117
Payments for investments	-	(1,421)
Net cash (used in) provided by investing activities	<u>\$ (41,152)</u>	<u>\$ 16,646</u>
Cash flows from financing activities:		
Payments of 2018 first lien term loan	\$ (8,000)	\$ (6,000)
Payments of 2018 second lien term loan	-	(40,000)
Payments of 2018 revolving credit facility	-	(26,000)
Proceeds from Convertible Senior Notes	-	172,500
Payment of IVG note	(4,240)	-
Proceeds from unsecured note	7,485	-
Standard Diversified Inc. reorganization, net of cash acquired	(1,737)	-
Payment for call options	-	(20,528)
Payment of dividends	(2,846)	(2,646)
Payments of financing costs	(194)	(6,997)
Exercise of options	303	639
Surrender of restricted stock	-	(84)
Redemption of options	-	(12)
Common stock repurchased	(7,665)	-
Net cash (used in) provided by financing activities	<u>\$ (16,894)</u>	<u>\$ 70,872</u>
Net (decrease) increase in cash	\$ (24,847)	\$ 107,531
Cash, beginning of period:		
Unrestricted	95,250	3,306
Restricted	32,074	2,361
Total cash at beginning of period	<u>127,324</u>	<u>5,667</u>
Cash, end of period:		
Unrestricted	67,403	81,124
Restricted	<u>35,074</u>	<u>32,074</u>

Total cash at end of period	<u>\$ 102,477</u>	<u>\$ 113,198</u>
Supplemental schedule of noncash investing activities:		
Hold back for acquisition	<u>\$ -</u>	<u>\$ 265</u>
Supplemental schedule of noncash financing activities:		
Dividends declared not paid	<u>\$ 1,081</u>	<u>\$ 897</u>
Issuance of note payable for acquisition	<u>\$ 10,000</u>	<u>\$ -</u>
Accrued expenses for incurred financing costs	<u>\$ -</u>	<u>\$ 123</u>

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

Turning Point Brands, Inc.
Consolidated Statements of Changes in Stockholders' Equity (Deficit)
(dollars in thousands except share data)
(unaudited)

	<u>Voting Shares</u>	<u>Common Stock, Voting</u>	<u>Additional Paid-In Capital</u>	<u>Cost of Repurchased Common Stock</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Accumulated Earnings (Deficit)</u>	<u>Total</u>
Beginning balance July 1, 2020	19,467,164	\$ 197	\$ 126,928	\$ (5,289)	\$ (5,299)	\$ (4,795)	\$ 111,742
Unrecognized pension and postretirement cost adjustment, net of tax of \$62	-	-	-	-	1,816	-	1,816
Unrealized gain on derivative instruments, net of tax of \$84	-	-	-	-	238	-	238
Stock compensation expense	-	-	772	-	-	-	772
Exercise of options	4,048	-	58	-	-	-	58
Cost of repurchased common stock	(82,097)	-	-	(2,376)	-	-	(2,376)
Standard Diversified Inc. reorganization, net	(244,214)	(2)	-	-	-	(1,735)	(1,737)
Dividends	-	-	-	-	-	(975)	(975)
Net income	-	-	-	-	-	7,796	7,796
Ending balance September 30, 2020	<u>19,144,901</u>	<u>\$ 195</u>	<u>\$ 127,758</u>	<u>\$ (7,665)</u>	<u>\$ (3,245)</u>	<u>\$ 291</u>	<u>\$ 117,334</u>
Beginning balance July 1, 2019	19,657,946	\$ 197	\$ 112,366	\$ -	\$ (3,040)	\$ (7,522)	\$ 102,001
Unrecognized pension and postretirement cost adjustment, net of tax of \$1	-	-	-	-	(4)	-	(4)
Unrealized gain on MSA investments, net of tax of \$88	-	-	-	-	263	-	263
Unrealized loss on derivative instruments, net of tax of \$70	-	-	-	-	(208)	-	(208)
Stock compensation expense	-	-	1,065	-	-	-	1,065
Restricted stock forfeitures	-	-	-	-	-	-	-
Exercise of options	4,042	-	29	-	-	-	29
Dividends	-	-	-	-	-	(897)	(897)
Purchase of call options, net of tax of \$5,091	-	-	(15,437)	-	-	-	(15,437)
Issuance of Convertible Senior Notes, net of tax of \$778	-	-	2,253	-	-	-	2,253
Net income	-	-	-	-	-	6,274	6,274
Ending balance September 30, 2019	<u>19,661,988</u>	<u>\$ 197</u>	<u>\$ 100,276</u>	<u>\$ -</u>	<u>\$ (2,989)</u>	<u>\$ (2,145)</u>	<u>\$ 95,339</u>
		Common	Additional	Cost of	Accumulated Other		

	<u>Voting Shares</u>	<u>Stock, Voting</u>	<u>Paid-In Capital</u>	<u>Repurchased Common Stock</u>	<u>Comprehensive Loss</u>	<u>Accumulated Earnings (Deficit)</u>	<u>Total</u>
Beginning balance January 1, 2020	19,680,673	\$ 197	\$ 125,469	\$ -	\$ (3,773)	\$ (15,308)	\$ 106,585
Unrecognized pension and postretirement cost adjustment, net of tax of \$57	-	-	-	-	1,830	-	1,830
Unrealized loss on derivative instruments, net of tax of \$516	-	-	-	-	(1,302)	-	(1,302)
Stock compensation expense	-	-	1,986	-	-	-	1,986
Exercise of options	47,402	-	303	-	-	-	303
Cost of repurchased common stock	(338,960)	-	-	(7,665)	-	-	(7,665)
Standard Diversified Inc. reorganization, net	(244,214)	(2)	-	-	-	(1,735)	(1,737)
Dividends	-	-	-	-	-	(2,964)	(2,964)
Net income	-	-	-	-	-	20,298	20,298
Ending balance September 30, 2020	<u>19,144,901</u>	<u>\$ 195</u>	<u>\$ 127,758</u>	<u>\$ (7,665)</u>	<u>\$ (3,245)</u>	<u>\$ 291</u>	<u>\$ 117,334</u>
Beginning balance January 1, 2019	19,553,857	\$ 196	\$ 110,466	\$ -	\$ (2,536)	\$ (25,503)	\$ 82,623
Unrecognized pension and postretirement cost adjustment, net of tax of \$4	-	-	-	-	(11)	-	(11)
Unrealized gain on MSA investments, net of tax of \$351	-	-	-	-	1,174	-	1,174
Unrealized loss on derivative instruments, net of tax of \$563	-	-	-	-	(1,616)	-	(1,616)
Stock compensation expense	-	-	2,452	-	-	-	2,452
Restricted stock forfeitures	(1,947)	-	(84)	-	-	-	(84)
Exercise of options	110,078	1	638	-	-	-	639
Redemption of options	-	-	(12)	-	-	-	(12)
Dividends	-	-	-	-	-	(2,681)	(2,681)
Purchase of call options, net of tax of \$5,091	-	-	(15,437)	-	-	-	(15,437)
Issuance of Convertible Senior Notes, net of tax of \$778	-	-	2,253	-	-	-	2,253
Net income	-	-	-	-	-	26,039	26,039
Ending balance September 30, 2019	<u>19,661,988</u>	<u>\$ 197</u>	<u>\$ 100,276</u>	<u>\$ -</u>	<u>\$ (2,989)</u>	<u>\$ (2,145)</u>	<u>\$ 95,339</u>

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

Turning Point Brands, Inc.

Notes to Consolidated Financial Statements

(dollars in thousands, except where designated and per share data)

Note 1. Description of Business and Basis of Presentation

Description of Business

Turning Point Brands, Inc. and its Subsidiaries (collectively referred to herein as the “Company,” “we,” “our,” or “us”) is a leading manufacturer, marketer and distributor of branded consumer products with active ingredients. We sell a wide range of products to adult consumers, from our iconic brands to our next generation products to fulfill evolving consumer preferences. Our three focus segments are led by our core, proprietary brands – *Stoker’s®* in Smokeless Products; *Zig-Zag®* in Smoking Products; and *Nu-X®*, *Solace®* along with our distribution platforms (*VaporBeast®*, *VaporFi®* and *Direct Vapor®*) in NewGen. The Company’s products are available in more than 210,000 retail outlets in North America. We operate in three segments: (i) Smokeless products, (ii) Smoking products, and (iii) NewGen products.

Basis of Presentation

The accompanying unaudited interim, consolidated financial statements have been prepared in accordance with the accounting practices described in the Company’s audited, consolidated financial statements as of and for the year ended December 31, 2019. In the opinion of management, the unaudited, interim, consolidated financial statements included herein contain all adjustments necessary to present fairly the financial position, results of operations, and cash flows of the Company for the periods indicated. Such adjustments, other than nonrecurring adjustments separately disclosed, are of a normal and recurring nature. The operating results for interim periods are not necessarily indicative of results to be expected for a full year or future interim periods. The unaudited, interim, consolidated financial statements should be read in conjunction with the Company’s audited, consolidated financial statements and accompanying notes as of and for the year ended December 31, 2019. The accompanying interim, consolidated financial statements are presented in accordance with the rules and regulations of the Securities and Exchange Commission and, accordingly, do not include all the disclosures required by generally accepted accounting principles in the United States (“GAAP”) with respect to annual financial statements.

Certain prior year amounts have been reclassified to conform to the current year’s presentation. The changes did not have an impact on the Company’s consolidated financial position, results of operations, or cash flows in any of the periods presented.

Note 2. Summary of Significant Accounting Policies

Consolidation

The consolidated financial statements include the accounts of the Company and its subsidiaries, all of which are wholly-owned. All significant intercompany transactions have been eliminated.

Revenue Recognition

The Company recognizes revenues in accordance with Accounting Standards Update (“ASU”) 2014-09, Revenue from Contracts with Customers (Topic 606), which includes excise taxes and shipping and handling charges billed to customers, net of cash discounts for prompt payment, sales returns and incentives, upon delivery of goods to the customer – at which time the Company’s performance obligation is satisfied – at an amount that the Company expects to be entitled to in exchange for those goods in accordance with the five-step analysis outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. The Company excludes from the transaction price, sales taxes and value-added taxes imposed at the time of sale (which do not include excise taxes on smokeless tobacco, cigars or vaping products billed to customers).

The Company records an allowance for sales returns, based principally on historical volume and return rates, which is included in accrued liabilities on the consolidated balance sheets. The Company records sales incentives, which consist of consumer incentives and trade promotion activities, as a reduction in revenues (a portion of which is based on amounts estimated as being due to wholesalers, retailers and consumers at the end of the period) based principally on historical volume and utilization rates. Expected payments for sales incentives are included in accrued liabilities on the consolidated balance sheets.

A further requirement of ASU 2014-09 is for entities to disaggregate revenue recognized from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. Company management views business performance through segments that closely resemble the performance of major product lines. Thus, the primary and most useful disaggregation of the Company's contract revenue for decision making purposes is the disaggregation by segment which can be found in Note 18 of Notes to Consolidated Financial Statements. An additional disaggregation of contract revenue by sales channel can be found within Note 18 as well.

Shipping Costs

The Company records shipping costs incurred as a component of selling, general, and administrative expenses. Shipping costs incurred were approximately \$5.3 million and \$4.4 million for the three months ending September 30, 2020 and 2019, respectively. Shipping costs incurred were approximately \$17.4 million and \$13.6 million for the nine months ending September 30, 2020 and 2019, respectively.

Fair Value

GAAP establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3).

The three levels of the fair value hierarchy under GAAP are described below:

- Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets at the measurement date.
- Level 2 – Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 – Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

Derivative Instruments

Foreign Currency Forward Contracts: The Company enters into foreign currency forward contracts to hedge a portion of its exposure to changes in foreign currency exchange rates on inventory purchase commitments. The Company accounts for its forward contracts under the provisions of ASC 815, Derivatives and Hedging. Under the Company's policy, the Company may hedge up to 100% of its anticipated purchases of inventory in the denominated invoice currency over a forward period not to exceed twelve months. The Company may also, from time to time, hedge up to ninety percent of its non-inventory purchases in the denominated invoice currency. Forward contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these forward contracts are transferred from other comprehensive income into inventory as the related inventories are received and are transferred to net income as inventory is sold. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Interest Rate Swap Agreements: The Company enters into interest rate swap contracts to manage interest rate risk and reduce the volatility of future cash flows. The Company accounts for its interest rate swap contracts under the provisions of ASC 815, Derivatives and Hedging. Swap contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these swap contracts are transferred from other comprehensive income into net income upon settlement of the derivative position or at maturity of the interest rate swap contract. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Risks and Uncertainties

Manufacturers and sellers of tobacco products are subject to regulation at the federal, state, and local levels. Such regulations include, among others, labeling requirements, limitations on advertising, and prohibition of sales to minors. The tobacco industry is likely to continue to be heavily regulated. There can be no assurance as to the ultimate content, timing, or effect of any regulation of tobacco products by any federal, state, or local legislative or regulatory body, nor can there be any assurance that any such legislation or regulation would not have a material adverse effect on the Company's financial position, results of operations, or cash flows. In a number of states targeted flavor bans have been proposed or enacted legislatively or by the administrative process. Depending on the number and location of such bans, that legislation or regulation could have a material adverse effect on the Company's financial position, results of operations or cash flows. Food and Drug Administration ("FDA") continues to consider various restrictive regulations around our products, including targeted flavor bans; however, the details, timing, and ultimate implementation of such measures remain unclear.

The tobacco industry has experienced, and is experiencing, significant product liability litigation. Most tobacco liability lawsuits have been brought against manufacturers and sellers of cigarettes for injuries allegedly caused by smoking or exposure to smoke. However, several lawsuits have been brought against manufacturers and sellers of smokeless products for injuries to health allegedly caused by use of smokeless products. Typically, such claims assert that use of smokeless products is addictive and causes oral cancer. Additionally, several lawsuits have been brought against manufacturers and distributors of NewGen products due to malfunctioning devices. There can be no assurance the Company will not sustain losses in connection with such lawsuits and that such losses will not have a material adverse effect on the Company's financial position, results of operations, or cash flows.

Master Settlement Agreement (MSA): Pursuant to the Master Settlement Agreement (the "MSA") entered into in November 1998 by most states (represented by their attorneys general acting through the National Association of Attorneys General) and subsequent states' statutes, a "cigarette manufacturer" (which is defined to include a manufacturer of make-your-own ("MYO") cigarette tobacco) has the option of either becoming a signatory to the MSA or opening, funding, and maintaining an escrow account to have funds available for certain potential tobacco-related liabilities with sub-accounts on behalf of each settling state. Such companies are entitled to direct the investment of the escrowed funds and withdraw any appreciation, but cannot withdraw the principal for twenty-five years from the year of each annual deposit, except to withdraw funds deposited pursuant to an individual state's escrow statute to pay a final judgement to that state's plaintiffs in the event of such a final judgement against the Company. The Company chose to open and fund an escrow account as its method of compliance. It is the Company's policy to record amounts on deposit in the escrow account for prior years as a non-current asset. Each year's annual obligation is required to be deposited in the escrow account by April 15 of the following year. In addition to the annual deposit, many states have elected to require quarterly deposits for the previous quarter's sales. As of September 30, 2020, the Company had on deposit approximately \$32.1 million, the fair value of which was approximately \$32.1 million. At December 31, 2019, the Company had on deposit approximately \$32.1 million, the fair value of which was approximately \$32.1 million. Effective in the third quarter of 2017, the Company no longer sells any product covered under the MSA. Thus, absent a change in legislation, the Company will no longer be required to make deposits to the MSA escrow account.

The Company has chosen to invest a portion of the MSA escrow, from time to time, in U.S. Government securities including TIPS, Treasury Notes, and Treasury Bonds. These investments are classified as available-for-sale and carried at fair value. Realized losses are prohibited under the MSA; any investment in an unrealized loss position will be held until the value is recovered, or until maturity. All monies at September 30, 2020 and December 31, 2019 were held in money market savings accounts.

The following shows the amount of deposits by sales year for the MSA escrow account:

Sales Year	Deposits as of	
	September 30, 2020	December 31, 2019
1999	\$ 211	\$ 211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	83	83
Total	\$ 32,074	\$ 32,074

Food and Drug Administration: On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (the “TCA”) authorized the FDA to immediately regulate the manufacturing, sale, and marketing of four categories of tobacco products – cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.

Under the TCA, tobacco product user fees are assessed on six classes of regulated tobacco products. The user fees are computed using a methodology similar to the methodology used by the U.S Department of Agriculture to compute the Tobacco Transition Payment Program assessment. First, the total, annual, congressionally established user fee assessment is allocated among the various classes of tobacco products using the federal excise tax weighted market share of tobacco products subject to regulation. Then, the assessment for each class of tobacco products is divided among individual manufacturers and importers.

In August 2016, the FDA’s regulatory authority under the TCA was extended to all tobacco products not previously covered, including: (i) certain NewGen products (such as electronic cigarettes, vaporizers and e-liquids) and their components or parts (such as tanks, coils and batteries); (ii) cigars and their components or parts (such as cigar tobacco); (iii) pipe tobacco; (iv) hookah products; and (v) any other tobacco product “newly deemed” by the FDA. These “deeming regulations” apply to all products made or derived from tobacco intended for human consumption, but excluding accessories of tobacco products (such as lighters). Accordingly, the FDA has since regulated our cigar and cigar wrap products as well as our vapor products containing tobacco-derived nicotine and products intended or reasonably expected to be used to consume such e-liquids.

Under the deeming regulations, the FDA has responsibility for conducting premarket review of “new tobacco products”—defined as those products not commercially marketed in the United States as of February 15, 2007. There are three pathways for obtaining premarket authorization, including submission of a premarket tobacco product application (“PMTA”).

When the FDA initially issued the deeming regulations, it recognized that many products in the deemed categories that were already on the market qualified as “new tobacco products” and lacked a marketing order. In August 2017, the FDA issued a compliance policy (the “August 2017 Guidance”) that allowed new tobacco products to remain on the market without an FDA authorization until specified deadlines had passed. Under the August 2017 Guidance, compliance dates vary depending upon the type of application submitted, but all newly-deemed products require an application no later than August 8, 2021, for “combustible” products (e.g. cigar and pipe), and August 8, 2022, for “non-combustible” products (e.g. vapor products) with the exception of “grandfathered” products (products in commerce as of February 15, 2007) which are already authorized.

On March 27, 2018, several public health organizations filed a lawsuit (the “Maryland Lawsuit”) challenging the August 2017 Guidance. The plaintiffs asserted, among other arguments, that the modification to the deeming regulations included in the August 2017 Guidance conflicts with the TCA and exceeds FDA’s statutory authority.

The court found in favor of the plaintiffs in May 2019 and vacated the August 2017 Guidance. On July 12, 2019, the court issued its remedy order (the “Remedy Order”). Specifically, the court ordered that: (1) for all deemed new tobacco products, marketers must file applications within 10 months of the Remedy Order to continue marketing such products; (2) such a product may remain on the market pending FDA review of a timely filed application for a period not to exceed one year from the date of the application’s submission; (3) in its discretion, the FDA may enforce the premarket review requirements against such products for which marketers do not file applications within 10 months; and (4) the FDA will have the ability to exempt deemed new tobacco products from these application submission requirements for good cause, on a case-by-case basis. FDA appealed the Remedy Order and other actions adverse to the FDA; however, on May 4, 2020, the U.S. Court of Appeals for the Fourth Circuit issued a ruling dismissing the appeals in their entirety.

On March 30, 2020, citing the impacts of the worldwide COVID-19 pandemic on both FDA and industry, FDA requested a modification to the Remedy Order that would extend the May 12, 2020, deadline for filing premarket applications by 120 days to September 9, 2020. After several procedural steps, the Remedy Order was modified on April 22, 2020, to reflect the new deadline, and since then, FDA has updated relevant Guidance documents to reflect this new timeline.

