FIRST BUSEY CORP /NV/
Form S-8
June 22, 2010

As filed with the Securities and Exchange Commission on June 22, 2010

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE

SECURITIES ACT OF 1933

FIRST BUSEY CORPORATION

(Exact name of Registrant as specified in its charter)

Nevada	**37-1078406**
(State or other jurisdiction of incorporation)	(I.R.S. Employer Identification Number)

100 W. University Avenue

Champaign, Illinois 61820

(Address of principal executive offices, including zip code)

(217) 365-4516

(Registrant s telephone number, including area code)

First Busey Corporation 2010 Equity Incentive Plan &

First Busey Corporation Employee Stock Purchase Plan

(Full Title of Plans)

Van A. Dukeman

President and Chief Executive Officer

100 W. University Avenue

Champaign, Illinois 61820

(217) 365-4516

(Telephone number, including area code, of agent for service)

With copies of all communications to:

Robert M. Fleetwood, Esq.

Barack Ferrazzano Kirschbaum & Nagelberg LLP

200 West Madison Street, Suite 3900

Chicago, Illinois 60606

Phone: (312) 984-3100

Fax: (312) 984-3150

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Securities and Exchange Act of 1934, as amended (the Exchange Act). (Check one):

Large accelerated filer o	Accelerated filer x	Non-accelerated filer o	Smaller reporting company o

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee (2)
Common Stock, $0.001 par value, issuable under the First Busey Corporation 2010 Equity Incentive Plan	4,000,000	$ 4.55	$ 18,200,000	$ 1,298.00
Common Stock, $0.001 par value, issuable under the First Busey Corporation Employee Stock Purchase Plan	500,000	$ 4.55	$ 2,275,000	$ 162.00
Total				$ 1,460.00

(1) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers an indeterminate number of additional shares that may be issued to adjust the number of shares issued pursuant to the First Busey Corporation 2010 Equity Incentive Plan (2010 Equity Incentive Plan) and the First Busey Corporation Employee Stock Purchase Plan (Employee Stock Purchase Plan) described herein as the result of any future stock split, stock dividend or similar adjustment of the Registrant s common stock.

(2) Estimated solely for purposes of calculating the registration fee. Pursuant to Rule 457(h) of the Securities Act of 1933, the proposed maximum offering price per share is based on the average high and low prices of the common stock as reported on the NASDAQ Global Select Market on June 18, 2010.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in Part I (Information Required in the Section 10(a) Prospectus) will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the SEC), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The Registrant will provide participants of the 2010 Equity Incentive Plan and the Employee Stock Purchase Plan, upon written or oral request and without charge, a copy of the documents incorporated by reference in Item 3 of Part II of this Registration Statement, which are incorporated by reference in the Section 10(a) prospectus, and all documents required to be delivered to employees pursuant to Rule 428(b) under the Securities Act. Requests for such documents should be directed to First Busey Corporation, 100 W. University Avenue, Champaign, Illinois 61820, Attention: Robin Elliott, telephone number (217) 365-4516.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

The following documents which have been filed with the United States Securities and Exchange Commission by First Busey Corporation (First Busey or the Registrant) pursuant to the Securities Exchange Act of 1934 (Exchange Act) are incorporated herein by reference:

(a) First Busey s Annual Report on Form 10-K for the year ended December 31, 2009 (filed with the Commission on March 16, 2010) (Commission File No. 0-15950);

(b) All other reports required to be filed by First Busey pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the last fiscal year; and

(c) The description of First Busey s common stock, par value $.001 per share, contained in the Registrant s Registration Statement on Form 8-A, filed with the Securities and Exchange Commission on April 30, 1990 (1934 Act File No. 000-15950), and all amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by First Busey with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference into this Registration Statement and to be a part hereof from the date of the filing of such documents.

Any statement contained in the documents incorporated, or deemed to be incorporated, by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement and the prospectus which is a part hereof (the Prospectus) to the extent that a statement contained herein or in any other subsequently filed document which also is, or is deemed to be, incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement and the Prospectus.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Subsection 1 of Section 78.7502 of the Nevada Revised Statutes Annotated, or the Nevada RSA, empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding if that person acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, or that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his or her conduct was unlawful.

Subsection 2 of Section 78.7502 of the Nevada RSA empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys fees actually and reasonably incurred by such person in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 78.7502 of the Nevada RSA further provides that to the extent a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2 of Section 78.7502, or in defense of any claim, issue or matter therein, a corporation shall indemnify him or her against expenses, including attorneys fees, actually and reasonably incurred by such person in connection with the defense.

