



# **FORM 10-Q**

**BANK JOS A CLOTHIERS INC /DE/ - JOSB**

**Filed: December 13, 2007 (period: November 03, 2007)**

Quarterly report which provides a continuing view of a company's financial position

## PART I

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**Item 1.** Unaudited Condensed Consolidated Financial Statements 3

## PART I.

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### FINANCIAL INFORMATION

**Item 1.** Unaudited Condensed Consolidated Financial Statements

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

**Item 3.** Quantitative and Qualitative Disclosures About Market Risk

**Item 4.** Controls and Procedures

## PART II.

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### OTHER INFORMATION

**Item 1.** Legal Proceedings

**Item 1A.** Risk Factors

**Item 6.** Exhibits

### SIGNATURE

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EX-31.1 (EXHIBIT 31.1)

EX-31.2 (EXHIBIT 31.2)

EX-32.1 (EXHIBIT 32.1)

EX-32.2 (EXHIBIT 32.2)

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**United States Securities and Exchange Commission**  
Washington, DC 20549

**FORM 10-Q**

**Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**  
For the quarterly period ended November 3, 2007.

or

**Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**  
Commission File Number 0-23874

**Jos. A. Bank Clothiers, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State incorporation)

**36-3189198**  
(I.R.S. Employer  
Identification  
Number)

**500 Hanover Pike, Hampstead, MD**  
(Address of Principal Executive Offices)

**21074-2095**  
(Zip Code)

**410-239-2700**  
(Registrant's telephone number including area code)

**None**  
(Former name or former address, if changed since last report)

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 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):

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

<u>Class</u>	<u>Outstanding as of December 5, 2007</u>
Common Stock, \$.01 par value	18,179,371

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JOS. A. BANK CLOTHIERS, INC. AND SUBSIDIARIES

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**PART I. FINANCIAL INFORMATION****Item 1. Unaudited Condensed Consolidated Financial Statements****JOS. A. BANK CLOTHIERS, INC. AND SUBSIDIARIES****Condensed Consolidated Statements of Income**

(In thousands except per share data)

(Unaudited)

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 28, 2006</u>	<u>November 3, 2007</u>	<u>October 28, 2006</u>	<u>November 3, 2007</u>
Net sales	\$ 119,511	\$ 131,304	\$ 352,274	\$ 395,115
Cost of goods sold	<u>47,057</u>	<u>47,679</u>	<u>135,770</u>	<u>146,663</u>
Gross Profit	<u>72,454</u>	<u>83,625</u>	<u>216,504</u>	<u>248,452</u>
Operating expenses:				
Sales and marketing	50,796	59,094	147,457	170,015
General and administrative	<u>12,599</u>	<u>13,034</u>	<u>37,254</u>	<u>39,622</u>
Total operating expenses	<u>63,395</u>	<u>72,128</u>	<u>184,711</u>	<u>209,637</u>
Operating income	9,059	11,497	31,793	38,815
Other income (expense):				
Interest income	29	396	82	1,374
Interest expense	<u>(447)</u>	<u>(92)</u>	<u>(1,068)</u>	<u>(285)</u>
Total other income (expense)	<u>(418)</u>	<u>304</u>	<u>(986)</u>	<u>1,089</u>
Income before provision for income taxes	8,641	11,801	30,807	39,904
Provision for income taxes	<u>3,133</u>	<u>4,705</u>	<u>12,465</u>	<u>16,244</u>
Net income	<u>\$ 5,508</u>	<u>\$ 7,096</u>	<u>\$ 18,342</u>	<u>\$ 23,660</u>
Earnings per share:				
Net income per share:				
Basic	\$ 0.31	\$ 0.39	\$ 1.02	\$ 1.31
Diluted	\$ 0.30	\$ 0.38	\$ 1.00	\$ 1.28
Weighted average shares outstanding:				
Basic	18,016	18,165	17,967	18,111
Diluted	18,330	18,439	18,339	18,419

See accompanying notes.

**JOS. A. BANK CLOTHIERS, INC. AND SUBSIDIARIES**  
**Condensed Consolidated Balance Sheets**  
(In Thousands)  
(Unaudited)

	<u>February 3, 2007</u>	<u>November 3, 2007</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 43,080	\$ 26,608
Accounts receivable, net	5,193	10,403
Inventories:		
Finished goods	175,690	214,948
Raw materials	7,781	10,099
Total inventories	183,471	225,047
Prepaid expenses and other current assets	18,560	20,766
Total current assets	250,304	282,824
<b>NONCURRENT ASSETS:</b>		
Property, plant and equipment, net	117,553	125,493
Other noncurrent assets	535	510
Total assets	<u>\$ 368,392</u>	<u>\$ 408,827</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 41,683	\$ 56,228
Accrued expenses	63,606	58,927
Deferred tax liability — current	8,453	8,179
Total current liabilities	113,742	123,334
<b>NONCURRENT LIABILITIES:</b>		
Long-term debt	412	421
Noncurrent lease obligations	42,053	46,939
Deferred tax liability — noncurrent	2,595	1,873
Other noncurrent liabilities	1,356	1,690
Total liabilities	160,158	174,257
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>STOCKHOLDERS' EQUITY:</b>		
Common stock	180	181
Additional paid-in capital	78,101	80,776
Retained earnings	130,092	153,752
Accumulated other comprehensive losses	(139)	(139)
Total stockholders' equity	208,234	234,570
Total liabilities and stockholders' equity	<u>\$ 368,392</u>	<u>\$ 408,827</u>

See accompanying notes.