In January 2020, FDA issued a Guidance document (the “January 2020 Guidance”) that stated it would be prioritizing enforcement of several categories of electronic nicotine delivery systems (“ENDS”) products: (1) flavored, cartridge-based ENDS products (other than tobacco- or menthol-flavored ENDS products); (2) ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors’ access; (3) ENDS products targeted to minors or whose marketing is likely to promote the use of ENDS by minors; and (4) ENDS products offered for sale after the May 12, 2020, premarket application deadline for which the manufacturer has not submitted a premarket application. The policy outlined several factors the agency would consider in its enforcement of flavored cigars going forward but did not drastically restrict those products as it had considered in its March 2019 Guidance proposal. The FDA’s policy on these and other regulated products may change or expand over time in ways not yet known and may significantly impact our products or our premarket filings.

We filed premarket filings prior to the September 9, 2020, deadline for certain of our products and intend to supplement and complete the applications within FDA’s discretionary timeline. A successful PMTA must demonstrate that the subject product is “appropriate for the protection of public health,” taking into account the effect of the marketing of the product on all sub-populations while a Substantial Equivalence Report must demonstrate that a new product either has the same characteristics as its predicate product or different characteristics, but does not raise different questions of public health. FDA has issued a number of proposed rules related to premarket filings; however, none of these rules are final yet, and their requirements may shift before being finalized. We believe we have products that meet the requisite standards and have filed premarket filings supporting a showing of the respective required standard. However, there is no assurance that the FDA’s guidance or ultimate regulation will not change, the Remedy Order will not be further altered or that unforeseen circumstances will not arise that prevent us from sufficiently supplementing or completing our applications or otherwise increase the amount of time and money we are required to spend to receive all necessary marketing orders. Although we filed many premarket applications in a timely manner, no assurance can be given that the applications will ultimately be successful. This may result in the prioritization of supplementing or completing applications for high priority SKUs in our inventory position, which could adversely impact future revenues.

In addition, we currently distribute many third-party manufactured vapor products for which we will be completely dependent on the manufacturer complying with the premarket filing requirements. There can be no assurance that these third-party products will receive a marketing order. While we will take measures to pursue regulatory compliance for our own privately-branded or proprietary vape products that compete with these third-party products, there is no assurance that such proprietary products would be as successful in the marketplace or can fully displace third-party products that are currently being distributed by us, which could adversely affect our results of operations and liquidity. For a period of time after the filing deadline, we expect there to be a lack of enforcement, which may adversely affect our ability to compete in the marketplace against those who continue to sell unauthorized products.

Recent Accounting Pronouncements Adopted

In June 2016, the Financial Accounting Standards Board (“FASB”) issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. ASU 2016-13 is intended to improve financial reporting by requiring timelier recording of credit losses on loans and other financial instruments held by financial institutions and other organizations. This ASU applies to financial assets measured at amortized cost, including loans, held-to-maturity debt securities, net investments in leases, and trade accounts receivable as well as certain off-balance sheet credit exposures, such as loan commitments. The ASU replaced the previous incurred loss impairment methodology with a methodology to reflect current expected credit losses (“CECL”) and requires consideration of a broader range of reasonable and supportable information to explain credit loss estimates. The guidance was adopted using a modified retrospective transition method through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. The ASU was effective for the Company beginning in the first quarter of 2020. The ASU did not have an impact to the Company’s financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-15, *Intangibles — Goodwill and Other — Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*. ASU 2018-15 aligns the requirements for capitalizing implementation costs in a cloud computing arrangement service contract with the requirements for capitalizing implementation costs incurred for an internal-use software license. The guidance is effective for interim and annual periods beginning after December 15, 2019, with early adoption permitted. The Company adopted ASU 2018-15 effective January 1, 2020. The ASU did not have an impact to the Company’s financial statements and related disclosures.

Recent Accounting Pronouncements Not Yet Adopted

In December 2019, the FASB issued ASU 2019-12 to simplify the accounting in ASC 740, *Income Taxes*. This guidance removes certain exceptions related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. This guidance also clarifies and simplifies other areas of ASC 740. This ASU will be effective beginning in the first quarter of the Company’s fiscal year 2021. Early adoption is permitted. Certain amendments in this update must be applied on a prospective basis, certain amendments must be applied on a retrospective basis, and certain amendments must be applied on a modified retrospective basis through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. The Company is currently evaluating the impact this ASU will have on the financial statements and related disclosures, as well as the timing of adoption.

In August 2020, the FASB issued ASU 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity’s Own Equity (Subtopic 815-40)*. This guidance simplifies the accounting for convertible debt instruments by reducing the number of accounting models and the number of embedded conversion features that could be recognized separately from the convertible instrument. This guidance also enhances transparency and improves disclosures for convertible instruments and earnings per share guidance. This ASU is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. This update permits the use of either the modified retrospective or fully retrospective method of transition. The Company is currently evaluating the impact this ASU will have on the financial statements and related disclosures, as well as the timing of adoption.

Note 3. Acquisitions

Standard Diversified Inc. (“SDI”) Reorganization

On July 16, 2020, the Company completed its merger with SDI, whereby SDI was merged into a wholly-owned subsidiary of the Company in a tax-free downstream merger. Under the terms of the agreement, the holders of SDI’s Class A Common Stock and SDI’s Class B Common Stock (collectively, “SDI Common Stock”) received in the aggregate, in return for their SDI Common Stock, TPB Voting Common Stock (“TPB Common Stock”) at a ratio of 0.52095 shares of TPB Common Stock for each share of SDI Common Stock at the time of the merger. SDI divested its assets, other than SDI’s TPB Common Stock, prior to close such that the net liabilities at closing were minimal and the only assets that SDI retained were the remaining TPB Common Stock holdings. The transaction was accounted for as an asset purchase for \$236.0 million in consideration, comprised of 7,934,704 shares of TPB Common Stock valued at \$234.3 million plus transaction costs and assumed net liabilities. \$236.0 million was assigned to the 8,178,918 shares of TPB Common Stock acquired. Shares of TPB Common Stock acquired in excess of the shares issued were retired. The Company no longer has a controlling shareholder and 244,214 shares of TPB Common Stock were retired resulting in a charge of \$1.7 million recorded in Accumulated earnings (deficit).

Durfort Holdings

In June 2020, the Company purchased certain tobacco assets and distribution rights from Durfort Holdings S.R.L. (“Durfort”) and Blunt Wrap USA for \$47.7 million in total consideration, comprised of \$37.7 million in cash, including \$1.7 million of capitalized transaction costs, and a \$10.0 million unsecured subordinated promissory note (“Promissory Note”). With this transaction, the Company acquired co-ownership in the intellectual property rights of all of Durfort’s and Blunt Wrap USA’s Homogenized Tobacco Leaf (“HTL”) cigar wraps and cones. The Company also entered into an exclusive Master Distribution Agreement to market and sell the original *Blunt Wrap*® cigar wraps within the USA which was effective October 9, 2020. Durfort is an industry leader in alternative cigar and cigar wrap manufacturing and distribution. Blunt Wrap USA has been an innovator of new products in the smoking alternative market since 1997 and has secured patents in the USA and internationally for novel smoking wrappers and cones. The transaction was accounted for as an asset purchase with \$42.2 million assigned to intellectual property, which has an indefinite life, and \$5.5 million assigned to the Master Distribution Agreement, which has a 15 year life. Both assets are currently deductible for tax purposes.

Solace Technologies

In July 2019, the Company purchased the assets of E-Vape 12, Inc. and Solace Technologies LLC (“Solace”) for \$9.4 million in total consideration, comprised of \$7.7 million in cash, \$1.1 million earn-out fair value, and \$0.5 million holdback for 18 months, which was adjusted by \$0.2 million for a working capital deficiency. The earn-out consists of 44,295 shares of TPB Common Stock to be issued to the former owners upon the achievement of certain annual milestones. Immediately following the acquisition, 88,582 performance based restricted stock units (“PRSUs”) with a fair value of \$4.62 million were issued to former owners who became employees. See Note 15, “Share Incentive Plans”, for further details. Solace is an innovative product development company that has grown from the creator of one of the leading vape juice brands in the industry into a leader of alternative ingredients product development. The Company intends to incorporate Solace’s innovative products as well as the legacy vapor products into our Nu-X development engine. The Company completed the accounting for the acquisition during the third quarter 2020. The following purchase price and goodwill are based on the excess of the acquisition price over the estimated fair value of the tangible and intangible assets acquired:

Total consideration transferred	\$ 9,405
Adjustments to consideration transferred:	
Cash acquired	(45)
Working capital	(235)
Adjusted consideration transferred	9,125
Assets acquired:	
Working capital (primarily AR and inventory)	1,132
Fixed assets and Other long term assets	414
Intangible assets	1,352
Other liabilities	(209)
Net assets acquired	\$ 2,689
Goodwill	\$ 6,436

The goodwill of \$6.4 million consists of the synergies and scale expected from combining the operations and is currently deductible for tax purposes.

Note 4. Derivative Instruments

Foreign Currency

The Company's policy is to manage the risks associated with foreign exchange rate movements. The policy allows hedging up to 100% of its anticipated purchases of inventory over a forward period that will not exceed 12 rolling and consecutive months. The Company may, from time to time, hedge currency for non-inventory purchases, e.g., production equipment, not to exceed 90% of the purchase price. During the third quarter 2020, the Company executed various forward contracts, which met hedge accounting requirements, for the purchase of €19.7 million and sale of €21.4 million with maturity dates ranging from December 2020 to November 2021. At September 30, 2020, the Company had forward contracts for the purchase of €19.7 million and sale of €21.4 million. The foreign currency contracts' fair value at September 30, 2020, resulted in an asset of \$0.3 million included in Other current assets and a liability of \$0.2 million included in Accrued liabilities.

Interest Rate Swaps

The Company's policy is to manage interest rate risk by reducing the volatility of future cash flows associated with debt instruments bearing interest at variable rates. In March 2018, the Company executed various interest rate swap agreements for a notional amount of \$70 million with an expiration of December 2022. The swap agreements fix LIBOR at 2.755%. The swap agreements met the hedge accounting requirements; thus, any change in fair value is recorded to other comprehensive income. The Company uses the Shortcut Method to account for the swap agreements. The Shortcut Method assumes the hedge to be perfectly effective; thus, there is no ineffectiveness to be recorded in earnings. The swap agreements' fair values at September 30, 2020, and December 31, 2019, resulted in a liability of \$4.2 million and \$2.5 million, respectively, included in other long-term liabilities. Losses of \$0.5 million and \$1.0 million were reclassified into interest expense for the three and nine months ended September 30, 2020, respectively. Losses of \$0.1 million and \$0.2 million were reclassified into interest expense for the three and nine months ended September 30, 2019, respectively.

Note 5. Fair Value of Financial Instruments

The estimated fair value amounts have been determined by the Company using the methods and assumptions described below. However, considerable judgment is required to interpret market data to develop estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

Cash and Cash Equivalents

Cash and cash equivalents are, by definition, short-term. Thus, the carrying amount is a reasonable estimate of fair value.

Accounts Receivable

The fair value of accounts receivable approximates their carrying value due to their short-term nature.

Long-Term Debt

The Company's 2018 Credit Facility bears interest at variable rates that fluctuate with market rates, the carrying values of the long-term debt instruments approximate their respective fair values. As of September 30, 2020, the fair value of the 2018 First Lien Term Loan approximated \$138.0 million. As of December 31, 2019, the fair value of the 2018 First Lien Term Loan approximated \$146.0 million.

The Convertible Senior Notes bear interest at a rate of 2.50% per year and the fair value approximated \$144.7 million, with a carrying value of \$172.5 million as of September 30, 2020. As of December 31, 2019, the fair value of the Convertible Senior Notes approximated \$140.1 million, with a carrying value of \$172.5 million.

Note Payable – Promissory Note

The fair value of the Promissory Note approximates its carrying value of \$10.0 million due to the recency of the note’s issuance, related to the quarter ended September 30, 2020.

Note Payable – Unsecured Loan

The fair value of the Unsecured Note approximates its carrying value of \$7.5 million due to the recency of the note’s issuance, related to the quarter ended September 30, 2020.

See Note 11, “Notes Payable and Long-Term Debt”, for further information regarding the Company’s long-term debt.

Foreign Exchange

At September 30, 2020, the Company had forward contracts for the purchase of €19.7 million and sale of €21.4 million. The fair value of the foreign exchange contracts are based upon quoted market prices for similar instruments, thus leading to a level 2 distinction within the fair value hierarchy, and resulted in an asset of \$0.3 million and a liability of \$0.2 million as of September 30, 2020.

Interest Rate Swaps

The Company had swap contracts for a total notional amount of \$70 million at September 30, 2020 and December 31, 2019. The fair values of the swap contracts are based upon quoted market prices for similar instruments, thus leading to a level 2 distinction within the fair value hierarchy, and resulted in a liability of \$4.2 million and \$2.5 million as of September 30, 2020 and December 31, 2019, respectively.

Note 6. Inventories

The components of inventories are as follows:

	September 30, 2020	December 31, 2019
Raw materials and work in process	\$ 7,484	\$ 7,050
Leaf tobacco	35,798	32,763
Finished goods - Smokeless products	7,467	5,680
Finished goods - Smoking products	8,996	13,138
Finished goods - NewGen products	18,844	17,111
Other	350	989
Gross Inventory	78,939	76,731
LIFO reserve	(5,596)	(5,752)
Net Inventory	<u>\$ 73,343</u>	<u>\$ 70,979</u>

The inventory valuation allowance was \$13.4 million and \$21.5 million as of September 30, 2020, and December 31, 2019, respectively. Inventory reserves increased in the fourth quarter 2019 as a result of additional reserves necessary for products in our NewGen segment primarily from increased regulation.

Note 7. Other Current Assets

Other current assets consist of:

	September 30, 2020	December 31, 2019
Inventory deposits	\$ 6,214	\$ 4,012
Insurance deposit	3,000	-
Prepaid taxes	948	3,673
Other	10,781	8,430
Total	<u>\$ 20,943</u>	<u>\$ 16,115</u>

Note 8. Property, Plant, and Equipment

Property, plant, and equipment consists of:

	September 30, 2020	December 31, 2019
Land	\$ 22	\$ 22
Buildings and improvements	2,750	2,655
Leasehold improvements	3,749	2,567
Machinery and equipment	15,306	14,516
Furniture and fixtures	8,772	8,502
Gross property, plant and equipment	30,599	28,262
Accumulated depreciation	(16,596)	(14,446)
Net property, plant and equipment	<u>\$ 14,003</u>	<u>\$ 13,816</u>

Note 9. Other Assets

Other assets consist of:

	September 30, 2020	December 31, 2019
Equity investments	\$ 5,421	\$ 5,421
Pension assets	-	1,686
Other	3,300	3,566
Total	<u>\$ 8,721</u>	<u>\$ 10,673</u>

Note 10. Accrued Liabilities

Accrued liabilities consist of:

	September 30, 2020	December 31, 2019
Accrued payroll and related items	\$ 6,332	\$ 5,267
Customer returns and allowances	5,264	6,160
Taxes payable	3,117	705
Lease liabilities	3,227	2,218
Accrued interest	986	1,909
Other	13,083	10,261
Total	<u>\$ 32,009</u>	<u>\$ 26,520</u>

Note 11. Notes Payable and Long-Term Debt

Notes payable and long-term debt consists of the following in order of preference:

	September 30, 2020	December 31, 2019
2018 First Lien Term Loan	\$ 138,000	\$ 146,000
Convertible Senior Notes	172,500	172,500
Note payable - Promissory Note	10,000	-
Note payable - Unsecured Loan	7,485	-
Note payable - IVG	-	4,240
Gross notes payable and long-term debt	327,985	322,740
Less deferred finance charges	(5,360)	(6,466)
Less debt discount	(26,833)	(32,083)
Less current maturities	(12,000)	(15,240)
Notes payable and long-term debt	<u>\$ 283,792</u>	<u>\$ 268,951</u>

2018 Credit Facility

On March 7, 2018, the Company entered into \$250 million of credit facilities consisting of a \$160 million 2018 First Lien Term Loan and a \$50 million 2018 Revolving Credit Facility (collectively, the “2018 First Lien Credit Facility”), in each case, with Fifth Third Bank, as administrative agent, and other lenders, in addition to a \$40 million 2018 Second Lien Term Loan (the “2018 Second Lien Credit Facility,” and, together with the 2018 First Lien Credit Facility, the “2018 Credit Facility”) with Prospect Capital Corporation, as administrative agent, and other lenders. The 2018 Credit Facility contains a \$40 million accordion feature.

The 2018 Credit Facility contains customary events of default including payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain other material indebtedness in excess of specified amounts, certain events of bankruptcy and insolvency, certain ERISA events, judgments in excess of specified amounts, and change in control defaults. The 2018 Credit Facility also contains certain negative covenants customary for facilities of these types including covenants that, subject to exceptions described in the 2018 Credit Facility, restrict the ability of the Company and its subsidiary guarantors: (i) to pledge assets, (ii) to incur additional indebtedness, (iii) to pay dividends, (iv) to make distributions, (v) to sell assets, and (vi) to make investments. See Note 19, “Dividends and Share Repurchase”, for further information regarding dividend restrictions.

2018 First Lien Credit Facility: The 2018 First Lien Term Loan and the 2018 Revolving Credit Facility bear interest at LIBOR plus a spread of 2.75% to 3.50% based on the Company’s senior leverage ratio. The 2018 First Lien Term Loan has quarterly required payments of \$2.0 million beginning June 30, 2018, increasing to \$3.0 million on June 30, 2020, and increasing to \$4.0 million on June 30, 2022. The 2018 First Lien Credit Facility has a maturity date of March 7, 2023. The 2018 First Lien Term Loan is secured by a first priority lien on substantially all of the assets of the borrowers and the guarantors thereunder, including a pledge of the Company’s capital stock, other than certain excluded assets (the “Collateral”). In connection with the Convertible Senior Notes offering, the Company entered into a First Amendment (“the Amendment”) to the First Lien Credit Agreement, with Fifth Third Bank, as administrative agent, and other lenders and certain other lender parties thereto. The Amendment was entered into primarily to permit the Company to issue up to \$200 million of convertible senior notes, enter into certain capped call transactions in connection with the issuance of such notes and to use the proceeds from the issuance of the notes to repay amounts outstanding under the 2018 Second Lien Credit Facility and use the remaining proceeds for acquisitions and investments. In connection with the Amendment, fees of \$0.7 million were incurred. The 2018 First Lien Credit Facility contains certain financial covenants, which were amended in connection with the Convertible Senior Notes offering in the third quarter 2019. The covenants include maximum senior leverage ratio of 3.00x with step-downs to 2.50x, a maximum total leverage ratio of 5.50x with step-downs to 5.00x, and a minimum fixed charge coverage ratio of 1.20x. In the first quarter of 2020, the financial covenants were amended to permit certain add-backs related to PMTA in the definition of Consolidated EBITDA for the period of October 1, 2019 until September 30, 2020. In connection with the amendment, fees of \$0.2 million were incurred. Based on an excess cash covenant for the facility, a principal payment of \$4.5 million was due in the second quarter 2019. All parties agreed to waive the payment, resulting in consent fees of \$0.1 million. The weighted average interest rate of the 2018 First Lien Term Loan was 2.91% at September 30, 2020. At September 30, 2020, the Company had no borrowings outstanding under the 2018 Revolving Credit Facility. The \$50.0 million unused portion of the 2018 Revolving Credit Facility is reduced by letters of credit issued by Fifth Third Bank totaling \$3.6 million, resulting in \$46.4 million of availability under the 2018 Revolving Credit Facility at September 30, 2020.