Section 78.751 of the Nevada RSA provides that any discretionary indemnification under Section 78.7502, unless ordered by a court or advanced, may be made by a corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made: (a) by the stockholders; (b) by the board of directors by majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding; (c) if a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding so orders, by independent legal counsel in a written opinion; or (d) if a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

Section 78.751 of the Nevada RSA further provides that the indemnification provided for by Section 78.7502 does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, for either an action in the person s official capacity or an action in another capacity while holding office, except that indemnification, unless ordered by a court pursuant to Section 78.7502 or for the advancement of expenses made pursuant to subsection 2, may not be made to or on behalf of any director or officer if a final adjudication establishes that the director s or officer s acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action. In addition, Section 78.751 provides that the indemnification pursuant to Section 78.7502 and advancement of expenses authorized in or ordered by a court continues for a person who has ceased to be a director, officer, employee or agent and inures to the benefit of the heirs, executors and administrators of such a person. Section 78.752 of the Nevada RSA empowers a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the corporation would have the power to indemnify such person against such liabilities under Section 78.7502.

Article Tenth of our articles of incorporation provides that no director or officer shall be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (i) for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law or (ii) for the payment of distributions in violation of Section 78.300 of the Nevada RSA.

Our bylaws provide that we shall have the power to indemnify and hold harmless any current or former director, officer, agent or employee of the Company to the fullest extent legally permissible under the Nevada RSA from time to time against all expenses, liability and loss (including attorneys fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by him in connection therewith. Consistent with the power conferred to corporations under Section 78.751 of the Nevada RSA, our bylaws further provide that our board of directors may in its discretion cause the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding to be paid by us as they are incurred and in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the corporation.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

See the Exhibit Index following the signature page in this Registration Statement, which Exhibit Index is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that:

(A) paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered

therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant s annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan s annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Champaign, State of Illinois, on June 22, 2010.

FIRST BUSEY CORPORATION

By:	/s/ Van. A. Dukeman Van A. Dukeman President and Chief Executive Officer
By:	/s/ David B. White David B. White Executive Vice President and Chief Financial Officer

POWER OF ATTORNEY

We, the undersigned directors and officers of First Busey hereby severally constitute and appoint Van A. Dukeman, as our true and lawful attorney and agent, each with full power of substitution, to do any and all things in our names in the capacities indicated below which said attorney and agent may deem necessary or advisable to enable First Busey to comply with the Securities Act of 1933, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with the registration of common stock of First Busey issued pursuant to the First Busey Corporation 2010 Equity Incentive Plan and the First Busey Employee Stock Purchase Plan, including specifically, but not limited to, power and authority to sign for us in our names in the capacities indicated below the registration statement and any and all amendments (including post-effective amendments) thereto; and we hereby approve, ratify and confirm all that said attorney and agent shall do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Van A. Dukeman Van A. Dukeman	Director; President and Chief Executive Officer (principal executive officer)	June 22, 2010
/s/ David B. White David B. White	Executive Vice President and Chief Financial Officer (principal financial officer and principal accounting officer)	June 22, 2010
/s/ Joseph M. Ambrose Joseph M. Ambrose	Director	June 22, 2010
/s/ David J. Downey David J. Downey	Director	June 22, 2010
/s/ David L. Ikenberry David L. Ikenberry	Director	June 22, 2010
/s/ E. Phillips Knox E. Phillips Knox	Director	June 22, 2010
/s/ V.B. Leister, Jr. V.B. Leister, Jr.	Director	June 22, 2010
/s/ Gregory B. Lykins Gregory B. Lykins	Director	June 22, 2010
/s/ August C. Meyer, Jr. August C. Meyer, Jr.	Director	June 22, 2010

/s/ Douglas C. Mills Douglas C. Mills	Director	June 22, 2010
/s/ George T. Shapland George T. Shapland	Director	June 22, 2010

FIRST BUSEY CORPORATION

EXHIBIT INDEX

TO

FORM S-8 REGISTRATION STATEMENT

Exhibit No.	Description
4.1	First Busey Corporation 2010 Equity Incentive Plan
4.2	First Busey Corporation Employee Stock Purchase Plan
4.3	Form of Restricted Stock Unit Agreement for Certain Executive Officers
4.4	Form of Restricted Stock Unit Agreement
5.1	Opinion of Lewis and Roca LLP (including consent)
23.1	Consent of McGladrey & Pullen LLP
23.2	Consent of Lewis and Roca LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included in the signature page to the registration statement)

rocess and finished goods

46,610

45,956

Prepaid expenses and other current assets

18,403

	18,134
Total current assets	
	391,313
	418,510
Property, plant and equipment, at cost	
	254,400
	254,237
Less accumulated depreciation	
	(172,084)
	(170,314)

Net property, plant and equipment	82,316	83,923
Right of use lease assets	26,069	—
Goodwill	83,204	83,333
Other intangible assets, net	61,421	63,582
Investments in associated companies		

		22,726
		21,316
Non-current deferred tax assets		
		9,333
		6,946
Other assets		
		32,141
		32,055
Total assets		
	$	708,523
	$	709,665

LIABILITIES AND EQUITY

Current liabilities

Short-term borrowings and current portion of long-term debt

$

661

$

670

Accounts and other payables	91,145	92,754
Accrued compensation	15,959	25,727
Other current liabilities	39,743	32,319
Total current liabilities	147,508	

