

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

AMCON DISTRIBUTING CO  
Form 10-K/A  
May 25, 2007

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

FORM 10-K/A  
(Amendment No. 2)

/X/ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934 FOR THE FISCAL YEAR ENDED September 30, 2006

// TRANSITION REPORT PURSUANT TO SECTION 13 OF 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM to

Commission File Number 1-15589

AMCON Distributing Company

(Exact name of Registrant as specified in its charter)

Delaware

47-0702918

(State or other jurisdiction  
of incorporation or organization)

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

7405 Irvington Road, Omaha NE

68122

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: (402) 331-3727

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

Title of each class

Name of each exchange  
on which registered

None

None

Securities registered pursuant to Section 12(g) of the Act:  
Common Stock, \$.01 Par Value

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as  
defined in Rule 405 of the Securities Act. Yes No X

Indicate by check mark if the registrant is not required to file reports  
pursuant to Section 13 or Section 15(d) of the Act. Yes No X

Indicate by check mark whether the Registrant (1) has filed all reports  
required to be filed by Section 13 of 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 X No

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer      Accelerated filer      Non-accelerated filer    X  
    ----                      ----                      ----

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

The aggregate market value of equity securities held by non-affiliates of the Registrant on March 31, 2006 was approximately \$3.7 million.

As of December 25, 2006 there were 527,062 shares of common stock outstanding.

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

AMCON Distributing Company (the "Company") is filing this amendment No. 2 on Form 10-K/A (the "Amendment") in response to a comment letter received from the Staff of the Securities and Exchange Commissions (the "Staff"). This Amendment amends and replaces in its entirety the Company's disclosure in Item 9A of our Annual Report on Form 10-K for the year ended September 30, 2006, filed on December 29, 2006 (the "Report").

Except to the extent modified, this Amendment is as of the original filing date of our Report and has not been updated to reflect events occurring subsequent to the original filing date other than those required to reflect the effects of the comment letter received from the Staff. This Amendment should be read in conjunction with our filings made with the Securities and Exchange Commission subsequent to the filing of the Report, including any amendments to those filings.

3

### ITEM 9A. CONTROLS AND PROCEDURES

The Company maintains disclosure controls and procedures (as defined in Rules 13a-15(f) and 15d-15(e) under the Exchange Act of 1934, as amended (the "Exchange Act")), that are designed to ensure that information required to be

## Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

disclosed in the Company's reports filed or furnished under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Exchange Act and the related rules and forms of the SEC. Such information is accumulated and communicated to the Company's management, including its Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable, not absolute, assurance of achieving the desired control objectives.

The Company carried out the evaluation required by Rule 13a-15(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures. Based upon that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that, as of the end of the period covered by this report, the design and operation of the Company's disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms, and that such information is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

As previously disclosed, in connection with the Company's fiscal year 2005 audit, and the Company's evaluation of disclosure and controls procedures, management determined that material weaknesses existed at September 30, 2005 related to incorrect accounting entries made at the Company's HNWC subsidiary, and interest expense allocations made by the Company to one of its wholly-owned subsidiaries (The Beverage Group, Inc.) which was a component of discontinued operations. During fiscal 2006, the Company implemented a plan which resulted in the successful remediation and elimination of our material weaknesses in internal control over financial reporting as disclosed in Form 10-K for the fiscal year ended September 30, 2005.

Except for the changes related to the remediated material weaknesses described above, there has been no change during the Company's fiscal year ended September 30, 2006, in the Company's internal controls over financial reporting (as such term is defined in Rules 13(a)-15(f) under the Exchange Act) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

4

### SIGNATURES

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Act of 1934, the Registrant, AMCON Distributing Company, a Delaware corporation, has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Omaha, State of Nebraska, on the 23rd day of May 2007.

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

AMCON DISTRIBUTING COMPANY  
(registrant)

By: /s/ Christopher H. Atayan  
-----

Christopher H. Atayan,  
Chief Executive Officer  
and Vice Chairman

Pursuant to the requirements of the Securities Act of 1934, this report has been signed below by the following persons in the capacities indicated on the 23rd day of May 2007.

Signature -----	Title -----
/s/ William F. Wright ----- William F. Wright	Chairman of the Board and Director
/s/ Christopher H. Atayan ----- Christopher H. Atayan	Chief Executive Officer and Vice Chairman
/s/ Kathleen M. Evans ----- Kathleen M. Evans	President and Director
/s/ Andrew C. Plummer ----- Andrew C. Plummer	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Allen D. Petersen ----- Allen D. Petersen	Director
5	
/s/ Jeremy W. Hobbs ----- Jeremy W. Hobbs	Director
/s/ John R. Loyack ----- John R. Loyack	Director

Edgar Filing: AMCON DISTRIBUTING CO - Form 10-K/A

/s/ Raymond F. Bentele                      Director  
-----  
Raymond F. Bentele

/s/ Stanley Mayer                              Director  
-----  
Stanley Mayer

/s/ Timothy R. Pestotnik                      Director  
-----  
Timothy R. Pestotnik