2018 Second Lien Credit Facility: The 2018 Second Lien Credit Facility bore interest at a rate of LIBOR plus 7.00% and had a maturity date of March 7, 2024. The 2018 Second Lien Term Loan was secured by a second priority interest in the Collateral and was guaranteed by the same entities as the 2018 First Lien Term Loan. Based on an excess cash covenant for the facility, a \$4.5 million principal payment was made in the second quarter 2019, resulting in a \$0.2 million loss on extinguishment of debt. The Company used a portion of the proceeds from the issuance of the Convertible Senior Notes to prepay all outstanding amounts related to the 2018 Second Lien Credit Facility in the third quarter 2019 in the amount of \$35.5 million, and the transaction resulted in a \$1.1 million loss on extinguishment of debt.

Convertible Senior Notes

In July 2019, the Company closed an offering of \$172.5 million in aggregate principal amount of its 2.50% Convertible Senior Notes due July 15, 2024 (the “Convertible Senior Notes”). The Convertible Senior Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on January 15 and July 15 of each year, beginning on January 15, 2020. The Convertible Senior Notes will mature on July 15, 2024, unless earlier repurchased, redeemed or converted. The Convertible Senior Notes are senior unsecured obligations of the Company.

The Convertible Senior Notes are convertible into approximately 3,202,808 shares of TPB Common Stock under certain circumstances prior to maturity at a conversion rate of 18.567 shares per \$1,000 principal amount of the Convertible Senior Notes, which represents a conversion price of approximately \$53.86 per share, subject to adjustment under certain conditions, but will not be adjusted for any accrued and unpaid interest. Upon conversion, the Company may pay cash, shares of common stock or a combination of cash and stock, as determined by the Company at its discretion. The conditions required to allow the holders to convert their Convertible Senior Notes were not met as of September 30, 2020.

Under GAAP, certain convertible debt instruments that may be settled in cash on conversion are required to be separately accounted for as liability and equity components of the instrument in a manner that reflects the issuer’s non-convertible debt borrowing rate. Accordingly, in accounting for the issuance of the Convertible Senior Notes, the Company separated the Convertible Senior Notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The carrying amount of the equity component, which is recognized as a debt discount, represents the difference between the proceeds from the issuance of the Convertible Senior Notes and the fair value of the liability component of the Convertible Senior Notes. The excess of the principal amount of the liability component over its carrying amount (“debt discount”), \$35.0 million, will be amortized to interest expense using an effective interest rate of 7.5% over the expected life of the Convertible Senior Notes. The equity component is not remeasured as long as it continues to meet the criteria for equity classification. Interest expense includes \$1.8 million and \$5.3 million of amortization for the three and nine months, respectively, ended September 30, 2020.

In accounting for the issuance costs related to the issuance of the Convertible Senior Notes, the Company allocated the total amount incurred to the liability and equity components based on their relative fair values. Debt issuance costs attributable to the liability component are amortized to interest expense using the effective interest method over the expected life of the Convertible Senior Notes, \$4.7 million, and the debt issuance costs attributable to the equity component, \$1.2 million, are netted with the equity component of stockholders’ equity (deficit).

In connection with the Convertible Senior Notes offering, the Company entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions have a strike price of \$53.86 per and a cap price of \$82.86 per, and are exercisable when, and if, the Convertible Senior Notes are converted. The Company paid \$20.53 million for these capped calls and charged that amount to additional paid-in capital.

Promissory Note

On June 10, 2020, in connection with the acquisition of certain Durfort assets, the Company issued the Promissory Note in the principal amount of \$10.0 million (the “Principal Amount”), with an annual interest rate of 7.5%, payable quarterly, with the first payment due September 10, 2020. The Principal Amount is payable in two \$5.0 million installments, with the first installment due 18 months after the closing date of the acquisition (June 10, 2020), and the second installment due 36 months after the closing date of the acquisition. The second installment is subject to reduction for certain amounts payable to the Company as a holdback.

Unsecured Loan

On April 6, 2020, the 2018 First Lien Credit Facility was amended to allow for an unsecured loan under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES”). On April 17, 2020, National Tobacco Company, L.P., a subsidiary of the Company, entered into a loan agreement with Regions Bank guaranteed by the Small Business Administration for a \$7.5 million unsecured loan. The proceeds of the loan were received on April 27, 2020. The loan is scheduled to mature on April 17, 2022 and has a 1.00% interest rate.

Note Payable – IVG

In September 2018, the Company issued a note payable to IVG’s former shareholders (“IVG Note”). The IVG Note had a principal amount of \$4.0 million with 6.0% interest compounding annually and matured on March 5, 2020. All principal and accrued and unpaid interest under the IVG Note were subject to indemnification obligations of the sellers pursuant to the International Vapor Group Stock Purchase Agreement dated as of September 5, 2018. The carrying amount of the IVG Note, \$4.2 million, was deposited into an escrow account pending agreement with the sellers of any indemnification obligations.

Note 12. Leases

As of January 1, 2019, the Company adopted ASU 2016-02, Leases (Topic 842). The main impact to the financial statements is the recognition of lease liabilities and right of use assets. The Company’s leases consist primarily of leased property for manufacturing warehouse, head offices and retail space as well as vehicle leases. In general, the Company does not recognize any renewal periods within the lease terms as there are not significant barriers to ending the lease at the initial term. Lease and non-lease components are accounted for as a single lease component.

Leases with an initial term of 12 months or less are not recorded on the balance sheet. Lease expense for these leases is recognized on a straight-line basis over the lease term.

The components of lease expense consisted of the following:

	Three Months Ended September 30,	
	2020	2019
Operating lease cost		
Cost of sales	\$ 225	\$ 225
Selling, general and administrative	643	511
Variable lease cost (1)	96	259
Short-term lease cost	11	31
Sublease income	(30)	(30)
Total	<u>\$ 945</u>	<u>\$ 996</u>

(1) Variable lease cost includes elements of a contract that do not represent a good or service but for which the lessee is responsible for paying.

	Nine Months Ended September 30,	
	2020	2019
Operating lease cost		
Cost of sales	\$ 683	\$ 649
Selling, general and administrative	1,647	1,671
Variable lease cost (1)	452	629
Short-term lease cost	120	120
Sublease income	(90)	(80)
Total	<u>\$ 2,812</u>	<u>\$ 2,989</u>

(1) Variable lease cost includes elements of a contract that do not represent a good or service but for which the lessee is responsible for paying.

	September 30, 2020	December 31, 2019
Assets:		
Right of use assets	\$ 19,064	\$ 12,130
Total lease assets	<u>\$ 19,064</u>	<u>\$ 12,130</u>
Liabilities:		
Current lease liabilities (2)	\$ 3,227	\$ 2,218
Long-term lease liabilities	17,073	11,067
Total lease liabilities	<u>\$ 20,300</u>	<u>\$ 13,285</u>

(2) Reported within accrued liabilities on the balance sheet

	As of September 30,	
	2020	2019
Weighted-average remaining lease term - operating leases	7.4 years	8.6 years
Weighted-average discount rate - operating leases	4.93%	6.47%

Nearly all the lease contracts for the Company do not provide a readily determinable implicit rate. For these contracts, the Company estimated the incremental borrowing rate based on information available upon adoption of ASU 2016-02. The Company applied a consistent method in periods after the adoption of ASU 2016-02 to estimate the incremental borrowing rate.

As of September 30, 2020, and December 31, 2019, maturities of lease liabilities consisted of the following:

	September 30, 2020	December 31, 2019
2020	\$ 859	\$ 2,924
2021	4,229	2,730
2022	3,836	2,165
2023	3,478	1,782
2024	2,418	1,028
Years thereafter	9,484	6,297
Total lease payments	<u>\$ 24,304</u>	<u>\$ 16,926</u>
Less: Imputed interest	4,004	3,641
Present value of lease liabilities	<u>\$ 20,300</u>	<u>\$ 13,285</u>

During the third quarter of the year, the Company entered into one new lease agreement which resulted in an increase in lease liability of \$6.6 million as of September 30, 2020.

Note 13. Income Taxes

The Company's effective income tax rate for the three and nine months ended September 30, 2020, was 18.9% and 22.9%, respectively, which includes a discrete tax deduction of \$0.0 million and \$0.9 million for the three and nine months ended September 30, 2020, respectively, relating to stock option exercises, and a discrete tax benefit of \$0.6 million for the three and nine months ended, September 30, 2020, relating to the valuation release in other comprehensive income from the defined benefit pension plan. The Company's effective income tax rate for the three and nine months ended September 30, 2019, was 26.3% and 21.2%, respectively, which includes a discrete tax deduction of \$0.1 million and \$4.6 million for the three and nine months ended September 30, 2019, respectively, relating to stock option exercises.

The Company follows the provisions of ASC 740-10-25, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more-likely-than-not to be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. The Company has determined that the Company did not have any uncertain tax positions requiring recognition under the provisions of ASC 740-10-25. The Company's policy is to recognize interest and penalties accrued on uncertain tax positions, if any, as part of interest expense. The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. In general, the Company is no longer subject to U.S. federal and state tax examinations for years prior to 2017.

Note 14. Pension and Postretirement Benefit Plans

The Company has a defined benefit pension plan. Benefits for hourly employees were based on a stated benefit per year of service, reduced by amounts earned in a previous plan. Benefits for salaried employees were based on years of service and the employees' final compensation. The defined benefit pension plan was frozen. The Company's policy is to make the minimum amount of contributions that can be deducted for federal income taxes. The Company expects to make no contributions to the pension plan in 2020. In October 2019, the Company elected to terminate the defined benefit pension plan, effective December 31, 2019 with final distributions made in third quarter of 2020.

The Company sponsored a defined benefit postretirement plan that covered hourly employees. This plan provides medical and dental benefits. This plan was contributory with retiree contributions adjusted annually. The Company's policy was to make contributions equal to benefits paid during the year. The Company does not expect to contribute to its postretirement plan in 2020 for the payment of benefits. In October 2019, the Company amended the plan to cease benefits effective June 30, 2020.

The following table provides the components of net periodic pension and postretirement benefit costs and total costs for the plans:

	Three Months Ended September 30,			
	Pension Benefits		Postretirement Benefits	
	2020	2019	2020	2019
Service cost	\$ -	\$ 26	\$ -	\$ -
Interest cost	-	130	-	25
Expected return on plan assets	-	(161)	-	-
Amortization of (gains) losses	-	36	-	(41)
Settlement and curtailment loss	1,188	-	-	-
Net periodic benefit cost (income)	<u>\$ 1,188</u>	<u>\$ 31</u>	<u>\$ -</u>	<u>\$ (16)</u>

	Nine Months Ended September 30,			
	Pension Benefits		Postretirement Benefits	
	2020	2019	2020	2019
Service cost	\$ -	\$ 78	\$ -	\$ -
Interest cost	190	390	-	76
Expected return on plan assets	(322)	(484)	-	-
Amortization of (gains) losses	72	110	(131)	(125)
Settlement and curtailment loss	1,188	-	-	-
Net periodic benefit cost (income)	<u>\$ 1,128</u>	<u>\$ 94</u>	<u>\$ (131)</u>	<u>\$ (49)</u>

Note 15. Share Incentive Plans

On April 28, 2016, the Board of Directors of the Company adopted the Turning Point Brands, Inc., 2015 Equity Incentive Plan (the “2015 Plan”), pursuant to which awards may be granted to employees, non-employee directors, and consultants. In addition, the 2015 Plan provides for the granting of nonqualified stock options to employees of the Company or any subsidiary of the Company. Pursuant to the 2015 Plan, 1,400,000 shares of TPB Common Stock are reserved for issuance as awards to employees, non-employee directors, and consultants as compensation for past or future services or the attainment of certain performance goals. The 2015 Plan is scheduled to terminate on April 27, 2026. The 2015 Plan is administered by a committee (the “Committee”) of the Company’s Board of Directors. The Committee determines the vesting criteria for the awards, with such criteria to be specified in the award agreement. As of September 30, 2020, net of forfeitures, there were 16,159 shares of restricted stock, 440,132 PRSUs, and 610,730 options granted under the 2015 Plan. There are 332,979 shares available for grant under the 2015 Plan.

On February 8, 2006, the Board of Directors of the Company adopted the 2006 Equity Incentive Plan (the “2006 Plan”) of North Atlantic Holding Company, Inc., pursuant to which awards may be granted to employees. The 2006 Plan provides for the granting of nonqualified stock options and restricted stock awards to employees. Upon the adoption of the Company’s 2015 Equity Incentive Plan in connection with its IPO, the Company determined no additional grants would be made under the 2006 Plan. However, all awards issued under the 2006 Plan that have not been previously terminated or forfeited remain outstanding and continue unaffected.

There are no shares available for grant under the 2006 Plan. Stock option activity for the 2006 and 2015 Plans is summarized below:

	Stock Option Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Outstanding, December 31, 2018	659,574	\$ 9.00	\$ 3.34
Granted	180,780	43.89	14.34
Exercised	(129,067)	5.72	2.58
Forfeited	(14,571)	34.55	11.10
Outstanding, December 31, 2019	<u>696,716</u>	18.13	6.17
Granted	155,000	14.85	4.41
Exercised	(47,402)	6.40	2.73
Forfeited	(3,508)	28.71	9.14
Outstanding, September 30, 2020	<u>800,806</u>	\$ 18.14	\$ 6.02

Under the 2006 and 2015 Plans, the total intrinsic value of options exercised during the nine months ended September 30, 2020 and 2019, was \$0.9 million, and \$4.6 million, respectively.

At September 30, 2020, under the 2006 Plan, the outstanding stock options' exercise price for 272,681 options is \$3.83 per share, all of which are exercisable. The weighted average of the remaining lives of the outstanding stock options with an exercise price of \$3.83 is approximately 2.95 years. The Company estimates the expected life of these stock options is ten years from the date of grant. For the \$3.83 per share options, the weighted average fair value of options was determined using the Black-Scholes model assuming a ten-year life from grant date, a current share price and exercise price of \$3.83, a risk-free interest rate of 3.57%, volatility of 40%, and no assumed dividend yield. Based on these assumptions, the fair value of these options is approximately \$2.17 per share option granted.

At September 30, 2020, under the 2015 Plan, the risk-free interest rate is based on the U.S. Treasury rate for the expected life at the time of grant. The expected volatility is based on the average long-term historical volatilities of peer companies. We intend to continue to consistently use the same group of publicly traded peer companies to determine expected volatility until sufficient information regarding volatility of our share price becomes available or until the selected companies are no longer suitable for this purpose. Due to our limited trading history, we are using the simplified method presented by SEC Staff Accounting Bulletin No. 107 to calculate expected holding periods, which represent the periods of time for which options granted are expected to be outstanding. We will continue to use this method until we have sufficient historical exercise experience to give us confidence in the reliability of our calculations. The fair values of these options were determined using the Black-Scholes option pricing model.

The following table outlines the assumptions based on the number of options granted under the 2015 Plan.

	February 10, 2017	May 17, 2017	March 7, 2018	March 13, 2018	March 20, 2019	October 24, 2019	March 18, 2020
Number of options granted	40,000	93,819	98,100	26,000	155,780	25,000	155,000
Options outstanding at September 30, 2020	27,050	65,077	84,765	26,000	146,433	25,000	153,800
Number exercisable at September 30, 2020	27,050	65,077	56,683	26,000	50,021	8,250	-
Exercise price	\$ 13.00	\$ 15.41	\$ 21.21	\$ 21.49	\$ 47.58	\$ 20.89	\$ 14.85
Remaining lives	6.37	6.63	7.44	7.45	8.47	9.07	9.47
Risk free interest rate	1.89%	1.76%	2.65%	2.62%	2.34%	1.58%	0.79%
Expected volatility	27.44%	26.92%	28.76%	28.76%	30.95%	31.93%	35.72%
Expected life	6.000	6.000	6.000	5.495	6.000	6.000	6.000
Dividend yield	-	-	0.83%	0.82%	0.42%	0.95%	1.49%
Fair value at grant date	\$ 3.98	\$ 4.60	\$ 6.37	\$ 6.18	\$ 15.63	\$ 6.27	\$ 4.41

The Company has recorded compensation expense related to the options based on the provisions of ASC 718 under which the fixed portion of such expense is determined as the fair value of the options on the date of grant and amortized over the vesting period. The Company recorded compensation expense related to the options of approximately \$0.3 million and \$0.5 million for the three months ended September 30, 2020 and 2019, respectively. The Company recorded compensation expense related to the options of approximately \$0.9 million and \$1.2 million for the nine months ended September 30, 2020 and 2019, respectively. Total unrecognized compensation expense related to options at September 30, 2020, is \$0.9 million, which will be expensed over 1.68 years.

Performance-Based Restricted Stock Units

PRSUs are restricted stock units subject to both performance-based and service-based vesting conditions. The number of shares of TPB Common Stock a recipient will receive upon vesting of a PRSU will be calculated by reference to certain performance metrics related to the Company's performance over a five-year period. PRSUs will vest on the measurement date, which is no more than 65 days after the performance period provided the applicable service and performance conditions are satisfied. As of September 30, 2020, there are 440,132 PRSUs outstanding, all of which are unvested. The following table outlines the PRSUs granted and outstanding as of September 30, 2020.

	March 31, 2017	March 7, 2018	March 20, 2019	March 20, 2019	July 19, 2019	March 18, 2020
Number of PRSUs granted	94,000	96,000	92,500	4,901	88,582	90,000
PRSUs outstanding at September 30, 2020	83,000	93,000	85,550	-	88,582	90,000
Fair value as of grant date	\$ 15.60	\$ 21.21	\$ 47.58	\$ 47.58	\$ 52.15	\$ 14.85
Remaining lives	1.25	2.25	3.25	-	2.25	4.25

The Company recorded compensation expense related to the PRSUs of approximately \$0.4 million and \$0.6 million in the consolidated statements of income for the three months ended September 30, 2020 and 2019, respectively, based on the probability of achieving the performance condition. The Company recorded compensation expense related to the PRSUs of approximately \$1.1 million and \$1.3 million in the consolidated statements of income for the nine months ended September 30, 2020 and 2019, respectively, based on the probability of achieving the performance condition. Total unrecognized compensation expense related to these awards at September 30, 2020, is \$9.4 million which will be expensed over the service periods based on the probability of achieving the performance condition.

Note 16. Contingencies

On October 9, 2020, a purported stockholder of Turning Point Brands, Inc., Paul-Emile Berteau, filed a complaint in the Delaware Court of Chancery relating to the Agreement and Plan of Merger and Reorganization, dated as of April 7, 2020, by and among TPB, SDI and Merger Sub (the “SDI Merger”). The complaint asserts two derivative counts purportedly on behalf of TPB for breaches of fiduciary duty against the Board of Directors of Turning Point Brands, Inc. and other parties. The third count asserts a direct claim against the Company and its Board of Directors seeking a declaration that TPB’s Bylaws are inconsistent with TPB’s certificate of incorporation. While the Company believes it has good and valid defenses to the claims, there can be no assurance that the Company will prevail in this case, and it could have a material adverse effect on the Company’s business and results of operations.

Other major tobacco companies are defendants in product liability claims. In a number of these cases, the amounts of punitive and compensatory damages sought are significant and could have a material adverse effect on our business and results of operations.

The Company is subject to several lawsuits alleging personal injuries resulting from malfunctioning vaporizer devices or consumption of e-liquids and may be subject to claims in the future relating to other NewGen products. The Company is still evaluating these claims and the potential defenses to them. For example, the Company did not design or manufacture the products at issue; rather, the Company was merely the distributor. Nonetheless, there can be no assurance that the Company will prevail in these cases, and they could have a material adverse effect on the financial position, results of operations, or cash flows of the Company.