	151,470
Long-term debt	
	11,720
	35,934
Long-term lease liabilities	
	20,231
	—
Non-current deferred tax liabilities	
	9,194
	10,003
Other non-current liabilities	
	73,507
	75,889

Total liabilities	
	262,160
	273,296
Commitments and contingencies (Note 18)	
Equity	
Common stock, $1 par value; authorized 30,000,000 shares; issued and	

outstanding 2019 – 13,333,668 shares; 2018 – 13,338,026 shares

13,334

13,338

Capital in excess of par value

96,832

97,304

Retained earnings

413,992

405,125

Accumulated other comprehensive loss

	(79,167)	(80,715)
Total Quaker shareholders’ equity	444,991	435,052
Noncontrolling interest	1,372	1,317
Total equity	446,363	436,369

Total liabilities and equity	$	708,523
	$	709,665

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

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Quaker Chemical Corporation

Condensed Consolidated Statements of Cash Flows

(Dollars in thousands)

	Unaudited Three Months Ended March 31, 2019	2018
Cash flows from operating activities		
Net income	$ 13,900	$ 12,787
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	3,047	3,194
Amortization	1,812	1,853
Equity in undistributed earnings of associated companies, net of dividends	(186)	511
Deferred compensation, deferred taxes and other, net	(6,842)	428
Share-based compensation	1,012	1,083
Gain on disposal of property, plant, equipment and other assets	(9)	(52)
Insurance settlement realized	(190)	(85)
Combination-related expenses, net of payments	(1,012)	2,161
Pension and other postretirement benefits	(1,346)	(2,632)
(Decrease) increase in cash from changes in current assets and current liabilities, net of acquisitions:		
Accounts receivable	(5,470)	(5,827)
Inventories	946	(7,758)
Prepaid expenses and other current assets	366	(1,055)
Accounts payable and accrued liabilities	(6,008)	(1,862)
Net cash provided by operating activities	20	2,746
Cash flows from investing activities		
Investments in property, plant and equipment	(2,537)	(3,449)
Payments related to acquisitions, net of cash acquired	(500)	(500)
Proceeds from disposition of assets	8	29
Insurance settlement interest earned	65	19
Net cash used in investing activities	(2,964)	(3,901)
Cash flows from financing activities		
Proceeds from long-term debt	—	8,166
Repayments of long-term debt	(23,948)	(197)
Dividends paid	(4,935)	(4,724)
Stock options exercised, other	(1,489)	(866)
Distributions to noncontrolling affiliate shareholders	—	(834)
Net cash (used in) provided by financing activities	(30,372)	1,545

Effect of foreign exchange rate changes on cash		1,004		2,246
Net (decrease) increase in cash, cash equivalents and restricted cash		(32,312)		2,636
Cash, cash equivalents and restricted cash at the beginning of the period		124,425		111,050
Cash, cash equivalents and restricted cash at the end of the period	$	92,113	$	113,686

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

Quaker Chemical Corporation

Notes to Condensed Consolidated Financial Statements

(Dollars in thousands, except share and per share amounts, unless otherwise stated)

(Unaudited)

Note 1 – Condensed Financial Information

The condensed consolidated financial statements included herein are unaudited and have been prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP") for interim financial reporting and the United States Securities and Exchange Commission ("SEC") regulations. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the financial statements reflect all adjustments which are necessary for a fair statement of the financial position, results of operations and cash flows for the interim periods. The results for the three months ended March 31, 2019 are not necessarily indicative of the results to be expected for the full year. These financial statements should be read in conjunction with the Company's Annual Report filed on Form 10-K for the year ended December 31, 2018.

Hyper-inflationary economies

Economies that have a cumulative three-year rate of inflation exceeding 100% are considered hyper-inflationary under U.S. GAAP. A legal entity which operates within an economy deemed to be hyper-inflationary is required to remeasure its monetary assets and liabilities to the applicable published exchange rates and record the associated gains or losses resulting from the remeasurement directly to the Condensed Consolidated Statements of Income. The Company has a 50-50 joint venture in a Venezuelan affiliate, Kelko Quaker Chemical, S.A. Venezuela's economy has been considered hyper-inflationary under U.S. GAAP since 2010. During the three months ended March 31, 2018 the Company recorded a $0.2 million remeasurement loss associated with the applicable currency conversions related to Venezuela. These losses were recorded within equity in net income (loss) of associated companies in the Company's Condensed Consolidated Statements of Income. Due to heightened foreign exchange controls and restrictions currently present within Venezuela, during the third quarter of 2018 the Company concluded that it no longer had significant influence over this affiliate. Prior to this determination, the Company historically accounted for this affiliate under the equity method. As of March 31, 2019 and December 31, 2018, the Company has no remaining carrying value for its investment in Kelko Venezuela.