Franchisors are defendants from time to time in the ordinary course of business. In certain of these cases, the amounts of punitive and compensatory damages sought are significant. One of the Company’s subsidiaries is a defendant in a lawsuit brought by a franchisee. In that case, the franchisee is seeking compensatory and punitive damages and rescission of their franchise agreement, alleging that the Company’s subsidiary failed to make certain disclosures in the Franchise Disclosure Document. The subsidiary is evaluating these claims, the potential defenses to them as well as available counterclaims. The subsidiary believes that termination of the franchise agreement was proper, no damages are due and the franchisee is bound by an arbitration agreement pursuant to the terms of their franchise agreement (and therefore it was improper to pursue litigation). The former franchisee has also named various other parties, including the Company and another subsidiary asserting the same claims, as well as a claim for a declaratory judgment, that the Company and the subsidiary should be found liable as successor entities, or under the doctrines of “de facto merger”, or alter ego. The Company and the subsidiary have moved to stay the case pending the arbitration noted above. Both motions remain pending. While the Company and its subsidiaries believe they have good and valid defenses to the claims, there can be no assurance that the Company and its subsidiaries will prevail in this case, and it could have a material adverse effect on the Company’s business and results of operations.

The Company has several subsidiaries engaged in making, distributing, and selling vapor products. As a result of the overall publicity and controversy surrounding the vapor industry generally, many companies have received informational subpoenas from various regulatory bodies and in some jurisdictions regulatory lawsuits have been filed regarding marketing practices and possible underage sales. The Company has subsidiaries that are subject to some information requests. In the acquisition of the vapor businesses, the Company negotiated financial “hold-backs”, which it expects to be able to use to defray expenses associated with the information production and the cost of defending any such lawsuits as well as the franchisee lawsuit. To the extent that litigation becomes necessary, the Company believes that the subsidiaries have strong factual and legal defenses against claims that it unfairly marketed vapor products.

Note 17. Income Per Share

The following is a reconciliation of the numerators and denominators of the basic and diluted EPS computations of net income:

	Three Months Ended September 30,					
	2020			2019		
	Income	Shares	Per Share	Income	Shares	Per Share
Consolidated net income	\$ 7,796			\$ 6,274		
Basic EPS:						
Weighted average		19,240,187	\$ 0.41		19,659,217	\$ 0.32
Diluted EPS:						
Effect of dilutive securities:						
Stock options		396,802			408,196	
		<u>19,636,989</u>	<u>\$ 0.40</u>		<u>20,067,413</u>	<u>\$ 0.31</u>
	Nine Months Ended September 30,					
	2020			2019		
	Income	Shares	Per Share	Income	Shares	Per Share
Consolidated net income	\$ 20,298			\$ 26,039		
Basic EPS:						
Weighted average		19,478,297	\$ 1.04		19,613,868	\$ 1.33
Diluted EPS:						
Effect of dilutive securities:						
Stock options		380,394			163,295	
		<u>19,858,691</u>	<u>\$ 1.02</u>		<u>19,777,163</u>	<u>\$ 1.32</u>

For the three and nine months ended September 30, 2020, the effect of the 3,202,808 shares issuable upon conversion of the Convertible Senior Notes were excluded from the diluted net income per share calculation because the Company's average stock price did not exceed \$53.86 during those periods.

Note 18. Segment Information

In accordance with ASC 280, Segment Reporting, the Company has three reportable segments: Smokeless products, Smoking products, and NewGen products. The Smokeless products segment (i) manufactures and markets moist snuff and (ii) contracts for and markets loose leaf chewing tobacco products. The Smoking products segment (i) markets and distributes cigarette papers, tubes, and related products; and (ii) contracts for, markets and distributes finished cigars and MYO cigar wraps. The NewGen products segment (i) markets and distributes CBD, liquid vapor products and certain other products without tobacco and/or nicotine; (ii) distributes a wide assortment of products to non-traditional retail via VaporBeast; and (iii) markets and distributes a wide assortment of products to individual consumers via the VaporFi B2C online platform. Smokeless and Smoking products are distributed primarily through wholesale distributors in the United States while NewGen products are distributed primarily through e-commerce to non-traditional retail outlets and direct to consumers in the United States. The Other segment includes the costs and assets of the Company not assigned to one of the three reportable segments such as intercompany transfers, deferred taxes, deferred financing fees, and investments in subsidiaries.

The accounting policies of these segments are the same as those of the Company. Corporate costs are not directly charged to the three reportable segments in the ordinary course of operations. The Company evaluates the performance of its segments and allocates resources to them based on operating income.

The tables below present financial information about reported segments:

	Three Months Ended September 30,	
	2020	2019
Net sales		
Smokeless products	\$ 29,764	\$ 26,187
Smoking products	35,973	30,222
NewGen products	38,437	40,391
Total	<u>\$ 104,174</u>	<u>\$ 96,800</u>
Gross profit		
Smokeless products	\$ 16,042	\$ 13,587
Smoking products	21,263	16,619
NewGen products	11,002	12,610
Total	<u>\$ 48,307</u>	<u>\$ 42,816</u>
Operating income (loss)		
Smokeless products	\$ 11,466	\$ 9,392
Smoking products	16,827	12,931
NewGen products	745	(1,233)
Corporate unallocated ⁽¹⁾	(13,017)	(8,058)
Total	<u>\$ 16,021</u>	<u>\$ 13,032</u>
Interest expense, net	5,224	3,641
Investment income	(3)	(265)
Loss on extinguishment of debt	-	1,158
Net periodic cost (income), excluding service cost	<u>1,188</u>	<u>(12)</u>
Income before income taxes	<u>\$ 9,612</u>	<u>\$ 8,510</u>
Capital expenditures		
Smokeless products	\$ 1,450	\$ 1,208
Smoking products	-	-
NewGen products	14	888
Total	<u>\$ 1,464</u>	<u>\$ 2,096</u>
Depreciation and amortization		
Smokeless products	\$ 562	\$ 415
Smoking products	91	-
NewGen products	633	633
Total	<u>\$ 1,286</u>	<u>\$ 1,048</u>

(1) Includes corporate costs that are not allocated to any of the three reportable segments.

	Nine Months Ended September 30,	
	2020	2019
Net sales		
Smokeless products	\$ 87,081	\$ 74,907
Smoking products	92,290	81,104
NewGen products	120,455	125,756
Total	<u>\$ 299,826</u>	<u>\$ 281,767</u>
Gross profit		
Smokeless products	\$ 46,580	\$ 39,723
Smoking products	53,066	43,841
NewGen products	38,184	40,899
Total	<u>\$ 137,830</u>	<u>\$ 124,463</u>
Operating income (loss)		
Smokeless products	\$ 33,452	\$ 26,610
Smoking products	41,471	33,251
NewGen products ⁽²⁾	4,493	9,056
Corporate unallocated ⁽¹⁾	(37,022)	(23,909)
Total	<u>\$ 42,394</u>	<u>\$ 45,008</u>
Interest expense, net	15,198	11,233
Investment income	(128)	(527)
Loss on extinguishment of debt	-	1,308
Net periodic cost (income), excluding service cost	997	(34)
Income before income taxes	<u>\$ 26,327</u>	<u>\$ 33,028</u>
Capital expenditures		
Smokeless products	\$ 3,148	\$ 2,310
Smoking products	-	-
NewGen products	272	1,750
Total	<u>\$ 3,420</u>	<u>\$ 4,060</u>
Depreciation and amortization		
Smokeless products	\$ 1,605	\$ 1,137
Smoking products	91	-
NewGen products	2,090	1,797
Total	<u>\$ 3,786</u>	<u>\$ 2,934</u>

(1) Includes corporate costs that are not allocated to any of the three reportable segments.

(2) Includes VMR settlement gain of \$5.5 million for the nine months ended September 30, 2020.

	September 30, 2020	December 31, 2019
Assets		
Smokeless products	\$ 135,264	\$ 120,723
Smoking products	193,380	145,831
NewGen products	85,895	90,899
Corporate unallocated ⁽¹⁾	64,692	89,131
Total	\$ 479,231	\$ 446,584

(1) Includes assets not assigned to the three reportable segments. All goodwill has been allocated to the reportable segments.

Revenue Disaggregation—Sales Channel

Revenues of the Smokeless and Smoking segments are primarily comprised of sales made to wholesalers while NewGen sales are made business to business and business to consumer, both online and through our corporate retail stores. NewGen net sales are broken out by sales channel below.

	NewGen Segment	
	Three Months Ended	
	September 30,	
	2020	2019
Business to Business	\$ 26,080	\$ 29,981
Business to Consumer - Online	10,880	8,367
Business to Consumer - Corporate store	1,389	2,017
Other	88	26
Total	\$ 38,437	\$ 40,391

	NewGen Segment	
	Nine Months Ended	
	September 30,	
	2020	2019
Business to Business	\$ 81,727	\$ 93,182
Business to Consumer - Online	34,066	25,052
Business to Consumer - Corporate store	4,500	7,381
Other	162	141
Total	\$ 120,455	\$ 125,756

Net Sales—Domestic vs. Foreign

The following table shows a breakdown of consolidated net sales between domestic and foreign customers.

	Three Months Ended September 30,	
	2020	2019
Domestic	\$ 100,492	\$ 91,236
Foreign	3,682	5,564
Total	\$ 104,174	\$ 96,800

	Nine Months Ended September 30,	
	2020	2019
Domestic	\$ 290,050	\$ 271,521
Foreign	9,776	10,246
Total	\$ 299,826	\$ 281,767

Note 19. Dividends and Share Repurchase

The most recent dividend of \$0.05 per common share was paid on October 9, 2020, to shareholders of record at the close of business on September 18, 2020.

Dividends are classified as restricted payments within the 2018 Credit Facility. The Company is generally permitted to make restricted payments provided that, at the time of payment, or as a result of payment, the Company is not in default on its debt covenants. Additional restrictions limit the aggregate amount of restricted, quarterly dividends during a fiscal year to the aggregate amount of mandatory and voluntary principal payments made on the priority term loans during the fiscal year.

On February 25, 2020, the Company's Board of Directors approved a \$50.0 million share repurchase authorization, which is intended for opportunistic execution based upon a variety of factors including market dynamics. The authorization is subject to the ongoing discretion of the Board. The total number of shares repurchased for the three months ended September 30, 2020, was 82,097 shares for a total cost of \$2.4 million and an average price per share of \$28.95. The total number of shares repurchased for the nine months ended September 30, 2020, was 338,960 shares for a total cost of \$7.7 million and an average price per share of \$22.61.

Note 20. Subsequent Events

Wild Hempettes LLC

On October 1, 2020, the Company acquired a 20% stake in Wild Hempettes LLC ("Wild Hempettes"), a leading manufacturer of hemp cigarettes under the WildHemp™ and Hempettes™ brands, for \$2.5 million. The Company has options to increase its stake to a 100% ownership position based on certain milestones. As part of the transaction, the Wild Hempettes joint venture was spun off from Crown Distributing LLC and formed as a vehicle for the Company to be the exclusive distributor of Hempettes™ to U.S. bricks and mortar retailers under a profit-sharing arrangement. The Company has provided Wild Hempettes with a secured line of credit up to \$2.0 million with a term up to 5 years.

Sale of Vapor Shark Retail Assets

On October 1, 2020, the Company sold the assets of its remaining 7 Vapor Shark retail stores in Oklahoma. The Company will receive monthly royalties over the next 4 years as consideration for the assets.

dosist™

On October 27, 2020, the Company invested \$15.0 million in dosist™, a global cannabinoid company, with an option to invest an additional \$15.0 million at pre-determined terms over the next 12 months. The Company will receive a warrant to receive preferred shares of dosist that will automatically be exercised upon the changing of federal laws in the United States, rescheduling cannabis and/or permitting the general cultivation, distribution and possession of cannabis. As part of the investment, the Company also entered into an exclusive co-development and distribution of a new national CBD brand, created in partnership with dosist.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion of the historical financial condition and results of operations in conjunction with our historical consolidated financial statements and accompanying notes, which are included elsewhere in this Quarterly Report on Form 10-Q. In addition, this discussion includes forward-looking statements subject to risks and uncertainties that may result in actual results differing from statements we make. See "Cautionary Note Regarding Forward-Looking Statements." Factors that could cause actual results to differ include those risks and uncertainties discussed in "Risk Factors."

The following discussion relates to the unaudited financial statements of Turning Point Brands, Inc., included elsewhere in this Quarterly Report on Form 10-Q. In this discussion, unless the context requires otherwise, references to "our Company" "we," "our," or "us" refer to Turning Point Brands, Inc., and its consolidated subsidiaries. References to "TPB" refer to Turning Point Brands, Inc., without any of its subsidiaries. We were incorporated in 2004 under the name North Atlantic Holding Company, Inc. On November 4, 2015, we changed our name to Turning Point Brands, Inc. Many of the amounts and percentages in this discussion have been rounded for convenience of presentation.

Overview

Turning Point Brands, Inc. (the "Company," "we," "our," or "us") is a leading manufacturer, marketer and distributor of branded consumer products with active ingredients. We sell a wide range of products to adult consumers, from our iconic brands to our next generation products to fulfill evolving consumer preferences. Among other markets, we compete in the Other Tobacco Products ("OTP") industry which we estimate generated approximately \$11.5 billion of manufacturer revenue in 2019 and is exhibiting low to mid-single digit consumer unit growth as reported by Management Science Associates, Inc. ("MSAi"), a third-party analytics and information company. Our three focus segments are led by our core, proprietary brands – *Stoker's*® along with *Beech-Nut*® and *Trophy*® in Smokeless Products; *Zig-Zag*® in Smoking Products; and *Nu-X*®, *Solace*® along with our distribution platforms (*VaporBeast*®, *VaporFi*® and *Direct Vapor*®) in NewGen. Our businesses generate solid cash flow which we use to finance acquisitions, increase brand support, expand our distribution infrastructure, and strengthen our capital position. We currently ship to approximately 800 distributors with an additional 100 secondary, indirect wholesalers in the U.S. that carry and sell our products. Under the leadership of a senior management team with an average of 24 years of experience in the tobacco industry, we have grown and diversified our business through new product launches, category expansions, and acquisitions while concurrently improving operational efficiency.

We have identified additional growth opportunities in the emerging alternatives market. In January 2019, we established our subsidiary, Nu-X Ventures LLC ("Nu-X"), a new company and wholly-owned subsidiary dedicated to the development, production and sale of alternative products and acquisitions in related spaces. The creation of Nu-X allows TPB to leverage its expertise in traditional OTP management to alternative products. The TPB management team has over 100 years of experience navigating federal, state and local regulations that are directly applicable to the growing alternatives market. In July 2019, we acquired the assets of Solace Technology ("Solace"). Solace is an innovative product development company which established one of the top e-liquid brands and has since grown into a leader in alternative products. Solace's legacy and innovation will enhance Nu-X's strong and nimble development engine. In July 2019, we acquired a 30% stake in ReCreation Marketing ("ReCreation"). ReCreation is a specialty marketing and distribution firm focused on building brands in the Canadian smoking, vaping and alternative products categories. The investment will leverage ReCreation's significant expertise in marketing and distributing tobacco and cannabis products throughout Canada. The investment is part of Nu-X and we plan to make additional investments, partnerships and acquisitions to drive the business of Nu-X. These endeavors will enable us to continue to identify unmet customer needs and provide quality products that we believe will result in genuine customer satisfaction and foster the growth of revenue.

We believe there are meaningful opportunities to grow our business organically and through acquisitions and joint ventures across all product categories. As of December 31, 2019, our products are available in approximately 185,000 U.S. retail locations which, with the addition of retail stores in Canada, brings our total North American retail presence to an estimated 210,000 points of distribution. Our sales team targets widespread distribution to all traditional retail channels, including convenience stores.

Products

We operate in three segments: Smokeless products, Smoking products and NewGen products. In our Smokeless products segment, we (i) manufacture and market moist snuff and (ii) contract for and market loose leaf chewing tobacco products. In our Smoking products segment, we principally (i) market and distribute cigarette papers, tubes, and related products; and (ii) contract for, market and distribute finished cigars and MYO cigar wraps. In our NewGen products segment, we (i) market and distribute CBD, liquid vapor products and certain other products without tobacco and/or nicotine; (ii) distribute a wide assortment of products to non-traditional retail via VaporBeast; and (iii) market and distribute a wide assortment of products to individual consumers via the VaporFi B2C online platform. Our portfolio of brands includes some of the most widely recognized names in the OTP industry such as *Stoker's*® in the Smokeless segment, *Zig-Zag*® in the Smoking segment, and *VaporBeast*®, *VaporFi*® and *Solace*© in the NewGen segment.

Operations

Our core tobacco business (Smokeless and Smoking segments) primarily generates revenues from the sale of our products to wholesale distributors who, in turn, resell the products to retail operations. Our acquisition of VaporBeast in 2016 expanded our revenue streams as we began selling directly to non-traditional retail outlets. Our acquisition of IVG in 2018 enhanced our business-to-consumer revenue stream with the addition of the Vapor-Fi online platform. Our net sales, which include federal excise taxes, consist of gross sales net of cash discounts, returns, and selling and marketing allowances.

We rely on long-standing relationships with high-quality, established manufacturers to provide the majority of our produced products. More than 80% of our production, as measured by net sales, is outsourced to suppliers. The remaining production consists of our moist snuff tobacco operations located in Dresden, Tennessee, and Louisville, Kentucky. Our principal operating expenses include the cost of raw materials used to manufacture the limited number of our products which we produce in-house; the cost of finished products, which are generally purchased goods; federal excise taxes; legal expenses; and compensation expenses, including benefits and costs of salaried personnel. Our other principal expenses include interest expense and other expenses.

Key Factors Affecting Our Results of Operations

We consider the following to be the key factors affecting our results of operations:

- Our ability to further penetrate markets with our existing products;
- Our ability to introduce new products and product lines that complement our core business;
- Decreasing interest in some tobacco products among consumers;
- Price sensitivity in our end-markets;
- Marketing and promotional initiatives, which cause variability in our results;
- General economic conditions, including consumer access to disposable income;
- Cost and increasing regulation of promotional and advertising activities;
- Cost of complying with regulation, including the “deeming regulations”;
- Counterfeit and other illegal products in our end-markets;
- Currency fluctuations;
- Our ability to identify attractive acquisition opportunities in OTP; and
- Our ability to integrate acquisitions.

Recent Developments

Standard Diversified Inc. (“SDI”) Reorganization

On July 16, 2020, we completed our merger with SDI, whereby SDI was merged into a wholly-owned subsidiary of TPB in a tax-free downstream merger. Under the terms of the agreement, the holders of SDI’s Class A Common Stock and SDI’s Class B Common Stock (collectively, “SDI Common Stock”) received in the aggregate, in return for their SDI Common Stock, TPB Voting Common Stock (“TPB Common Stock”) at a ratio of 0.52095 shares of TPB Common Stock for each share SDI Common Stock. SDI divested its assets prior to close of the merger such that SDI’s net liabilities at closing were minimal and the only assets that it retained were the remaining TPB Common Stock holdings. We no longer have a controlling shareholder and 244,214 shares of TPB Common Stock were retired. The transaction significantly improved the public float of shares outstanding and eliminated the overhang of a controlling holding company structure.

COVID-19 Impact

As a result of the extraordinary situation we are facing, our focus is on the safety and well-being of our colleagues and the communities and customers we serve. As an organization, we have implemented several changes to enhance safety and mitigate health risk in our work environment. For our warehouse and manufacturing operations, these include split shifts, temperature scans, additional contactless hand sanitizing stations, protective equipment, social distancing guidelines, and increased cleaning and sanitization. These changes resulted in higher operational costs related to maintaining a safer work environment and fulfilling orders.

We canceled all unnecessary travel and facilitated telecommuting where possible. Like many companies, we have changed the way we communicate through increased use of videoconferencing and have implemented tele-selling initiatives through our sales force. Some of these changes that are proving to be efficient are likely to remain in-place even after this crisis and lead to on-going cost savings. We have also put a hold on new spending commitments as we cautiously manage through this environment.

We hired additional employees in our Louisville facility and implemented temporary wage increases for our hourly employees to meet increased demand. We shifted production capacity to manufacture hand sanitizers and have donated bottles to hospitals, nursing homes and first responders in our local communities.

COVID-19 may impact our results. Our third-party cigar wrap manufacturer in the Dominican Republic was temporarily shut down. Our supply chain has remained operational otherwise. Select budgeted annual price increases will be delayed. Our B2C platforms have seen elevated sales levels from consumer shifts to online purchasing, and we gained market share. We continue to monitor this challenging environment closely and will make necessary adjustments as needed to make sure we are serving our employees and customers, while also protecting the safety of employees and communities.

Premarket Tobacco Applications

We submitted Premarket Tobacco Applications (“PMTAs”) covering 250 products to the FDA prior to the September 9, 2020 filing deadline. The PMTAs cover a broad assortment of products in the vapor category including multiple proprietary e-liquid offerings in varying nicotine strengths, technologies and sizes; proprietary replacement parts and components of open system tank devices through partnerships with two leading manufacturers for exclusive distribution of products in the United States; and a closed system e-cigarette.

Wild Hempettes LLC

On October 1, 2020, we acquired a 20% stake in Wild Hempettes LLC (“Wild Hempettes”), a leading manufacturer of hemp cigarettes under the WildHemp™ and Hempettes™ brands, for \$2.5 million. We have options to increase our stake to a 100% ownership position based on certain milestones. As part of the transaction, the Wild Hempettes joint venture was spun off from Crown Distributing LLC and formed as a vehicle for us to be the exclusive distributor of Hempettes™ to U.S. bricks and mortar retailers under a profit-sharing arrangement.

Sale of Vapor Shark Retail Assets

On October 1, 2020, we sold the assets of its remaining 7 Vapor Shark retail stores in Oklahoma. We will receive monthly royalties over the next 4 years as consideration for the assets. Net sales and gross profit were \$2.9 million and \$1.6 million, respectively, for the nine months ended September 30, 2020.

*dosist*TM

On October 27, 2020, we invested \$15.0 million in *dosist*TM, a global cannabinoid company, with an option to invest an additional \$15.0 million at pre-determined terms over the next 12 months. We will receive a warrant to receive preferred shares of *dosist* that will automatically be exercised upon the changing of federal laws in the United States, rescheduling cannabis and/or permitting the general cultivation, distribution and possession of cannabis. As part of the investment, we also entered into an exclusive co-development and distribution of a new national CBD brand, created in partnership with *dosist*.

Critical Accounting Policies and Uses of Estimates

There have been no material changes to our critical accounting policies and estimates from the information provided in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our 2019 Annual Report on Form 10-K.

Recent Accounting Pronouncements

Refer to Note 2, “Summary of Significant Accounting Policies,” of Notes to Consolidated Financial Statements included in this Quarterly Report for a description of recently issued accounting pronouncements, including those recently adopted.

Results of Operations

Comparison of the Three Months Ended September 30, 2020, to the Three Months Ended September 30, 2019

The table and discussion set forth below displays our consolidated results of operations (in thousands):

	Three Months Ended September 30,		
	2020	2019	% Change
Consolidated Results of Operations Data:			
Net sales			
Smokeless products	\$ 29,764	\$ 26,187	13.7%
Smoking products	35,973	30,222	19.0%
NewGen products	38,437	40,391	-4.8%
Total net sales	104,174	96,800	7.6%
Cost of sales	55,867	53,984	3.5%
Gross profit			
Smokeless products	16,042	13,587	18.1%
Smoking products	21,263	16,619	27.9%
NewGen products	11,002	12,610	-12.8%
Total gross profit	48,307	42,816	12.8%
Selling, general, and administrative expenses	32,286	29,784	8.4%
Operating income	16,021	13,032	22.9%
Interest expense, net	5,224	3,641	43.5%
Investment income	(3)	(265)	-98.9%
Loss on extinguishment of debt	-	1,158	NM
Net periodic cost (income), excluding service cost	1,188	(12)	NM
Income before income taxes	9,612	8,510	12.9%
Income tax expense	1,816	2,236	-18.8%
Consolidated net income	\$ 7,796	\$ 6,274	24.3%

Net Sales: For the three months ended September 30, 2020, consolidated net sales increased to \$104.2 million from \$96.8 million for the three months ended September 30, 2019, an increase of \$7.4 million or 7.6%. The increase in net sales was primarily driven by increased sales volume in the Smoking and Smokeless segments, partially offset by lower sales in the NewGen segment.

For the three months ended September 30, 2020, net sales in the Smokeless products segment increased to \$29.8 million from \$26.2 million for the three months ended September 30, 2019, an increase of \$3.6 million or 13.7%. For the three months ended September 30, 2020, volume increased 10.3% and price/mix increased 3.4%. The increase in net sales was driven by the continuing double-digit volume growth of *Stoker's*® MST. Sales in chewing tobacco products were up double digits as compared to prior year.

For the three months ended September 30, 2020, net sales in the Smoking products segment increased to \$36.0 million from \$30.2 million for the three months ended September 30, 2019, an increase of \$5.8 million or 19.0%. For the three months ended September 30, 2020, volume increased 18.0% and price/mix increased 1.0%. The increase in net sales was primarily related to double digit growth in US rolling papers and MYO cigar wraps, partially offset by a \$2.0 million decline in Canada papers and a \$0.3 million decline in non-focus cigars and MYO pipe.

For the three months ended September 30, 2020, net sales in the NewGen products segment decreased to \$38.4 million from \$40.4 million for the three months ended September 30, 2019, a decrease of \$2.0 million or 4.8%. Flat performance in our vape distribution business and double-digit growth from *Solace*® and other *Nu-X*® products was offset by a decline in *RipTide*® which compared against a trade load-in during its launch in the prior year period.

Gross Profit: For the three months ended September 30, 2020, consolidated gross profit increased to \$48.3 million from \$42.8 million for the three months ended September 30, 2019, an increase of \$5.5 million or 12.8%. Gross profit as a percentage of revenue increased to 46.4% for the three months ended September 30, 2020, compared to 44.2% for the three months ended September 30, 2019.

For the three months ended September 30, 2020, gross profit in the Smokeless products segment increased to \$16.0 million from \$13.6 million for the three months ended September 30, 2019, an increase of \$2.5 million or 18.1%. Gross profit as a percentage of net sales increased to 53.9% of net sales for the three months ended September 30, 2020, from 51.9% of net sales for the three months ended September 30, 2019, primarily as a result of strong incremental margin contribution of MST.

For the three months ended September 30, 2020, gross profit in the Smoking products segment increased to \$21.3 million from \$16.6 million for the three months ended September 30, 2019, an increase of \$4.6 million or 27.9%. Gross profit as a percentage of net sales increased to 59.1% of net sales for the three months ended September 30, 2020, from 55.0% of net sales for the three months ended September 30, 2019, as a result of increased US rolling paper sales and increased margin in MYO cigar sales as a result of the Durfort transaction.

For the three months ended September 30, 2020, gross profit in the NewGen products segment decreased to \$11.0 million from \$12.6 million for the three months ended September 30, 2019, a decrease of \$1.6 million or 12.8%. Gross profit as a percentage of net sales decreased to 28.6% of net sales for the three months ended September 30, 2020, from 31.2% of net sales for the three months ended September 30, 2019 primarily due to temporary pricing pressure as competitors exited the market due to the PMTA deadline. For the three months ended September 30, 2020, gross profit included \$2.3 million of tariff expenses compared to \$2.6 million for the three months ended September 30, 2019.

Selling, General, and Administrative Expenses: For the three months ended September 30, 2020, selling, general, and administrative expenses increased to \$32.3 million from \$29.8 million for the three months ended September 30, 2019, an increase of \$2.5 million or 8.4%. Selling, general and administrative expenses in the three months ended September 30, 2020 included \$0.8 million of stock options, restricted stock and incentives expense, \$0.6 million of transaction expenses and \$5.3 million of expense related to PMTA. Selling, general and administrative expenses in the three months ended September 30, 2019 included \$1.3 million of stock option, restricted stock and incentives expense, \$0.5 million of transaction costs, \$0.3 million in corporate and vapor restructuring and \$2.0 million of new product launch costs for Nu-X products.

Interest Expense, net: For the three months ended September 30, 2020, as a result of the amortization of the debt discount on the Convertible Senior Notes of \$1.8 million, interest expense, net increased to \$5.2 million, from \$3.6 million for the three months ended September 30, 2019.

Investment Income: Investment income relating to investment of the MSA deposits was less than \$0.1 million for the three months ended September 30, 2020, compared to approximately \$0.3 million for the three months ended September 30, 2019.

Loss on Extinguishment of Debt: There was no loss on extinguishment of debt for the three months ended September 30, 2020, compared to \$1.2 million for the three months ended September 30, 2019 related to the paying off of the 2018 Second Lien Credit Facility.

Net Periodic Cost (Income): Net periodic cost was \$1.2 million for the three months ended September 30, 2020 as a result of the curtailment from the shutdown of the pension plan compared to net periodic income of less than \$0.1 million for the three months ended September 30, 2019.

Income Tax Expense: Our income tax expense of \$1.8 million was 18.9% of income before income taxes for the three months ended September 30, 2020 and included a discrete tax benefit of \$0.6 million from the shutdown of the pension plan. Our effective income tax rate of 26.3% for the three months ended September 30, 2019 and included a discrete tax deduction \$0.1 million relating to stock option exercises.

Consolidated Net Income: Due to the factors described above, consolidated net income for the three months ended September 30, 2020 and 2019, was \$7.8 million and \$6.3 million, respectively.

Comparison of the Nine Months Ended September 30, 2020, to the Nine Months Ended September 30, 2019

The table and discussion set forth below displays our consolidated results of operations (in thousands):

	Nine Months Ended September 30,		
	2020	2019	% Change
Consolidated Results of Operations Data:			
Net sales			
Smokeless products	\$ 87,081	\$ 74,907	16.3%
Smoking products	92,290	81,104	13.8%
NewGen products	120,455	125,756	-4.2%
Total net sales	299,826	281,767	6.4%
Cost of sales	161,996	157,304	3.0%
Gross profit			
Smokeless products	46,580	39,723	17.3%
Smoking products	53,066	43,841	21.0%
NewGen products	38,184	40,899	-6.6%
Total gross profit	137,830	124,463	10.7%
Selling, general, and administrative expenses	95,436	79,455	20.1%
Operating income	42,394	45,008	-5.8%
Interest expense, net	15,198	11,233	35.3%
Investment income	(128)	(527)	-75.7%
Loss on extinguishment of debt	-	1,308	NM
Net periodic cost (income), excluding service cost	997	(34)	NM
Income before income taxes	26,327	33,028	-20.3%
Income tax expense	6,029	6,989	-13.7%
Consolidated net income	\$ 20,298	\$ 26,039	-22.0%

Net Sales: For the nine months ended September 30, 2020, consolidated net sales increased to \$299.8 million from \$281.8 million for the nine months ended September 30, 2019, an increase of \$18.1 million or 6.4%. The increase in net sales was primarily driven by increased sales volume in the Smoking and Smokeless segments, partially offset by lower sales in the NewGen segment.

For the nine months ended September 30, 2020, net sales in the Smokeless products segment increased to \$87.1 million from \$74.9 million for the nine months ended September 30, 2019, an increase of \$12.2 million or 16.3%. For the nine months ended September 30, 2020, volume increased 13.5% and price/mix increased 2.8%. The increase in net sales was primarily driven by the continuing double-digit volume growth of *Stoker's*® MST. Sales in chewing tobacco products were up mid-single digits as compared to prior year.

For the nine months ended September 30, 2020, net sales in the Smoking products segment increased to \$92.3 million from \$81.1 million for the nine months ended September 30, 2019, an increase of \$11.2 million or 13.8%. For the nine months ended September 30, 2020, volume increased 12.5% and price/mix increased 1.3%. The increase in net sales was primarily related to double digit growth in US papers, partially offset by a \$0.2 million decline in non-focus cigars and MYO pipe.

For the nine months ended September 30, 2020, net sales in the NewGen products segment decreased to \$120.5 million from \$125.8 million for the nine months ended September 30, 2019, a decrease of \$5.3 million or 4.2%. The decrease in net sales was primarily the result of the non-focus and discontinued products as well as a decline in *RipTide*® which compared to a trade load-in during its launch in the prior year.

Gross Profit: For the nine months ended September 30, 2020, consolidated gross profit increased to \$137.8 million from \$124.5 million for the nine months ended September 30, 2019, an increase of \$13.4 million or 10.7%. Gross profit as a percentage of revenue increased to 46.0% for the nine months ended September 30, 2020, compared to 44.2% for the nine months ended September 30, 2019.

For the nine months ended September 30, 2020, gross profit in the Smokeless products segment increased to \$46.6 million from \$39.7 million for the nine months ended September 30, 2019, an increase of \$6.9 million or 17.3%. Gross profit as a percentage of net sales increased to 53.5% of net sales for the nine months ended September 30, 2020, from 53.0% of net sales for the nine months ended September 30, 2019, primarily as a result of strong incremental margin contribution of MST.

For the nine months ended September 30, 2020, gross profit in the Smoking products segment increased to \$53.1 million from \$43.8 million for the nine months ended September 30, 2019, an increase of \$9.2 million or 21.0%. Gross profit as a percentage of net sales increased to 57.5% of net sales for the nine months ended September 30, 2020, from 54.1% of net sales for the nine months ended September 30, 2019, as a result of increased US paper sales and increased margin in MYO cigar sales as a result of the Durfort transaction.

For the nine months ended September 30, 2020, gross profit in the NewGen products segment decreased to \$38.2 million from \$40.9 million for the nine months ended September 30, 2019, a decrease of \$2.7 million or 6.6%. Gross profit as a percentage of net sales decreased to 31.7% of net sales for the nine months ended September 30, 2020, from 32.5% of net sales for the nine months ended September 30, 2019 primarily due to temporary pricing pressure as competitors exited the market due to the PMTA deadline. For the nine months ended September 30, 2020, gross profit included \$8.7 million of tariff expenses compared to \$6.6 million for the nine months ended September 30, 2019.

Selling, General, and Administrative Expenses: For the nine months ended September 30, 2020, selling, general, and administrative expenses increased to \$95.4 million from \$79.5 million for the nine months ended September 30, 2019, an increase of \$15.9 million or 20.1%. Selling, general and administrative expenses in the nine months ended September 30, 2020 included \$2.0 million of stock options, restricted stock and incentives expense, \$1.9 million of transaction expenses and \$14.4 million of expense related to PMTA. Selling, general and administrative expenses in the nine months ended September 30, 2019 included \$3.2 million of stock option, restricted stock and incentives expense, \$1.6 million of transaction costs, \$1.4 million in corporate and vapor restructuring and \$3.7 million of new product launch costs for Nu-X products. These costs were partially offset by a net \$5.5 million gain related to the settlement of the VMR Distribution and Supply agreement during the second quarter 2019.

Interest Expense, net: For the nine months ended September 30, 2020, as a result of the amortization of the debt discount on the Convertible Senior Notes of \$5.3 million, interest expense, net increased to \$15.2 million, from \$11.2 million for the nine months ended September 30, 2019.

Investment Income: Investment income relating to investment of the MSA deposits was \$0.1 million for the nine months ended September 30, 2020, compared to \$0.5 million for the nine months ended September 30, 2019.

Loss on Extinguishment of Debt: There was no loss on extinguishment of debt for the nine months ended September 30, 2020, compared to \$1.3 million for the nine months ended September 30, 2019 related to the paying off of the 2018 Second Lien Credit Facility.

Net Periodic Cost (Income): Net periodic cost was \$1.0 million for the nine months ended September 30, 2020 as a result of the curtailment from the shutdown of the pension plan compared to net periodic income of less than \$0.1 million for the nine months ended September 30, 2019.

Income Tax Expense: Our income tax expense of \$6.0 million was 22.9% of income before income taxes for the nine months ended September 30, 2020 and included a discrete tax deduction of \$0.9 million relating to stock option exercises and a discrete tax benefit of \$0.6 million from the shutdown of the pension plan. Our effective income tax rate of 21.2% for the nine months ended September 30, 2019 included a discrete tax deduction of \$4.6 million relating to stock option exercises.

Consolidated Net Income: Due to the factors described above, consolidated net income for the nine months ended September 30, 2020 and 2019, was \$20.3 million and \$26.0 million, respectively.

EBITDA and Adjusted EBITDA

To supplement our financial information presented in accordance with generally accepted accounting principles in the United States, or U.S. GAAP, we use non-U.S. GAAP financial measures including EBITDA and Adjusted EBITDA. We believe Adjusted EBITDA provides useful information to management and investors regarding certain financial and business trends relating to our financial condition and results of operations. Adjusted EBITDA is used by management to compare our performance to that of prior periods for trend analyses and planning purposes and is presented to our Board of Directors. We believe that EBITDA and Adjusted EBITDA are appropriate measures of operating performance because they eliminate the impact of expenses that do not relate to operating performance. In addition, our credit agreements contain financial covenants which use Adjusted EBITDA calculations.

We define “EBITDA” as net income before interest expense, loss on extinguishment of debt, provision for income taxes, depreciation, and amortization. We define “Adjusted EBITDA” as net income before interest expense, loss on extinguishment of debt, provision for income taxes, depreciation, amortization, other non-cash items, and other items we do not consider ordinary course in our evaluation of ongoing operating performance.

Non-U.S. GAAP measures should not be considered a substitute for, or superior to, financial measures calculated in accordance with U.S. GAAP. Adjusted EBITDA excludes significant expenses required to be recorded in our financial statements by U.S. GAAP and is subject to inherent limitations. Other companies in our industry may calculate this non-U.S. GAAP measure differently than we do or may not calculate it at all, limiting its usefulness as a comparative measure. The tables below provide reconciliations between net income and Adjusted EBITDA.

(in thousands)	Three Months Ended September 30,	
	2020	2019
Consolidated net income	\$ 7,796	\$ 6,274
Add:		
Interest expense, net	5,224	3,641
Loss on extinguishment of debt	-	1,158
Income tax expense	1,816	2,236
Depreciation expense	809	692
Amortization expense	477	356
EBITDA	\$ 16,122	\$ 14,357
Components of Adjusted EBITDA		
Other (a)	1,188	151
Stock options, restricted stock, and incentives expense (b)	772	1,314
Transaction expenses (c)	570	470
New product launch costs (d)	-	1,979
FDA PMTA (e)	5,271	241
Corporate and vapor restructuring (f)	-	265
Adjusted EBITDA	\$ 23,923	\$ 18,777

(a) Represents LIFO adjustment, non-cash pension expense (income) and foreign exchange hedging.

(b) Represents non-cash stock options, restricted stock, incentives expense and Solace PRSUs.

(c) Represents the fees incurred for transaction expenses.

(d) Represents product launch costs for our new product lines.

(e) Represents costs associated with applications related to FDA PMTA.

(f) Represents costs associated with corporate and vapor restructuring including severance and inventory reserves.

(in thousands)	Nine Months Ended September 30,	
	2020	2019
Consolidated net income	\$ 20,298	\$ 26,039
Add:		
Interest expense, net	15,198	11,233
Loss on extinguishment of debt	-	1,308
Income tax expense	6,029	6,989
Depreciation expense	2,482	1,855
Amortization expense	1,304	1,079
EBITDA	\$ 45,311	\$ 48,503
Components of Adjusted EBITDA		
Other (a)	841	(25)
Stock options, restricted stock, and incentives expense (b)	1,987	3,227
Transaction expenses (c)	1,909	1,567
New product launch costs (d)	-	3,691
FDA PMTA (e)	14,435	241
Corporate and vapor restructuring (f)	-	1,419
Vendor settlement (g)	-	(5,522)
Adjusted EBITDA	\$ 64,483	\$ 53,101

(a) Represents LIFO adjustment, non-cash pension expense (income) and foreign exchange hedging.