Based on various indices or index compilations currently being used to monitor inflation in Argentina as well as recent economic instability, effective July 1, 2018, Argentina's economy was considered hyper-inflationary under U.S. GAAP. As a result, the Company began applying hyper-inflationary accounting with respect to the Company's wholly owned Argentina subsidiary beginning July 1, 2018. As of, and for the three months ended March 31, 2019, the Company's Argentina subsidiary represented less than 1% of the Company's consolidated total assets and less than 1% of the Company's consolidated net sales. During the three months ended March 31, 2019, the Company recorded a $0.2 million remeasurement loss associated with the applicable currency conversions related to Argentina. These losses were recorded within foreign exchange losses, net, which is a component of other expense, net, in the Company's Condensed Consolidated Statements of Income.

Note 2 – Houghton Combination

On April 4, 2017, Quaker entered into a share purchase agreement with Gulf Houghton Lubricants, Ltd. to purchase the entire issued and outstanding share capital of Houghton International, Inc. (“Houghton”) (herein referred to as “the Combination”). The shares will be bought for aggregate purchase consideration consisting of: (i) $172.5 million in cash; (ii) a number of shares of common stock, $1.00 par value per share, of the Company comprising 24.5% of the common stock outstanding upon the closing of the Combination; and (iii) the Company’s assumption of Houghton’s net indebtedness as of the closing of the Combination, which was approximately $690 million at signing. At closing, the total aggregate purchase consideration is dependent on the Company’s stock price and the level of Houghton’s indebtedness.

The Company secured $1.15 billion in commitments from Bank of America Merrill Lynch and Deutsche Bank to fund the Combination and to provide additional liquidity, and has since replaced these commitments with a syndicated bank agreement (“the New Credit Facility”) with a group of lenders for $1.15 billion. The New Credit Facility is contingent upon and will not be effective until the closing of the Combination. During the first quarter of 2019, the Company extended the bank commitment for the New Credit Facility through July 15, 2019. The New Credit Facility is comprised of a $400.0 million multicurrency revolver, a $600.0 million USD term loan and a $150.0 million EUR equivalent term loan, each with a five-year term from the date the New Credit Facility becomes effective. The maximum amount available under the New Credit Facility can be increased by $200.0 million at the Company’s option if the lenders agree and the Company satisfies certain conditions. Borrowings under the New Credit Facility will bear interest at a base rate or LIBOR rate plus a margin. The Company currently estimates the annual floating rate cost will be in the 3.75% to 4.0% range based on current market interest rates. The New Credit Facility will be subject to certain financial and other covenants, including covenants that the Company’s consolidated net debt to adjusted EBITDA ratio cannot exceed 4.25 to 1 and the Company’s consolidated adjusted EBITDA to interest expense ratio cannot be less than 3.0 to 1. Both the USD and EUR equivalent term loans will have quarterly principal amortization during their respective five-year terms, with 5.0% amortization of the principal balance due in years 1 and 2, 7.5% in year 3, and 10.0% in years 4 and 5, with the remaining principal amounts due at maturity. Until closing, the Company will incur certain interest costs paid to maintain the bank commitment (“ticking fees”), which began to accrue on September 29, 2017 and bear an interest rate of 0.30% per annum.

Quaker Chemical Corporation

Notes to Condensed Consolidated Financial Statements - Continued

(Dollars in thousands, except share and per share amounts, unless otherwise stated)

(Unaudited)

The Company received regulatory approval for the Combination from China and Australia in 2017. In addition, at a shareholder meeting held during 2017, the Company's shareholders overwhelmingly approved the issuance of the new shares of the Company's common stock at closing of the Combination. The European Commission ("EC") conditionally approved the Combination in December 2018, including the remedy proposed by Quaker and Houghton. The Company expects to receive final approval from the EC once certain conditions are met, including their review and approval of the final purchase agreement between Quaker, Houghton, and the buyer of the divested product lines, which was finalized and signed at the end of March 2019. The Company continues to be in productive discussions with the U.S. Federal Trade Commission ("FTC"). Given the time lapse since the Company's initial filing, the FTC requested updated information as part of their approval process late in the fourth quarter of 2018. In addition, the government shutdown in the U.S. late in the fourth quarter of 2018 and early in 2019 extended the timeline to receive the final approval. Given current information, the Company expects that final approval from the FTC and EC and closing of the combination will occur in the next couple of months.

The Company incurred costs of $5.3 million and $6.1 million during the three months ended March 31, 2019 and 2018, respectively, primarily for certain legal, financial, and other advisory and consultant costs related to regulatory approvals, integration planning associated with the Combination and certain one-time labor-related costs and ticking fees. As of March 31, 2019 and December 31, 2018, the Company had current liabilities related to the Combination of $7.2 million and $8.2 million, respectively, primarily recorded within other current liabilities on its Condensed Consolidated Balance Sheets.