(b) Represents non-cash stock options, restricted stock, incentives expense and Solace PRSUs.

(c) Represents the fees incurred for transaction expenses.

(d) Represents product launch costs for our new product lines.

(e) Represents costs associated with applications related to FDA PMTA.

(f) Represents costs associated with corporate and vapor restructuring including severance and inventory reserves.

(g) Represents costs associated with settlement of a vendor contract.

Liquidity and Capital Reserves

Our principal uses for cash are working capital, debt service, and capital expenditures. We believe our cash flows from operations and borrowing availability under our 2018 Revolving Credit Facility are adequate to satisfy our operating cash requirements for the foreseeable future. We have \$46.4 million of availability under the 2018 Revolving Credit Facility at September 30, 2020.

Our working capital, which we define as current assets less current liabilities, decreased \$17.9 million to \$115.5 million at September 30, 2020, compared with \$133.4 million at December 31, 2019. The decrease was mainly related to the decrease in cash as a result of the June 2020 Durfort acquisition offset by increases in accounts receivable and inventory due to increased sales.

(in thousands)	As of	
	September 30, 2020	December 31, 2019
Current assets	\$ 170,472	\$ 189,250
Current liabilities	54,967	55,886
Working capital	\$ 115,505	\$ 133,364

Cash Flows from Operating Activities

For the nine months ended September 30, 2020, net cash provided by operating activities was \$33.2 million compared to net cash provided by operating activities of \$20.0 million for the nine months ended September 30, 2019, an increase of \$13.2 million, primarily due to timing of changes in working capital and increased amortization of debt discount and deferred financing costs, offset by lower net income due to the PMTA expenses in the current year.

Cash Flows from Investing Activities

For the nine months ended September 30, 2020, net cash used in investing activities was \$41.2 million compared to net cash provided by investing activities of \$16.6 million for the nine months ended September 30, 2019, a decrease of \$57.8 million, primarily due to the acquisition of certain assets from Durfort in the second quarter of 2020.

Cash Flows from Financing Activities

For the nine months ended September 30, 2020, net cash used in financing activities was \$16.9 million compared to net cash provided by financing activities of \$70.9 million for the nine months ended September 30, 2019, a decrease in cash flow of \$87.8 million, primarily due to the net proceeds from the Convertible Senior Notes partially offset by the payment of the revolving credit facility and second lien term loan in 2019.

Dividends and Share Repurchase

The most recent dividend of \$0.05 per common share was paid on October 9, 2020, to shareholders of record at the close of business on September 18, 2020.

On February 25, 2020, our Board of Directors approved a \$50.0 million share repurchase authorization, which is intended for opportunistic execution based upon a variety of factors including market dynamics. The authorization is subject to the ongoing discretion of the Board. The total number of shares repurchased for the nine months ended September 30, 2020, was 338,960 shares for a total cost of \$7.7 million and an average price per share of \$22.61.

Long-Term Debt

As of September 30, 2020, we were in compliance with the financial and restrictive covenants of the 2018 Credit Facility. The following table provides outstanding balances of our debt instruments.

	September 30, 2020	December 31, 2019
2018 First Lien Term Loan	\$ 138,000	\$ 146,000
Convertible Senior Notes	172,500	172,500
Note payable - Promissory Note	10,000	-
Note payable - Unsecured Loan	7,485	-
Note payable - IVG	-	4,240
Gross notes payable and long-term debt	327,985	322,740
Less deferred finance charges	(5,360)	(6,466)
Less debt discount	(26,833)	(32,083)
Less current maturities	(12,000)	(15,240)
Notes payable and long-term debt	<u>\$ 283,792</u>	<u>\$ 268,951</u>

2018 Credit Facility

On March 7, 2018, we entered into \$250 million of credit facilities consisting of a \$160 million 2018 First Lien Term Loan and a \$50 million 2018 Revolving Credit Facility (collectively, the “2018 First Lien Credit Facility”), in each case, with Fifth Third Bank, as administrative agent, and other lenders, in addition to a \$40 million 2018 Second Lien Term Loan (the “2018 Second Lien Credit Facility,” and, together with the 2018 First Lien Credit Facility, the “2018 Credit Facility”) with Prospect Capital Corporation, as administrative agent, and other lenders. The 2018 Credit Facility retained the \$40 million accordion feature of the 2017 Credit Facility.

The 2018 Credit Facility contains customary events of default including payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain other material indebtedness in excess of specified amounts, certain events of bankruptcy and insolvency, certain ERISA events, judgments in excess of specified amounts, and change in control defaults. The 2018 Credit Facility also contains certain negative covenants customary for facilities of these types including covenants that, subject to exceptions described in the 2018 Credit Facility, restrict our ability: (i) to pledge assets, (ii) to incur additional indebtedness, (iii) to pay dividends, (iv) to make distributions, (v) to sell assets, and (vi) to make investments. Refer to Note 19, “Dividends and Share Repurchases”, of Notes to Consolidated Financial Statements for further information regarding dividend restrictions.

2018 First Lien Credit Facility: The 2018 First Lien Term Loan and the 2018 Revolving Credit Facility bear interest at LIBOR plus a spread of 2.75% to 3.50% based on our senior leverage ratio. The 2018 First Lien Term Loan has quarterly required payments of \$2.0 million beginning June 30, 2018, increasing to \$3.0 million on June 30, 2020, and increasing to \$4.0 million on June 30, 2022. The 2018 First Lien Credit Facility has a maturity date of March 7, 2023. The 2018 First Lien Term Loan is secured by a first priority lien on substantially all of the assets of the borrowers and the guarantors thereunder, including a pledge of our capital stock, other than certain excluded assets (the “Collateral”). In connection with the Convertible Senior Notes offering, we entered into a First Amendment (“the Amendment”) to the First Lien Credit Agreement, with Fifth Third Bank, as administrative agent, and other lenders and certain other lending other lending parties thereto. The Amendment was entered into primarily to permit us to issue up to \$200 million of convertible senior notes, enter into certain capped call transactions in connection with the issuance of such notes and to use the proceeds from the issuance of the notes to repay amounts outstanding under our 2018 Second Lien Credit Facility and use the remaining proceeds for acquisitions and investments. In connection with the Amendment, fees of \$0.7 million were incurred. The 2018 First Lien Credit Facility contains certain financial covenants, which were amended in connection with the Convertible Senior Notes offering in the third quarter 2019. The covenants include maximum senior leverage ratio of 3.00x with step-downs to 2.50x, a maximum total leverage ratio of 5.50x with step-downs to 5.00x, and a minimum fixed charge coverage ratio of 1.20x. In the first quarter of 2020, the financial covenants were amended to permit certain add-backs related to PMTA in the definition of Consolidated EBITDA for the period of October 1, 2019 until September 30, 2020. In connection with the amendment, fees of \$0.2 million were incurred. Based on an excess cash covenant for the facility, a principal payment of \$4.5 million was due in the second quarter 2019. All parties agreed to waive the payment, resulting in consent fees of \$0.1 million. The weighted average interest rate of the 2018 First Lien Term Loan was 2.91% at September 30, 2020. At September 30, 2020, we had no borrowings outstanding under the 2018 Revolving Credit Facility. The \$50.0 million unused portion of the 2018 Revolving Credit Facility is reduced by letters of credit issued by Fifth Third Bank totaling \$3.6 million, resulting in \$46.4 million of availability under the 2018 Revolving Credit Facility at September 30, 2020.

2018 Second Lien Credit Facility: The 2018 Second Lien Credit Facility bore interest at a rate of LIBOR plus 7.00% and had a maturity date of March 7, 2024. The 2018 Second Lien Term Loan was secured by a second priority interest in the Collateral and was guaranteed by the same entities as the 2018 First Lien Term Loan. Based on an excess cash covenant for the facility, a \$4.5 million principal payment was made in the second quarter 2019, resulting in \$0.2 million loss on extinguishment of debt. We used a portion of the proceeds from the issuance of the Convertible Senior Notes to prepay all outstanding amounts related to the 2018 Second Lien Credit Facility in the third quarter 2019 in the amount of \$35.5 million, and the transaction resulted in a \$1.1 million loss on extinguishment of debt.

Convertible Senior Notes

In July 2019 we closed an offering of \$172.5 million in aggregate principal amount of our 2.50% Convertible Senior Notes due July 15, 2024 (the “Convertible Senior Notes”). The Convertible Senior Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on January 15 and July 15 of each year, beginning on January 15, 2020. The Convertible Senior Notes will mature on July 15, 2024, unless earlier repurchased, redeemed or converted. The Convertible Senior Notes are senior unsecured obligations.

The Convertible Senior Notes are convertible into approximately 3,202,808 shares of our voting common stock under certain circumstances prior to maturity at a conversion rate of 18.567 shares per \$1,000 principal amount of the Convertible Senior Notes, which represents a conversion price of approximately \$53.86 per share, subject to adjustment under certain conditions, but will not be adjusted for any accrued and unpaid interest. Upon conversion, we may pay cash, shares of our common stock or a combination of cash and stock, as determined by us at our discretion. The conditions required to allow the holders to convert their Convertible Senior Notes were not met as of September 30, 2020.

Under GAAP, certain convertible debt instruments that may be settled in cash on conversion are required to be separately accounted for as liability and equity components of the instrument in a manner that reflects the issuer's non-convertible debt borrowing rate. Accordingly, in accounting for the issuance of the Convertible Senior Notes, we separated the Convertible Senior Notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated conversion feature. The carrying amount of the equity component, which is recognized as a debt discount, represents the difference between the proceeds from the issuance of the Convertible Senior Notes and the fair value of the liability component of the Convertible Senior Notes. The excess of the principal amount of the liability component over its carrying amount ("debt discount"), \$35.0 million, will be amortized to interest expense using an effective interest rate of 7.5% over the expected life of the Convertible Senior Notes. The equity component is not remeasured as long as it continues to meet the criteria for equity classification. Interest expense includes \$1.8 million of amortization for the three months ended September 30, 2020.

In accounting for the debt issuance costs related to the issuance of the Convertible Senior Notes, we allocated the total amount incurred to the liability and equity components based on their relative values. Debt issuance costs attributable to the liability component are amortized to the interest expense using the effective interest method over the expected life of the Convertible Senior Notes, \$4.7 million, and the debt issuance costs attributable to the equity component, \$1.2 million, are netted with the equity component of stockholders' equity (deficit).

In connection with the Convertible Senior Notes offering, we entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions have a strike price of \$53.86 per and a cap price of \$82.86 per, and are exercisable when, and if, the Convertible Senior Notes are converted. We paid \$20.53 million for these capped calls and charged that amount to additional paid-in capital.

Promissory Note

On June 10, 2020, in connection with the acquisition of certain Durfort assets, we issued an unsecured subordinated promissory note ("Promissory Note") in the principal amount of \$10.0 million (the "Principal Amount"), with an annual interest rate of 7.5%, payable quarterly, with the first payment due September 10, 2020. The Principal Amount is payable in two \$5.0 million installments, with the first installment due 18 months after the closing date of the acquisition (June 10, 2020), and the second installment due 36 months after the closing date of the acquisition. The second installment is subject to reduction for certain amounts payable to us as a holdback.

Unsecured Loan

On April 6, 2020, the 2018 First Lien Credit Facility was amended to allow for an unsecured loan under the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES"). On April 17, 2020, National Tobacco Company, L.P., a wholly-owned subsidiary of the Company, entered into a loan agreement with Regions Bank guaranteed by the Small Business Administration for a \$7.5 million unsecured loan. The proceeds of the loan were received on April 27, 2020. The loan is scheduled to mature on April 17, 2022 and has a 1.00% interest rate.

Note Payable – IVG

In September 2018, we issued a note payable to IVG's former shareholders ("IVG Note"). The IVG Note had a principal amount of \$4.0 million with 6.0% interest compounding annually and matured on March 5, 2020. All principal and accrued and unpaid interest under the IVG Note were subject to indemnification obligations of the sellers pursuant to the International Vapor Group Stock Purchase Agreement dated as of September 5, 2018. The carrying amount of the IVG Note, \$4.2 million, was deposited into an escrow account pending agreement with the sellers of any indemnification obligations.

Off-balance Sheet Arrangements

During the three months and nine months ended September 30, 2020, the Company executed various forward contracts for the purchase of €19.7 million and sale of €21.4 million with maturity dates ranging from December 2020 to November 2021. At September 30, 2020, the Company had forward contracts for the purchase of €19.7 million and sale of €21.4 million. The fair value of the foreign currency contracts are based on quoted market prices and resulted in an asset of \$0.3 million included in Other current assets and liability of \$0.2 million included in Accrued liabilities at September 30, 2020. During the year ended December 31, 2019 we did not execute any forward contracts. At December 31, 2019, we did not have any forward contracts. The Company had interest rate swap contracts for a notional amount of \$70 million at September 30, 2020 and December 31, 2019. The fair values of the interest rate swap contracts are based upon quoted market prices and resulted in a liability of \$4.2 million and \$2.5 million, respectively, as of September 30, 2020 and December 31, 2019, included in other long-term liabilities.

Inflation

We believe that any effect of inflation at current levels will be minimal. Historically, we have been able to increase prices at a rate equal to or greater than that of inflation and believe that we will continue to be able to do so for the foreseeable future. In addition, we have been able to maintain a relatively stable variable cost structure for our products due, in part, to our successful procurement with regard to our tobacco products and, in part, to our existing contractual agreement for the purchase of our premium cigarette papers.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Foreign Currency Sensitivity

There have been no material changes in our exposure to exchange rate fluctuation risk, as reported within our 2019 Annual Report on Form 10-K, during the period. Please refer to our ‘Quantitative and Qualitative Disclosures about Market Risk’ included in our 2019 Annual Report on Form 10-K filed with the SEC.

Credit Risk

There have been no material changes in our exposure to credit risk, as reported within our 2019 Annual Report on Form 10-K, during the three months ended September 30, 2020. Please refer to our ‘Quantitative and Qualitative Disclosures about Market Risk’ included in our 2019 Annual Report on Form 10-K filed with the SEC.

Interest Rate Sensitivity

We have exposure to interest rate volatility principally related to interest rate changes applicable to loans under our 2018 Credit Facility. As of September 30, 2020, our 2018 Credit Facility bears interest at variable rates. However, we had swap contracts for a total notional amount of \$70 million at September 30, 2020. The fair values of the swap contracts are based upon quoted market prices and resulted in a liability of \$4.2 million as of September 30, 2020. We believe the effect, if any, of reasonably possible near-term changes in interest rates on our consolidated financial position, results of operations, or cash flows would not be significant. A 1% increase in interest rates would change pre-tax income by approximately \$0.7 million per year. Refer to Note 4, “Derivative Instruments”, of Notes to Consolidated Financial Statements for additional information regarding the interest rate swaps.

In July 2019, we issued Convertible Senior Notes with an aggregate principal amount of \$172.5 million. We carry the Convertible Senior Notes at face value less amortized discount on the balance sheet. Since the Convertible Senior Notes bear interest at a fixed rate, we have no financial statement risk associated with changes in interest rates. However, the fair value of the Convertible Senior Notes changes when the market price of our stock fluctuates, or interest rates change. Our remaining debt instruments bear interest at fixed rates and are not subject to interest rate volatility.

Item 4. Controls and Procedures

We have carried out an evaluation under the supervision, and with the participation of, our management including our Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), and Chief Accounting Officer (“CAO”), of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended (the “Act”)) as of September 30, 2020. Based upon the evaluation, our CEO, CFO, and CAO concluded our disclosure controls and procedures are effective to provide reasonable assurance that information required to be disclosed by us in the reports we file or submit under the Act is: (i) recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms and (ii) accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosures.

There have been no changes in the Company’s internal control over financial reporting during the fiscal quarter ended September 30, 2020 which have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

We are a party from time to time to various proceedings in the ordinary course of business. For a description of the Master Settlement Agreement, to which we are a party, see “Notes to Consolidated Financial Statements - Note 2 Summary of Significant Accounting Policies: Risk and Uncertainties.” Other than the proceedings mentioned below, there is no material litigation, arbitration or governmental proceeding currently pending against us or any of our officers or directors in their capacity as such, and we and our officers and directors have not been subject to any such proceeding.

On October 9, 2020, a purported stockholder of Turning Point Brands, Inc., Paul-Emile Berteau, filed a complaint in the Delaware Court of Chancery relating to the Agreement and Plan of Merger and Reorganization, dated as of April 7, 2020, by and among TPB, SDI and Merger Sub (the “SDI Merger”). The complaint asserts two derivative counts purportedly on behalf of TPB for breaches of fiduciary duty against the Board of Directors of Turning Point Brands, Inc. and other parties. The third count asserts a direct claim against the Company and its Board of Directors seeking a declaration that TPB’s Bylaws are inconsistent with TPB’s certificate of incorporation. While the Company believes it has good and valid defenses to the claims, there can be no assurance that the Company will prevail in this case, and it could have a material adverse effect on the Company’s business and results of operations.

Other major tobacco companies are defendants in product liability claims. In a number of these cases, the amounts of punitive and compensatory damages sought are significant and could have a material adverse effect on our business and results of operations. The Company is subject to several lawsuits alleging personal injuries resulting from malfunctioning vaporizer devices or consumption of e-liquids and may be subject to claims in the future relating to our other NewGen products. The Company is still evaluating these claims and the potential defenses to them. For example, the Company did not design or manufacture the products at issue; rather, we were merely the distributor. Nonetheless, there can be no assurance that we will prevail in these cases, and they could have a material adverse effect on our financial position, results of operations, or cash flows.

Franchisors are defendants from time to time in the ordinary course of business. In certain of these cases, the amounts of punitive and compensatory damages sought are significant. One of the Company’s subsidiaries is a defendant in a lawsuit brought by a franchisee. In that case, the franchisee is seeking compensatory and punitive damages and rescission of their franchise agreement, alleging that the Company’s subsidiary failed to make certain disclosures in the Franchise Disclosure Document. The subsidiary is evaluating these claims, the potential defenses to them as well as available counterclaims. The subsidiary believes that termination of the franchise agreement was proper, no damages are due and the franchisee is bound by an arbitration agreement pursuant to the terms of their franchise agreement (and therefore it was improper to pursue litigation). The former franchisee has also named various other parties, including the Company and a subsidiary asserting the same claims, as well as a claim for a declaratory judgment, that the Company and the subsidiary should be found liable as successor entities, or under the doctrines of “de facto merger”, or alter ego. The Company and the subsidiary have moved to stay the case pending the arbitration noted above. Both motions remain pending. While the Company and its subsidiaries believe they have good and valid defenses to the claims, there can be no assurance that the Company and its subsidiaries will prevail in this case, and it could have a material adverse effect on the Company’s business and results of operations.

We have several subsidiaries engaged in making, distributing, and retailing (online and in bricks-and-mortar) vapor products. As a result of the overall publicity and controversy surrounding the vapor industry generally, many companies have received informational subpoenas from various regulatory bodies and in some jurisdictions regulatory lawsuits have been filed regarding marketing practices and possible underage sales. Our subsidiaries are subject to some information requests. In the acquisition of the vapor businesses, we negotiated financial “hold-backs”, which we expect to be able to use to defray expenses associated with the information production and the cost of defending any such lawsuits as well as the franchisee lawsuit. To the extent that litigation becomes necessary, we believe that the subsidiaries have strong factual and legal defenses against claims that they unfairly marketed vapor products.

See ‘Risk Factors—We may become subject to significant product liability litigation’ within our 2019 Annual Report on Form 10-K for additional details.