Note 3 – Recently Issued Accounting Standards

The Financial Accounting Standards Board ("FASB") issued an accounting standard update in August 2018 that modifies certain disclosure requirements for employers that sponsor defined benefit pension or other postretirement plans. The amendments in this accounting standard update remove disclosures that are no longer considered cost beneficial, clarify the specific requirements of certain disclosures, and add new disclosure requirements as relevant. The guidance within this accounting standard update is effective for annual periods beginning after December 15, 2020, and should be applied retrospectively to all periods presented. Early adoption is permitted. The Company has not early adopted the guidance and is currently evaluating its implementation.

The FASB issued an accounting standard update in August 2018 that clarifies the accounting for implementation costs incurred in a cloud computing arrangement under a service contract. This guidance generally aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement under a service contract with the requirements for capitalizing implementation costs related to internal-use software. The guidance within this accounting standard update is effective for annual periods beginning after December 15, 2019 and should be applied either retrospectively or prospectively to all implementation costs incurred after the date of adoption. Early adoption is permitted. The Company has not early adopted the guidance and is currently evaluating its implementation.

The FASB issued an accounting standard update in August 2018 that modifies certain disclosure requirements for fair value measurements. The guidance removes certain disclosure requirements regarding transfers between levels of the fair value hierarchy as well as certain disclosures related to the valuation processes for certain fair value measurements. Further, the guidance added certain disclosure requirements including unrealized gains and losses and significant unobservable inputs used to develop certain fair value measurements. The guidance within this accounting standard update is effective for annual and interim periods beginning after December 15, 2019, and should be applied prospectively in the initial year of adoption or prospectively to all periods presented, depending on the amended disclosure requirement. Early adoption is permitted. The Company has not early adopted the guidance and is currently evaluating its implementation.

The FASB issued an accounting standard update in February 2018 that allows a reclassification from accumulated other comprehensive (loss) income (“AOCI”) to retained earnings for stranded tax effects resulting from U.S. Tax Reform enacted in December 2017. The guidance within this accounting standard update is effective for annual and interim periods beginning after December 15, 2018, and should be applied either in the period of adoption or retrospectively to each period in which the effect of the change in the U.S. federal corporate income tax rate in U.S. Tax Reform is recognized. Early adoption was permitted. The Company adopted this guidance in the first quarter of 2019, as required, but elected not to reclassify any stranded tax effects resulting from U.S. Tax Reform, therefore adoption of this guidance did not have an impact on its financial statements.

The FASB issued an accounting standard update in June 2016 related to the accounting for and disclosure of credit losses. The guidance introduces a new model for recognizing credit losses on financial instruments, including customer accounts receivable, based on an estimate of current expected credit losses. The guidance within this accounting standard update is effective for annual and interim periods beginning after December 15, 2019, and aspects of the guidance which may be applicable to Quaker should be applied on a modified retrospective basis. Early adoption is permitted. The Company has not early adopted the guidance and is currently evaluating its implementation.

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The FASB issued an accounting standard update in February 2016 regarding the accounting and disclosure for leases. During 2018 and 2019, the FASB issued a series of accounting standard updates to clarify and expand on the original 2016 implementation guidance, including providing an accounting policy election for lessors, certain targeted improvements around comparative reporting requirements and accounting for lease and non-lease components by lessors as well as other technical corrections and improvements. The amendments in these 2018 and 2019 updates did not change the core principles of the guidance previously issued in February 2016. The guidance within all of the leasing accounting standard updates are effective for annual and interim periods beginning after December 15, 2018, and should be applied on a modified retrospective basis, applying the transition requirements either (a) at the beginning of the earliest period presented in the financial statements in the year of adoption (January 1, 2017) or (b) in the period of adoption (January 1, 2019). Early adoption was permitted.

As part of the Company's implementation planning and its impact assessment related to the new lease accounting guidance, the Company developed a detailed project plan, identified and established a cross-functional implementation team and developed pre-adoption internal controls. In addition, the Company gathered an inventory of the Company's outstanding leases globally, performed certain review procedures to ensure completeness of its lease population and abstracted required information from its lease population for inclusion within the Company's leasing software. Also, the Company is considering how the new lease accounting guidance may impact Houghton and the pending Combination.

The Company adopted the guidance in the first quarter of 2019, as required, electing to use a modified retrospective transition approach and applied transition requirements as of January 1, 2019, as permitted. Comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods. In addition, the Company elected to apply certain of the permitted transition practical expedients within the new lease accounting related to lease identification, lease classification, and initial direct costs. The Company made certain accounting policy elections as a result of adopting the new lease accounting guidance which include not separating lease and non-lease components, applying a portfolio approach in the development of the Company's discount rates, applying the short-term lease exemption and establishing a capitalization threshold policy.

Adoption of the lease accounting guidance did not have a material impact on the Company's reported earnings or cash flows, however, adoption did result in a material impact to the Company's balance sheet to establish the right of use lease assets and associated lease liabilities. Specifically, the Company recorded a cumulative effect of an accounting change that resulted in an increase to its right of use lease assets of $27.3 million, an increase of $5.3 million of short-term lease liabilities and $21.4 million of long-term lease liabilities, a decrease in property, plant and equipment, net of $1.1 million, a decrease in other current liabilities of $0.4 million and a decrease to retained earnings of less than $0.1 million. See Note 5 of Notes to Condensed Consolidated Financial Statements.

Note 4 – Net Sales and Revenue Recognition

Business Description

The Company develops, produces, and markets a broad range of formulated chemical specialty products and offers chemical management services ("CMS") for various heavy industrial and manufacturing applications in a global portfolio throughout its four regions: North America, Europe, Middle East and Africa ("EMEA"), Asia/Pacific and South America. The major product lines in the Company's global portfolio include: (i) rolling lubricants (used by manufacturers of steel in the hot and cold rolling of steel and by manufacturers of aluminum in the hot rolling of aluminum); (ii) machining and grinding compounds (used by metalworking customers in cutting, shaping, and grinding metal parts which require special treatment to enable them to tolerate the manufacturing process, achieve closer tolerance, and improve tool life); (iii) corrosion preventives (used by steel and metalworking customers to protect metal during manufacture, storage, and shipment); (iv) hydraulic fluids (used by steel, metalworking, and other customers to operate hydraulic equipment); (v) specialty greases (used in automotive and aerospace production processes and applications, the manufacturing of steel, and various other applications); and (vi) metal finishing compounds (used to prepare metal surfaces for special treatments such as galvanizing and tin plating and to prepare metal for further processing).

A substantial portion of the Company's sales worldwide are made directly through its own employees and its CMS programs, with the balance being handled through distributors and agents. The Company's employees visit the plants of customers regularly, work on site, and, through training and experience, identify production needs which can be resolved or alleviated either by adapting the Company's existing products or by applying new formulations developed in its laboratories. The chemical specialty industry comprises many companies of similar size as well as companies larger and smaller than Quaker. The offerings of many of the Company's competitors differ from those of Quaker; some offer a broad portfolio of fluids, including general lubricants, while others have a more specialized product range. All competitors provide different levels of technical services to individual customers. Competition in the industry is based primarily on the ability to provide products that meet the needs of the customer, render technical services and laboratory assistance to the customer, and to a lesser extent on price.

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As part of the Company's CMS, certain third-party product sales to customers are managed by the Company. Where the Company acts as a principal, revenues are recognized on a gross reporting basis at the selling price negotiated with its customers. Where the Company acts as an agent, revenue is recognized on a net reporting basis at the amount of the administrative fee earned by the Company for ordering the goods. In determining whether the Company is acting as a principal or an agent in each arrangement, the Company considers whether it is primarily responsible for fulfilling the promise to provide the specified good, has inventory risk before the specified good has been transferred to the customer and has discretion in establishing the prices for the specified goods. The Company transferred third-party products under arrangements recognized on a net reporting basis of $10.4 million and $11.6 million for the three months ended March 31, 2019 and 2018, respectively.

A significant portion of the Company's revenues are realized from the sale of process fluids and services to manufacturers of steel, automobiles, aircraft, appliances, and durable goods, and, therefore, the Company is subject to the same business cycles as those experienced by these manufacturers and their customers. The Company's financial performance is generally correlated to the volume of global production within the industries it serves, rather than discretely related to the financial performance of such industries. Furthermore, steel customers typically have limited manufacturing locations compared to metalworking customers and generally use higher volumes of products at a single location. As previously disclosed in its Annual Report filed on Form 10-K for the year ended December 31, 2018, during 2018 the Company's five largest customers (each composed of multiple subsidiaries or divisions with semiautonomous purchasing authority) accounted for approximately 17% of consolidated net sales, with its largest customer accounting for approximately 8% of consolidated net sales.

Revenue Recognition Model

The Company applies the FASB's guidance on revenue recognition which requires the Company to recognize revenue in an amount that reflects the consideration to which the Company expects to be entitled in exchange for goods or services transferred to its customers. To do this, the Company applies the five-step model in the FASB's guidance, which requires the Company to: (i) identify the contract with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when, or as, the Company satisfies a performance obligation.

The Company identifies a contract with a customer when a sales agreement indicates approval and commitment of the parties; identifies the rights of the parties; identifies the payment terms; has commercial substance; and it is probable that the Company will collect the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer. In most instances, the Company's contract with a customer is the customer's purchase order. For certain customers, the Company may also enter into a sales agreement which outlines a framework of terms and conditions which apply to all future and subsequent purchase orders for that customer. In these situations, the Company's contract with the customer is both the sales agreement as well as the specific customer purchase order. Because the Company's contract with a customer is typically for a single transaction or customer purchase order, the duration of the contract is almost always one year or less. As a result, the Company has elected to apply certain practical expedients and omit certain disclosures of remaining performance obligations for contracts which have an initial term of one year or less as permitted by the FASB.