Item 1A. Risk Factors

In addition to the other information set forth in this report, carefully consider the factors discussed in the ‘Risk Factors’ section contained in our 2019 Annual Report on Form 10-K. There have been no material changes to the Risk Factors set forth in the 2019 Annual Report on Form 10-K.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

On February 25, 2020, the Company’s Board of Directors approved a \$50.0 million share repurchase program, which is intended for opportunistic execution based upon a variety of factors including market dynamics. This share repurchase program has no expiration date and is subject to the ongoing discretion of the Board. All repurchases to date under our stock repurchase programs have been made through open market transactions.

The following table includes information regarding purchases of our common stock made by us during the quarter ended September 30, 2020 in connection with the repurchase program described above:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs
July 1 to July 31	-	\$ -	-	44,710,727
August 1 to August 31	52,630	\$ 28.97	52,630	43,186,036
September 1 to September 30	29,467	\$ 28.91	29,467	42,334,145
Total	<u>82,097</u>		<u>82,097</u>	

In addition to the share repurchase program described above, the Company acquired shares of its common stock on July 16, 2020, when it completed its merger with Standard Diversified Inc. (“SDI”), whereby SDI was merged into a wholly-owned subsidiary of the Company in a tax-free downstream merger. Under the terms of the agreement, the holders of SDI’s Class A Common Stock and SDI’s Class B Common Stock (collectively, “SDI Common Stock”) received in the aggregate, in return for their SDI Common Stock, the Company’s common stock at a ratio of 0.52095 shares of the Company’s common stock for each share of SDI Common Stock at the time of the merger. SDI divested its assets, other than SDI’s TPB Common Stock, prior to close of the merger such that the net liabilities at closing were minimal and the only assets that it retained were the remaining shares of TPB Common Stock. The transaction was accounted for as an asset purchase for \$236.0 million in consideration, comprised of 7,934,704 shares of TPB Common Stock valued at \$234.3 million plus transaction costs and assumed net liabilities. \$236.0 million was assigned to the 8,178,918 shares of TPB Common Stock acquired, with an average price paid per share of \$28.86. The 244,214 shares of TPB Common Stock acquired in excess of the shares issued were retired.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

On October 26, 2020, the Company’s Board of Directors adopted Amendment No. 1 (“Amendment No. 1”) to the Amended and Restated Bylaws of the Company (the “Bylaws”), effective immediately. Amendment No. 1 amends and replaces Article IX of the Bylaws in its entirety to provide that the Bylaws may be amended, adopted or repealed by the affirmative vote of holders of a majority of the voting power of all of the then-outstanding shares entitled to vote generally in the election of directors.

The foregoing description of Amendment No. 1 does not purport to be complete and is qualified in its entirety by reference to the composite copy of the Second Amended and Restated Bylaws which is filed as Exhibit 3.1 hereto and is incorporated herein by reference.

Item 6. Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger and Reorganization, dated as of April 7, 2020, by and among TPB, SDI and Merger Sub (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on April 8, 2020).
3.1	Turning Point Brands, Inc. Second Amended and Restated Bylaws.*
10.1	Release and Severance Agreement, dated August 19, 2020, by and among TPB and James W. Dobbins, Senior Vice President and General Counsel.*
10.2	Consulting Agreement dated August 19, 2020, but effective November 1, 2020, between Turning Point Brands, Inc. and James Dobbins*
31.1	Rule 13a-14(a)/15d-14(a) Certification of Lawrence S. Wexler.*
31.2	Rule 13a-14(a)/15d-14(a) Certification of Robert Lavan.*
31.3	Rule 13a-14(a)/15d-14(a) Certification of Brian Wigginton.*
32.1	Section 1350 Certifications pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*
101	XBRL (eXtensible Business Reporting Language). The following materials from Turning Point Brands, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, filed on October 27, 2020, formatted in Inline XBRL (iXBRL): (i) consolidated balance sheets, (ii) consolidated statements of income, (iii) consolidated statements of comprehensive income, (iv) consolidated statements of cash flows, and (v) the notes to consolidated financial statements.*
104	Cover Page Interactive Data File (formatted in iXBRL and included in Exhibit 101).*

* Filed or furnished herewith

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.

TURNING POINT BRANDS, INC.

By: /s/ Lawrence S. Wexler

Name: Lawrence S. Wexler

Title: President and Chief Executive Officer

By: /s/ Robert Lavan

Name: Robert Lavan

Title: Chief Financial Officer

By: /s/ Brian Wigginton

Name: Brian Wigginton

Title: Chief Accounting Officer

Date: October 27, 2020

TURNING POINT BRANDS, INC.**SECOND AMENDED AND****RESTATED BYLAWS****ARTICLE I - STOCKHOLDERS****Section 1. Annual Meeting.**

(1) An annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date, and at such time as the Board of Directors shall fix.

(2) Nominations of persons for election to the Board of Directors and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's proxy materials with respect to such meeting, (b) by or at the direction of the Board of Directors, or (c) by any stockholder of record of the Corporation (the "Record Stockholder") at the time of the giving of the notice required in the following paragraph, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this section. For the avoidance of doubt, the foregoing clause (c) shall be the exclusive means for a stockholder to make nominations or propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "Exchange Act")) at an annual meeting of stockholders.

(3) For nominations or business to be properly brought before an annual meeting by a Record Stockholder pursuant to clause (c) of the foregoing paragraph, (a) the Record Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (b) any such business must be a proper matter for stockholder action under Delaware law and (c) the Record Stockholder and the beneficial owner, if any, on whose behalf any such proposal or nomination is made, must have acted in accordance with the representations set forth in the Solicitation Statement required by these Bylaws. To be timely, a Record Stockholder's notice shall be received by the Secretary at the principal executive offices of the Corporation not less than 45 or more than 75 days prior to the one-year anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that, subject to the last sentence of this Section 1(3), if the meeting is convened more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, or if no annual meeting was held in the preceding year, notice by the Record Stockholder to be timely must be so received not later than the close of business on the later of (i) the 90th day before such annual meeting or (ii) the 10th day following the day on which public announcement of the date of such meeting is first made. Notwithstanding anything in the preceding sentence to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there has been no public announcement naming all of the nominees for director or indicating the increase in the size of the Board of Directors made by the Corporation at least 10 days before the last day a Record Stockholder may deliver a notice of nomination in accordance with the preceding sentence, a Record Stockholder's notice required by this bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation. In no event shall an adjournment, or postponement of an annual meeting for which notice has been given, commence a new time period for the giving of a Record Stockholder's notice.

(4) Such Record Stockholder's notice shall set forth:

a. if such notice pertains to the nomination of directors, as to each person whom the Record Stockholder proposes to nominate for election or reelection as a director all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the Exchange Act, and such person's written consent to serve as a director if elected;

b. as to any business that the Record Stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such Record Stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and

c. as to (1) the Record Stockholder giving the notice and (2) the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "party"):

(i) the name and address of each such party;

(ii) (A) the class, series, and number of shares of the Corporation that are owned, directly or indirectly, beneficially and of record by each such party, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by each such party, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which either party has a right to vote, directly or indirectly, any shares of any security of the Corporation, (D) any short interest in any security of the Corporation held by each such party (for purposes of this Section 1(4), a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the Corporation owned beneficially directly or indirectly by each such party that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which either party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (G) any performance-related fees (other than an asset-based fee) that each such party is directly or indirectly entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of each such party's immediate family sharing the same household (which information set forth in this paragraph shall be supplemented by such stockholder or such beneficial owner, as the case may be, not later than 10 days after the record date for determining the stockholders entitled to vote at the meeting; provided, that if such date is after the date of the meeting, not later than the day prior to the meeting);

(iii) any other information relating to each such party that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or the election of directors in a contested election pursuant to Section 14 of the Exchange Act; and

(iv) a statement whether or not each such party will deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to carry the proposal or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by the Record Stockholder or beneficial holder, as the case may be, to be sufficient to elect the nominee or nominees proposed to be nominated by the Record Stockholder (such statement, a "Solicitation Statement").

(5) A person shall not be eligible for election or re-election as a director at an annual meeting unless (i) the person is nominated by a Record Stockholder in accordance with Section 1(2)(c) or (ii) the person is nominated by or at the direction of the Board of Directors. Only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this section. The chairman of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defectively proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(6) For purposes of these Bylaws, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(7) Notwithstanding the foregoing provisions of this Section 1, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 1. Nothing in this Section 1 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2. Special Meetings.

(1) Special meetings of the stockholders, other than those required by statute, may be called at any time by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For purposes of these Bylaws, the term “Whole Board” shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. The Board of Directors may postpone or reschedule any previously scheduled special meeting.

(2) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors. The notice of such special meeting shall include the purpose for which the meeting is called. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (a) by or at the direction of the Board of Directors or (b) by any stockholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers a written notice to the Secretary setting forth the information set forth in Section 1(4)(a) and 1(4)(c) of this Article I. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders only if such stockholder of record’s notice required by the preceding sentence shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall an adjournment, or postponement of a special meeting for which notice has been given, commence a new time period for the giving of a stockholder of record’s notice. A person shall not be eligible for election or reelection as a director at a special meeting unless the person is nominated (i) by or at the direction of the Board of Directors or (ii) by a stockholder of record in accordance with the notice procedures set forth in this Article I.

(3) Notwithstanding the foregoing provisions of this Section 2, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 2. Nothing in this Section 2 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 3. Notice of Meetings.

Notice of the place, if any, date, and time of all meetings of the stockholders, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, shall be given, not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation).

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given to each stockholder in conformity herewith. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and, except as otherwise required by law, shall not be more than 60 nor less than 10 days before the date of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 4. Quorum.

At any meeting of the stockholders, the holders of a majority of the voting power of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law or by the rules of any stock exchange upon which the Corporation's securities are listed. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, if any, date, or time.

Section 5. Organization.

Such person as the Board of Directors may have designated or, in the absence of such a person, the Chief Executive Officer of the Corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

Section 6. Conduct of Business.

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order. The chairman shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

Section 7. Proxies and Voting.

At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

The Corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law or the rules of any stock exchange upon which the Corporation's securities are listed, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

Section 8. Stock List.

The officer who has charge of the stock ledger of the Corporation shall, at least 10 days before every meeting of stockholders, prepare and make a complete list of stockholders entitled to vote at any meeting of stockholders, provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date, arranged in alphabetical order and showing the address of each such stockholder and the number of shares registered in his or her name. Such list shall be open to the examination of any stockholder for a period of at least 10 days prior to the meeting in the manner provided by law.

A stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine (a) the identity of the stockholders entitled to examine such stock list and to vote at the meeting and (b) the number of shares held by each of them.

ARTICLE II - BOARD OF DIRECTORS

Section 1. Number, Election and Term of Directors.

Subject to the rights of the holders of any series of preferred stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board. At each annual meeting of stockholders, (i) directors shall be elected for a term of office to expire at the next annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, and (ii) if authorized by a resolution of the Board of Directors, directors may be elected to fill any vacancy on the Board of Directors, regardless of how such vacancy shall have been created.

Section 2. Newly Created Directorships and Vacancies.

Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall serve for a term expiring at the next annual meeting of stockholders or until such director's successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3. Regular Meetings.

Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 4. Special Meetings.

Special meetings of the Board of Directors may be called by the Chief Executive Officer or by the Board of Directors and shall be held at such place, on such date, and at such time as they or he or she shall fix. Notice of the place, date, and time of each such special meeting shall be given to each director by whom it is not waived by mailing written notice not less than five days before the meeting or by telephone or by telegraphing or telexing or by facsimile or electronic transmission of the same not less than 24 hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 5. Quorum.

A majority of the Whole Board shall constitute a quorum for all purposes at any meeting of the Board of Directors. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

Section 6. Participation in Meetings By Conference Telephone.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 7. Conduct of Business.

At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board of Directors may from time to time determine, and, except as otherwise expressly required by law, all matters shall be determined by the affirmative vote of a majority of the directors present at any meeting at which a quorum is present. Action may be taken by the Board of Directors without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 8. Compensation of Directors.

Unless otherwise restricted by the certificate of incorporation, the Board of Directors shall have the authority to fix the compensation of the directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or paid a stated salary or paid other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings.

Section 9. Director Qualifications.

For so long as the Corporation or a “Subsidiary” (as hereinafter defined) is party to any of the “Distribution Agreements” (as hereinafter defined), no person who is a Bollore Competitor (as hereinafter defined) or who is an officer, director or representative of a Bollore Competitor or any Entity (as hereinafter defined) that owns more than a 20% Equity Interest (as hereinafter defined) in a Bollore Competitor shall be qualified to serve on the Board of Directors. The Corporation may require that any director or nominee for director certify that he or she is not disqualified from service on the Board of Directors pursuant to this Section 9 and the Board of Directors is authorized to make such reasonable determinations as shall be necessary to implement this Section 9.

For the purposes of this Article II, Section 9, the following terms shall have the following meanings:

- (1) “Bollore” shall mean Bollore Technologies, S.A., a corporation organized under the laws of the Republic of France.
- (2) “Bollore Competitor” shall mean any Entity that directly or indirectly manufactures, sells, markets, distributes or otherwise promotes cigarette paper booklets, filter tubes, injector machines or filter tips in the Territory.
- (3) “Distribution Agreements” shall mean the Amended and Restated Distribution and License Agreements dated as of November 30, 1992 between Bollore and North Atlantic Operating Corporation, Inc., a Delaware corporation and subsidiary of the Corporation, relating to (i) the United States and (ii) Canada, each as amended by a Restated Amendment dated June 25, 1997 and Amendments dated respectively October 22, 1997, October 7, 1999, October 20, 1999, June 19, 2002, February 28, 2005 and April 20, 2006, and the License and Distribution Agreement, dated March 19, 2013, between Bollore and North Atlantic Operating Corporation, Inc., in each case as so amended and as may hereafter be amended, modified or superseded, and any other related agreements between or among such parties.
- (4) “Entity” means any person, corporation, partnership or other entity.
- (5) “Equity Interest” means the ownership of any class of equity security of an Entity (whether common or preferred and whether voting or non-voting), any security that is convertible into any class of equity security of an Entity (including, but not limited to any warrant, option, convertible note or contract right to acquire any equity security) or any partnership or other equity ownership interest in an Entity.
- (6) “Subsidiary” shall mean any Entity 50% or more of whose Equity Interests are owned, directly or indirectly, by the Corporation.
- (7) “Territory” means the United States, the District of Columbia, the territories, possessions and military bases of the United States and the Dominion of Canada.

ARTICLE III - COMMITTEES

Section 1. Committees of the Board of Directors.

The Board of Directors may from time to time designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 2. Conduct of Business.

Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; one- third of the members shall constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV - OFFICERS

Section 1. Generally.

The officers of the Corporation shall consist of a Chief Executive Officer, a Chief Financial Officer, one or more Vice Presidents, a Secretary and such other officers as may from time to time be appointed by the Board of Directors. Officers shall be elected by the Board of Directors, which shall consider that subject at its first meeting after every annual meeting of stockholders. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. The salaries of officers elected by the Board of Directors shall be fixed from time to time by the Board of Directors or by such officers as may be designated by resolution of the Board of Directors.

Section 2. Chief Executive Officer.

The Chief Executive Officer shall have general responsibility for the management and control of the operations of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief executive officer or which are delegated to him or her by the Board of Directors. Subject to the direction of the Board of Directors, the Chief Executive Officer shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision of all of the other officers, employees and agents of the Corporation. The Chief Executive Officer shall also perform such other duties as the Board of Directors may from time to time prescribe.

Section 3. Chief Financial Officer.

The Chief Financial Officer shall have the responsibility for maintaining the financial records of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. Subject to the direction of the Board of Directors, the Chief Financial Officer shall have the power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized. The Chief Financial Officer shall also perform such other duties as the Board of Directors may from time to time prescribe.

Section 4. Vice President.

Each Vice President shall have such powers and duties as may be delegated to him or her by the Board of Directors. One Vice President shall be designated by the Board of Directors to perform the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability.

Section 5. Secretary.

The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board of Directors. He or she shall have charge of the corporate books and shall perform such other duties as the Board of Directors may from time to time prescribe.

Section 6. Delegation of Authority.

The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 7. Removal.

Any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors.

Section 8. Action with Respect to Securities of Other Corporations.

Unless otherwise directed by the Board of Directors, the Chief Executive Officer or any officer of the Corporation authorized by the Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V - STOCK

Section 1. Certificates of Stock.

Each holder of stock represented by certificates shall be entitled to a certificate signed by, or in the name of the Corporation by, the Chief Executive Officer or a Vice President, and by the Secretary or an Assistant Secretary, or the Chief Financial Officer, certifying the number of shares owned by him or her. Any or all of the signatures on the certificate may be by facsimile. Shares of the Corporation's stock may be in certificated or uncertificated form at the discretion of the Board of Directors.

Section 2. Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 4 of Article V of these Bylaws, an outstanding certificate for the number of shares involved, if one has been issued, shall be surrendered for cancellation before a new certificate, if any, is issued therefor.

Section 3. Record Date.

In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may, except as otherwise required by law, fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 3 at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 4. Lost, Stolen or Destroyed Certificates.

In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 5. Regulations.

The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE VI - NOTICES

Section 1. Notices.

If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

Section 2. Waivers.

A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened.

ARTICLE VII - MISCELLANEOUS

Section 1. Facsimile Signatures.

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2. Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Chief Financial Officer or by an Assistant Secretary.

Section 3. Reliance upon Books, Reports and Records.

Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director, committee member or officer reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4. Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 5. Time Periods.

In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE VIII - INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification.

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnatee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnatee in connection therewith; provided, however, that, except as provided in Section 3 of this Article VIII with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnatee in connection with a proceeding (or part thereof) initiated by such indemnatee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2. Right to Advancement of Expenses.

In addition to the right to indemnification conferred in Section 1 of this Article VIII, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

Section 3. Right of Indemnitee to Bring Suit.

If a claim under Section 1 or 2 of this Article VIII is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 4. Non-Exclusivity of Rights.

The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, Bylaws, agreement, vote of stockholders or directors or otherwise.

Section 5. Insurance.

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. Indemnification of Employees and Agents of the Corporation.

The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7. Nature of Rights.

The rights conferred upon indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

ARTICLE IX - AMENDMENTS

The Board of Directors is expressly empowered to adopt, amend or repeal these Bylaws. Any adoption, amendment or repeal of these Bylaws by the Board of Directors shall require the approval of a majority of the Whole Board. The stockholders shall also have power to adopt, amend or repeal these Bylaws; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to adopt, amend or repeal any provision of these Bylaws.

RELEASE AND SEVERANCE AGREEMENT

This Release and Severance Agreement (this "Release") is entered into by and between James W. Dobbins ("Employee") and Turning Point Brands, Inc. ("Turning Point") and, collectively with its direct and indirect subsidiary(ies), the "Company"). Employee and Turning Point are referred to herein as the "Parties."

RECITALS

- A. Employee and Turning Point are parties to an Employment Letter, dated as of November 23, 2015 (the "Employment Agreement"), which provides for severance after termination in certain circumstances, conditioned upon Employee first signing a general release of claims following termination of Employee's employment, which release becomes irrevocable in accordance with its terms.
- B. This Release is the contemplated release of claims under the Employment Agreement of which Employee has had notice since the Employment Agreement was executed, it being annexed thereto (the "Presentation Date").
- C. Employee's employment with the Company will end on October 31, 2020 (the "Separation Date").
- D. The Parties desire to settle any and all other claims, if any, that Employee may have against the Company or any of its employees that are releasable by law.