The Company identifies a performance obligation in a contract for each promised good or service that is separately identifiable from other promises in the contract and for which the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer. The Company determines the transaction price as the amount of consideration it expects to be entitled to in exchange for fulfilling the performance obligations, including the effects of any variable consideration, significant financing elements, amounts payable to the customer or noncash consideration. For any contracts that have more than one performance obligation, the Company allocates the transaction price to each performance obligation in an amount that depicts the amount of consideration to which the Company expects to be entitled in exchange for satisfying each performance obligation.

In accordance with the last step of the FASB's guidance, the Company recognizes revenue when, or as, it satisfies the performance obligation in a contract by transferring control of a promised good or service to the customer. The Company recognizes revenue over time whenever the customer simultaneously receives and consumes the benefits provided by the Company's performance; the Company's performance creates or enhances an asset that the customer controls as the asset is created or enhanced; or the Company's performance does not create an asset with an alternative use to the entity, and the entity has an enforceable right to payment, including a profit margin, for performance completed to date. For performance obligations not satisfied over time, the Company determines the point in time at which a customer obtains control of a promised asset and the Company satisfies a performance obligation by considering when the Company has a right to payment for the asset; the customer has legal title to the asset; the Company has transferred physical possession of the asset; the customer has the significant risks and rewards of ownership of the asset; or the customer has accepted the asset.

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The Company typically satisfies its performance obligations and recognizes revenue at a point in time for product sales, generally when products are shipped or delivered to the customer, depending on the terms underlying each arrangement. In circumstances where the Company's products are on consignment, revenue is generally recognized upon usage or consumption by the customer. For any CMS or other services provided by the Company to the customer, the Company typically satisfies its performance obligations and recognizes revenue over time, as the promised services are performed. The Company uses input methods to recognize revenue over time related to these services, including labor costs and time incurred. The Company believes that these input methods represent the most indicative measure of the CMS or other service work performed by the Company.

Other Considerations

The Company does not have standard payment terms for all customers globally, however the Company's general payment terms require customers to pay for products or services provided after the performance obligation is satisfied. The Company does not have significant financing arrangements with its customers. The Company does not have significant amounts of variable consideration in its contracts with customers and where applicable, the Company's estimates of variable consideration are not constrained. The Company records certain third-party license fees in other expense, net, in its Condensed Consolidated Statements of Income, which generally include sales-based royalties in exchange for the license of intellectual property. These license fees are recognized in accordance with their agreed-upon terms and when performance obligations are satisfied, which is generally when the third party has a subsequent sale.

Practical Expedients and Accounting Policy Elections

The Company has made certain accounting policy elections and elected to use certain practical expedients as permitted by the FASB in applying the guidance on revenue recognition. It is the Company's policy to not adjust the promised amount of consideration for the effects of a significant financing component as the Company expects, at contract inception, that the period between when the Company transfers a promised good or service to the customer and when the customer pays for that good or service will be one year or less. In addition, it is the Company's policy to expense costs to obtain a contract as incurred when the expected period of benefit, and therefore the amortization period, is one year or less. It is also the Company's accounting policy to exclude from the measurement of the transaction price all taxes assessed by a governmental authority that are both imposed on and concurrent with a specific revenue-producing transaction and collected by the entity from a customer, including sales, use, value added, excise and various other taxes. Lastly, the Company has elected to account for shipping and handling activities that occur after the customer has obtained control of a good as a fulfilment cost rather than an additional promised service.

Contract Assets and Liabilities

The Company recognizes a contract asset or receivable on its Condensed Consolidated Balance Sheet when the Company performs a service or transfers a good in advance of receiving consideration. A receivable is the Company's right to consideration that is unconditional and only the passage of time is required before payment of that consideration is due. A contract asset is the Company's right to consideration in exchange for goods or services that the Company has transferred to a customer. The Company had no material contract assets recorded on its Condensed Consolidated Balance Sheets as of March 31, 2019 or December 31, 2018.

A contract liability is recognized when the Company receives consideration, or if it has the unconditional right to receive consideration, in advance of performance. A contract liability is the Company's obligation to transfer goods or services to a customer for which the Company has received consideration, or a specified amount of consideration is due, from the customer. The Company's contract liabilities primarily represent deferred revenue recorded for customer payments received by the Company prior to the Company satisfying the associated performance obligation. Deferred revenues are presented within other current liabilities in the Company's Condensed Consolidated Balance Sheets. The Company had approximately $1.3 million and $1.3 million of deferred revenue as of March 31, 2019 and December 31, 2018, respectively. During the three months ended March 31, 2019, the Company satisfied the associated performance obligations and recognized revenue of $1.3 million related to advance customer payments recorded as of December 31, 2018.

Disaggregated Revenue

The Company sells its various industrial process fluids, its chemical specialties and its technical expertise as a global product portfolio. The Company generally manages and evaluates its performance by geography first, and then by customer industry, rather than by individual product lines. The Company has provided annual net sales information for its product lines greater than 10% in its previously filed Form 10-K for the year ended December 31, 2018, and those annual percentages are generally consistent with the current quarter's net sales by product line. Also, net sales of each of the Company's major product lines are generally spread throughout all four of the Company's regions, and in most cases, approximately proportionate to the level of total sales in each region.