AGREEMENT

NOW, THEREFORE, in consideration for the covenants and mutual promises contained in the Employment Agreement, the Parties agree as follows:

PART I

For and in consideration of the promises made herein by Employee in Part II and Part III of this Release, and his performance thereof, the sufficiency of which, either separately or combined, is hereby acknowledged, Turning Point agrees as follows:

1.1 ***Severance Benefits to Employee.*** In exchange for Employee signing this Release, complying with its terms, and not revoking this Release, the Company will pay and provide to Employee the following benefits (the "Severance Benefits"): (i) 12 months of Employee's base salary paid on the Company's normal pay dates beginning on the Separation Date, provided that payments will not begin until expiration of the seven day revocation period in Section 2.4, with the first payment including all accrued amounts since the Separation Date; (ii) a severance bonus equal to the average of the annual cash bonuses received by Employee for the 24 months prior to the Separation Date, paid in two equal installments with the first installment made when annual bonuses are paid to employees generally in 2021 but not later than April 30, 2021 and the second installment on November 1, 2021; (iii) Employee's accrued, unused vacation as of the Separation Date, if any, paid on the next pay date following termination; (iv) the Company will pay Employee's COBRA premiums for continued medical, dental and vision coverage for the 18 months following the Separation Date provided Employee timely elects COBRA for each such benefit (which premiums shall be taxable to Employee); (v) Employee shall vest as of the Separation Date in outstanding stock option awards under the Company's 2006 and 2015 Equity Incentive Plans (the "Equity Plans"), the options shall only become exercisable on the original vesting dates stated at grant of options, and those options will continue to be exercisable until their original expiration date as if Employee's employment continued; (vi) Employee shall retain the Company-issued computer and related accessories and equipment and the Company-issued cell phone and number; and (vii) Employee shall vest and be entitled to payment of any performance restricted stock units or similar awards under the Equity Plans, if any value is payable and on the same date as payable had employment continued, as and when therein required, with all of the Severance Benefits conditioned on Employee signing this Release. Severance Benefits will be provided if, and only if, (1) Employee signs this Release and returns it to the Company on or after his Separation Date (the Parties are signing this Release in August 2020 as documentation of the terms, but Employee must re-sign at actual separation); and (2) the seven day revocation period in Part II, Section 2.4 below has expired on or before the 55th day after Separation Date, provided that Employee has not exercised his right to revoke this Release in accordance with Part II, Section 2.4 below.

1.2 ***Separate and Adequate Age Claim Consideration.*** The Parties expressly agree and acknowledge that a portion of the Severance Benefits in Section 1.1 above represents separate and adequate consideration, to which Employee is not otherwise entitled, in exchange for Employee's Age Claim Waiver, set out below in Part II. Turning Point's present promise to provide this consideration is exchanged for Employee's present release of any Age Claims at the time of the execution of this Release.

PART II

For and in consideration of the promises made herein by Turning Point in Part I of this Release, and its performance thereof, the sufficiency of which is hereby acknowledged, Employee agrees as follows:

2.1 General Release and Waiver of All Claims and Potential Claims. Employee hereby releases all claims and potential claims, known and unknown, against the Company that are releasable by law. More specifically, for and on behalf of himself and his family, dependents, heirs, executors, administrators and assigns, Employee hereby irrevocably and unconditionally releases the Company and its respective predecessors, successors, and all their past, present or future assigns, parents, subsidiaries, affiliates, insurers, attorneys, divisions, subdivisions and affiliated entities, together with their respective current and former officers, directors, shareholders, fiduciaries, administrators, trustees, agents, servants, employees, attorneys, insurers and/or representatives, and their respective predecessors, successors and assigns, heirs, executors, administrators, and any and all other affiliated persons, firms, plans or corporations which may have an interest by or through them (collectively "Releasees"), both jointly and individually, from any and all claims, actions, arbitrations, and lawsuits, of any nature whatsoever, known or unknown to Employee, accrued or unaccrued, which he ever had, now has or may have had against Releasees since the beginning of time through the date of execution of this Release. This general release and waiver of claims includes, but is not limited to, any and all claims, demands, causes of action, suits, debts, complaints, liabilities, obligations, promises, agreements, controversies, damages and expenses that are releasable by law (including, without limitation, attorneys fees and costs actually incurred or to be incurred) of any nature or description whatsoever, in law or equity, whether known or unknown, in connection with or arising out of his employment with the Company and/or termination of said employment. Claims being released include, without limitation, any and all employment-related claims that are releasable by law arising under federal, state or local statutes, ordinances, resolutions, regulations or constitutional provisions prohibiting discrimination in employment on the basis of sex, race, religion, national origin, age, disability and/or veterans' status, including, but not limited to, claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 1981, 1981a, 1983 and 1985, the Civil Rights Act of the State in which Employee resides and works, the Sarbanes-Oxley Act, 18 U.S.C. § 1514A, *et seq.*, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, the Federal Rehabilitation Act of 1973, Executive Order 11246, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, the Family and Medical Leave Act, 29 U.S.C. §§ 2601, *et seq.*, the Genetic Information Non-Discrimination Act, 42 U.S.C. §§ 2000ff *et seq.*, the minimum wage act, wage payment law and wage discrimination statutes and workers compensation statutes and similar state laws of the state in which Employee has provided services, in all instances as amended. This general release and waiver of claims also includes, but is not limited to, any and all claims for unpaid benefits or entitlements asserted under any plan, policy, benefits offering or program (except as otherwise required by law), any and all contract or tort claims, including, without limitation, claims of wrongful discharge, assault, battery, intentional infliction of emotional distress, negligence, and/or defamation against Releasees.

2.2 Mutual Nondisparagement. You agree that following the termination of your employment for any reason, you shall not publicly make any negative, disparaging, detrimental or derogatory remarks or statements (written, oral, telephonic, electronic, or by any other method) about the Company or its subsidiaries or any of their respective owners, partners, managers, directors, officers, employees or agents, including, without limitation, any remarks or statements that could be reasonably expected to adversely affect in a material manner (i) the conduct of the Company's or its subsidiaries' businesses or (ii) the business reputation or relationships of the Company or its subsidiaries and/or any of their past or present officers, directors, agents, employees, attorneys, successors and assigns, in each case, except to the extent required by law or legal process. Similarly, following termination of your employment for any reason, neither the Company's officers, nor the members of the Board, shall make any such statements about you.

Nothing in this Section 2.1, Section 2.3, or any other provision in the remainder of this Release shall be construed to prevent Employee from making a claim for indemnity under law or governance documents providing for indemnity or insurance against claims for acts or omissions in his capacity acting as an officer or director of the Company. Furthermore, nothing in this Section 2.1, Section 2.2, or any other provision in the remainder of this Release shall be construed to prohibit Employee from talking to, cooperating in any investigation by, and/or filing a charge with, the U.S. Equal Employment Opportunity Commission (the "EEOC") or any other similar state or local fair employment practices administrative agency. However, by signing this Release, Employee hereby waives the right to recover from Releasees any relief from any charge or claim pursued or otherwise prosecuted by him, or by persons or entities like the EEOC acting by or through him, including, without limitation, the right to attorneys' fees, costs, and any other relief, whether legal or equitable, sought in such charge, claim, or other proceeding.

2.3 **Age Claim Waiver.** Employee further agrees that his full general release includes a waiver of his rights, if any, to assert or allege discrimination based upon age pursuant to the Age Discrimination in Employment Act or any and all other federal, state or local laws or regulations prohibiting discrimination on the basis of age (collectively, "Age Claim Waiver").

2.4 **Adequate Consideration Period/Consult an Attorney.** Employee acknowledges that he is hereby instructed that he may and **should** consult an attorney of his own choosing regarding the terms of this Release, and specifically including the Age Claim Waiver, and that he has been given at least **twenty-one (21)** days to consider the terms of this Release and whether to sign this Release, although Employee may choose to sign this Release prior to the expiration of this **twenty-one (21)** day period. The Parties agree that if Employee fails to execute this Release prior to the expiration of the **twenty-one (21)** day period or prior to the deadline set forth in Section 1.1 hereof, this Release will be null and void.

2.5 **Seven (7) Day Revocation Period.** Employee further agrees that he is hereby instructed by the Company that, following his signing of this Release, Employee shall have up to seven (7) days to withdraw, rescind or revoke this Release by providing written notice to Kelly L. Goldman, Vice-President Human Resources; 5201 Interchange Way; Louisville, KY 40229, but that, in the event Employee exercises his right to withdraw or rescind this Release, all terms of this Release, including, without limitation, Turning Point's duty to provide the Severance Benefits provided in Part I, Section 1.1, above, shall be void and of no effect.

2.6 **Permanent Waiver of Re-employment.** In order to effect the degree of separation contemplated by the Parties, Employee acknowledges his present intent to permanently remove himself from the labor pool of the Company as of the Separation Date and forever thereafter. In order to accomplish this present permanent removal from Releasees' labor pool, Employee agrees that he will not seek and will not accept hiring, rehiring, placement, or reinstatement with Releasees, as an employee or a temporary worker.

2.7 **Section 409A.** The Parties intend and believe that the salary continuation and average bonus Severance Benefits are exempt from Section 409A of the Internal Revenue Code ("IRC") as benefits payable upon an involuntary separation of employment that do not exceed two times the 401(a)(17) compensation limit and that are paid by the end of the year after the year of separation, and other Severance Benefits are exempt from IRC Section 409A as short-term deferrals or otherwise. The parties have nonetheless agreed to refer to Employee's separation as retirement, which does not change the character of the separation. Employee will be providing certain consulting services on a transition basis following termination and the Parties believe those services will be less than 20% of the average services provided by Employee over the prior 36 months. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with, or are exempt from compliance from, IRC Section 409A and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Executive on account of non-compliance with IRC Section 409A.

PART III
Other Agreements

3.1 ***Additional Covenants by Employee.*** Employee represents, warrants and covenants that, as of the date he signs this Release, (1) he is unaware of any wages (as that term is defined by applicable state law) that are owed to him by the Company and that have not been paid, with the exception of one week's salary and any accrued, unused vacation; (2) he is unaware of any request for leave under the Family and Medical Leave Act that was denied; (3) he has no known work-related injury, disability, or illness, and has not requested any accommodation under the Americans With Disabilities Act or similar state law that has not been satisfied; and (4) he is unaware of any document, circumstance, occurrence, or any conduct on behalf of the Company or any of its agents, employees, officers or directors, or any Releasee, which can or should be reported to any state or federal authority as a violation of any law, standard, or regulation, upon which representations the Company expressly relies in entering into this Release.

3.2 ***Knowing and Voluntary Agreement.*** Employee agrees and acknowledges that he has been advised to consult an attorney regarding the terms of this Release and that he has carefully reviewed, studied and thought over the terms of this Release. Employee further acknowledges and agrees that he knowingly and voluntarily entered into and signed this Release after deliberate consideration and review of all of its terms and provisions, that he was not coerced, pressured or forced in any way by the Company, any Releasee or anyone else to accept the terms of this Release, and that the decision to accept the terms of this Release was entirely his own.

3.3 ***No Wrongdoing By the Parties.*** The Parties further agree that they have entered this Release to resolve any and all claims, if any, Employee may have against the Company or any other Releasee, and that this Release does not constitute an admission of, or is to be used as evidence of, any liability, violation or wrongdoing of any kind.

3.4 ***Choice of Law; Interpretation; Captions.*** The Parties understand and agree that this Release shall in all respects be interpreted, enforced and governed under the laws of the Commonwealth of Kentucky and the language of this Release shall in all cases be interpreted as a whole, according to its fair meaning and not strictly for or against either of the Parties, regardless of which is the drafter of this Release. Captions and headings used herein are for convenience of reference only.

3.5 ***Exclusive Jurisdiction; Venue.*** The Parties understand and agree that the federal and/or state courts located in the Commonwealth of Kentucky shall have exclusive jurisdiction with regard to any litigation relating to this Release and that venue shall be proper only in the Commonwealth of Kentucky and any federal court whose judicial district encompasses the Commonwealth of Kentucky, and that any objection to this jurisdiction or venue is specifically waived.

3.6 **Entire Agreement.** The Parties agree that this Release sets forth the entire agreement between the Parties on the subject matter herein and fully supersedes any and all other prior agreements or understandings between them, *except for the terms in the Employment Agreement referred to herein, the Consulting Agreement (dated as of August 19, 2020), and any agreements between Employee and the Company regarding non-disclosure of confidential information, intellectual property, non-solicitation of customers, employees or contractors, non-competition, and/or other restrictive covenant obligations*, which agreements, if any, shall remain in full force and effect according to their terms. This includes, without limitation, Employee's continuing obligations under Sections 7-11 of the Employment Agreement. This Release may be amended or superseded only by a subsequent writing, executed by the Party against whom enforcement is sought.

3.7 **Agreement to Indemnify.** The Parties agree that should Employee seek to overturn, set aside, or legally challenge any release of claims, promise or covenant made by him under this Release, by judicial action or otherwise, the Company and/or Releasees shall be entitled to recover from Employee its costs of defending and enforcing the terms of this Release and/or any other claim brought by or against the Company or Releasees, including, without limitation, reasonable attorneys' fees. The Parties acknowledge and agree that each Releasee is an intended third-party beneficiary of this Release and may enforce the terms of this Release accordingly.

[signature page follows]

I, JAMES W. DOBBINS, UNDERSTAND AND AGREE THAT THIS RELEASE CONSTITUTES A FULL AND FINAL RELEASE OF ALL CLAIMS THAT ARE RELEASEABLE BY LAW.

/s/ James W. Dobbins

James W. Dobbins

Date: 8/19/2020

-- and --

TURNING POINT BRANDS, INC.

By: /s/ Lawrence S. Wexler

Title: President and Chief Executive Officer

Date: 8/19/2020

CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement"), effective as of November 1, 2020, is between Turning Point Brands, Inc. ("Turning Point") and, collectively with its parent(s), subsidiary(ies), and all other related companies], having its principal place of business at 5201 Interchange Way, Louisville, KY 40229 (the "Company"), and James W. Dobbins, an individual ("Consultant"), located at 1006 Monmouth Avenue; Durham, NC 27701.

1. Consulting Relationship. Consultant was previously the Senior VP and General Counsel for the Company, and has agreed to provide his services pursuant to the terms of this agreement in order to transfer relevant knowledge, provide interim support, and facilitate the transition of his work to others as well as continue to provide his insights on ongoing business, legal, and regulatory issues ("Services"). Consultant shall provide such Services as directed and under the direction of CEO and General Counsel. Consultant may choose to form and operate as a corporate entity, provided that all services under this contract are exclusively performed by Mr. Dobbins. Consultant shall provide all relevant tax or other documentation to Turning Point.

2. Fees.

a. Annual Rate will be \$100,000 per year, paid in monthly increments ("Fees"). If the Company consistently exceeds Consultant's monthly time of up to 40 hours, the Company and Consultant will renegotiate the contract rate or if asked to work on a specific project that will take significant time, the Company and Consultant will negotiate a rate for that project. Travel time shall be considered part of the services performed by Consultant under this Agreement to the extent the travel is to or from the Company's Louisville, Kentucky office or another site designated by the Company in advance of the travel.

b. Monthly Billing & Minimum — Consultant shall keep a record of all time spent performing services on behalf of Company in 1/2 day increments and submit an invoice to Company on a calendar monthly basis reflecting the monthly fee set forth above. Consultant shall be available for up to five (5) business days per month. Company shall pay Consultant's invoice within fifteen (15) business days of the invoice date.

3. Expenses. Provided such expenses are approved in advance by the Company, the Company will reimburse Consultant for all reasonable expenses incurred by Consultant in connection with the provision of the Services contemplated by this Agreement. Consultant shall submit his expenses with his monthly invoice for fees. All such submissions of expenses must be accompanied by receipts for such expenses unless the individual expense is less than \$25.00. In addition, Company agrees to reimburse for 2020 CLE and training. Consultant will provide receipts for reimbursement.

4. Relationship of the Parties. Consultant's relationship with Company will be that of an independent contractor and not that of an employee. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between Company and Consultant. It is understood that Consultant cannot, and has no authority to, impose any obligation on Company or to bind Company to the performance of any obligation. Consultant will report as income to the IRS and applicable local tax authorities, compensation received pursuant to this Agreement, and will pay any and all applicable federal, state and local taxes. Company shall report to the IRS and local revenue departments payments made to Consultant pursuant to this Agreement on a Form 1099 and provide a copy to Consultant.

5. Confidential Information.

a. Consultant shall keep strictly confidential and not disclose to any third-party Confidential Information, unless he receives written permission to do so by Company.

b. In the event Consultant is required by statute, regulation, or judicial or administrative process to disclose Confidential Information, he shall promptly (1) notify Company so Company may seek appropriate protection or another remedy and (2) consult with Company regarding such efforts. If Company does not obtain a relevant protective order or other form of relief, Consultant may disclose that portion of any Confidential Information that is legally required with no liability under this Agreement.

c. Confidential Information shall mean any and all information that is disclosed to Consultant or that Consultant learns during the term of this Agreement that relates to the business of Company, including without limitation, methods, processes, techniques, formulae, research data, marketing and sales information, personnel data, customer lists, financial data, strategic plans, marketing plans and other plans, manuals, policies, computer programs and databases, know-how, and proprietary information of Company and its subsidiaries and affiliate or any information Consultant knows or should reasonably know is treated by Company as confidential or proprietary. Confidential Information does not include any portion of the Confidential Information that (1) is generally available to the public at the time of disclosure, (2) becomes generally available to the public after disclosure, except through breach of this Agreement by Consultant, or (3) was not acquired directly or indirectly by Consultant from Company.

d. Non-Competition. In consideration of the Fees, the terms of the Non-Competition clauses of the Employment Agreement between Turning Point Brand, Inc. and James Dobbins shall be extended six months beyond the termination of this Consulting Agreement, to the extent consistent with law and public policy in Kentucky, North Carolina and New York.

6. Term and Termination. This Agreement shall become effective as of November 1, 2020, and continue for a period of two (2) years and will automatically expire on October 31, 2022. In the event of a material breach, upon thirty days' notice, either party may terminate the agreement, provided that the alleged breach is not cured within that thirty-day period.

7. Notice. Any notice under this Agreement may be given by UPS Next Day Air at the physical addresses listed above, or in the alternative by electronic mail.

8. Miscellaneous.

a. Entire Agreement; Amendment; Headings. This Agreement constitutes the sole and complete agreement between the parties with respect to the Services provided by Consultant during the term. No modification of this Agreement shall be binding upon either party unless signed by both. The descriptive phrases at the head of various paragraphs are for reference only and shall not be construed to define the terms.

b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky with regard to its conflict of laws principles. If any provision of this Agreement is found by a court to be unenforceable, the remainder shall continue in full force and effect.

c. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

Turning Point Brands, Inc.

/s/ James W. Dobbins

James W. Dobbins

By: /s/ Lawrence S. Wexler

Lawrence S. Wexler

Turning Point Brands, Inc.

Date: 8/19/2020

Date: 8/19/2020

CERTIFICATIONS

I, Lawrence Wexler, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Turning Point Brands, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 27, 2020

By: /s/ Lawrence S. Wexler
Lawrence S. Wexler
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Robert Lavan, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Turning Point Brands, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 27, 2020

By: /s/ Robert Lavan
Robert Lavan
Chief Financial Officer
(Principal Financial Officer)

CERTIFICATIONS

I, Brian Wigginton, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Turning Point Brands, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 27, 2020

By: /s/ Brian Wigginton
Brian Wigginton
Chief Accounting Officer

**CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Turning Point Brands, Inc. (the "Company") for the quarterly period ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Lawrence S. Wexler, President and Chief Executive Officer, Robert Lavan, Chief Financial Officer, and Brian Wigginton, Chief Accounting Officer, of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: October 27, 2020

By: /s/ Lawrence S. Wexler
Lawrence S. Wexler
President and Chief Executive Officer
(Principal Executive Officer)

Date: October 27, 2020

By: /s/ Robert Lavan
Robert Lavan
Chief Financial Officer
(Principal Financial Officer)

Date: October 27, 2020

By: /s/ Brian Wigginton
Brian Wigginton
Chief Accounting Officer