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The following tables disaggregate the Company's net sales by region, customer industry, and timing of revenue recognized for the three months ended March 31, 2019 and 2018. The Company has made certain reclassifications of disaggregated customer industry disclosures for the three months ended March 31, 2018 to conform with the Company's current period customer industry segmentation.

	Three Months Ended March 31, 2019				
	North America	**EMEA**	**Asia/Pacific**	**South America**	**Consolidated Total**
Net sales	$ 95,253	$ 56,288	$ 50,527	$ 9,142	$ 211,210
Customer Industries					
Primary metals	$ 39,685	$ 24,883	$ 32,092	$ 5,290	$ 101,950
Metalworking	40,436	28,248	16,468	3,761	88,913
Coatings and other	15,132	3,157	1,967	91	20,347
	$ 95,253	$ 56,288	$ 50,527	$ 9,142	$ 211,210
Timing of Revenue Recognized					
Product sales at a point in time	$ 92,483	$ 56,234	$ 48,651	$ 9,064	$ 206,432
Services transferred over time	2,770	54	1,876	78	4,778
	$ 95,253	$ 56,288	$ 50,527	$ 9,142	$ 211,210

	Three Months Ended March 31, 2018				
	North America	**EMEA**	**Asia/Pacific**	**South America**	**Consolidated Total**
Net sales	$ 91,820	$ 62,055	$ 48,777	$ 9,403	$ 212,055
Customer Industries					
Primary metals	$ 37,558	$ 27,314	$ 30,907	$ 5,299	$ 101,078
Metalworking	40,589	31,170	17,526	3,783	93,068
Coatings and other	13,673	3,571	344	321	17,909
	$ 91,820	$ 62,055	$ 48,777	$ 9,403	$ 212,055
Timing of Revenue Recognized					
Product sales at a point in time	$ 88,986	$ 61,999	$ 46,848	$ 9,319	$ 207,152
	2,834	56	1,929	84	4,903

Services transferred over time	$	91,820	$	62,055	$	48,777	$	9,403	$	212,055

Note 5 - Leases

The Company determines if an arrangement is a lease at its inception. This determination generally depends on whether the arrangement conveys the right to control the use of an identified fixed asset explicitly or implicitly for a period of time in exchange for consideration. Control of an underlying asset is conveyed if the Company obtains the rights to direct the use of, and to obtain substantially all of the economic benefits from the use of, the underlying asset. Lease expense for variable leases and short-term leases is recognized when the obligation is incurred.

The Company has operating leases for certain facilities, vehicles and machinery and equipment with remaining lease terms up to 8 years. In addition, the Company has certain land use leases with remaining lease terms up to 96 years. The lease term for all of the Company's leases includes the non-cancellable period of the lease plus any additional periods covered by an option to extend the lease that the Company is reasonably certain it will exercise. Operating leases are included in right of use lease assets, other current liabilities and long-term lease liabilities on the Condensed Consolidated Balance Sheet. Right of use lease assets and liabilities are recognized at each lease's commencement date based on the present value of its lease payments over its respective lease term. The Company uses the stated borrowing rate for a lease when readily determinable. When a stated borrowing rate is not available in a lease agreement, the Company uses its incremental borrowing rate based on information available at the lease's commencement date to determine the present value of its lease payments. In determining the incremental borrowing rate used to present value each of its

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leases, the Company considers certain information including fully secured borrowing rates readily available to the Company and its subsidiaries. The Company has one immaterial finance lease, which is included in property, plant and equipment, current portion of long-term debt and long-term debt on the Condensed Consolidated Balance Sheet.

Operating lease expense is recognized on a straight-line basis over the lease term. Operating lease expense for the three months ended March 31, 2019 was $1.8 million. Short-term lease expense for the three months ended March 31, 2019 was $0.1 million. The Company has no material variable lease costs or sublease income for the three months ended March 31, 2019. Cash paid for operating leases during the three months ended March 31, 2019 was $1.7 million. Subsequent to the Company's adoption of the new lease accounting guidance and cumulative effect of an accounting change on January 1, 2019, the Company recorded new right of use lease assets and associated lease liabilities of approximately $0.3 million during the three months ended March 31, 2019.

Supplemental balance sheet information related to the Company's leases is as follows:

		March 31, 2019
Right of use lease assets	$	26,069
Other current liabilities		5,258
Long-term lease liabilities		20,231
Total operating lease liabilities	$	25,489
Weighted average remaining lease term (years)		6.1
Weighted average discount rate		4.65%

Maturities of operating lease liabilities as of March 31, 2019 were as follows:

		March 31, 2019
For the remainder of 2019	$	4,844
For the year ended December 31, 2020		5,465