**JOS. A. BANK CLOTHIERS, INC. AND SUBSIDIARIES**  
**Condensed Consolidated Statements of Cash Flows**  
(In Thousands)  
(Unaudited)

	<u>Nine Months Ended</u>	
	<u>October 28,</u>	<u>November 3, 2007</u>
	<u>2006</u>	
Cash flows from operating activities:		
Net income	\$ 18,342	\$ 23,660
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	11,603	13,753
Loss on disposals of property, plant and equipment	30	121
Decrease in deferred taxes	(1,530)	(996)
Net increase in operating working capital and other components	<u>(41,710)</u>	<u>(36,465)</u>
<b>Net cash provided by (used in) operating activities</b>	<u>(13,265)</u>	<u>73</u>
Cash flows from investing activities:		
Capital expenditures	(20,322)	(19,511)
Proceeds from disposal of fixed assets	<u>—</u>	<u>290</u>
<b>Net cash used in investing activities</b>	<u>(20,322)</u>	<u>(19,221)</u>
Cash flows from financing activities:		
Borrowings under long-term Credit Agreement	85,253	—
Repayments under long-term Credit Agreement	(68,595)	—
Proceeds from issuance of long-term debt	400	—
Repayment of other long-term debt	(718)	—
Income tax benefit from exercise of stock options	4,371	807
Net proceeds from exercise of stock options	<u>7,086</u>	<u>1,869</u>
<b>Net cash provided by financing activities</b>	<u>27,797</u>	<u>2,676</u>
Net decrease in cash and cash equivalents	(5,790)	(16,472)
Cash and cash equivalents — beginning of period	<u>7,344</u>	<u>43,080</u>
Cash and cash equivalents — end of period	<u>\$ 1,554</u>	<u>\$ 26,608</u>

See accompanying notes.

**JOS. A. BANK CLOTHIERS, INC. AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

(Unaudited)

(Amounts in Thousands Except Per Share Amounts and the Number of Stores, or as Otherwise Noted)

**1. BASIS OF PRESENTATION**

Jos. A. Bank Clothiers, Inc. (the "Company") is a nationwide retailer of classic men's apparel through conventional retail stores and catalog and Internet direct marketing. The condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

The results of operations for the interim periods shown in this report are not necessarily indicative of results to be expected for the fiscal year. In the opinion of management, the information contained herein reflects all adjustments necessary to make the results of operations for the interim periods a fair statement of the operating results for these periods. These adjustments are of a normal recurring nature.

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X and therefore do not include all of the information and footnotes required by accounting principles accepted in the United States for comparable annual financial statements. Certain notes and other information have been condensed or omitted from the interim financial statements presented in this Quarterly Report on Form 10-Q. Therefore, these financial statements should be read in conjunction with the Company's Annual Report on Form 10-K for the fiscal year ended February 3, 2007 ("fiscal 2006").

**Reclassifications** - Certain amounts for the three and nine months ended October 28, 2006 have been reclassified to conform with the presentation in the three and nine months ended November 3, 2007. The Company reclassified certain store opening costs to sales and marketing expense in the accompanying unaudited Condensed Consolidated Statements of Income. In addition, interest income is reported separately from interest expense in the accompanying unaudited Condensed Consolidated Statements of Income.

**2. SIGNIFICANT ACCOUNTING POLICIES**

**Inventories** — The Company records inventory at the lower of cost or market ("LCM"). Cost is determined using the first-in, first-out method. The Company capitalizes into inventory certain warehousing and freight delivery costs associated with shipping its merchandise to the point of sale. The Company periodically reviews quantities of inventories on hand and compares these amounts to the expected sale of each product. The Company records a charge to cost of goods sold for the amount required to reduce the carrying value of inventory to net realizable value.

**Vendor Rebates** — The Company receives credits from vendors in connection with inventory purchases. The credits are separately negotiated with each vendor. Substantially all of these credits are earned in one of two ways: a) as a fixed percentage of purchases when an invoice is paid or b) as an agreed-upon amount in the month a new store is opened. There are no contingent minimum purchase amounts, milestones or other contingencies that are required to be met to earn the credits. The credits described in a) above are recorded as a reduction to inventories in the Condensed Consolidated Balance Sheet as the inventories are purchased and the credits described in b) above are recorded as a reduction to inventories as new stores are opened. In both cases, the credits are recognized as reductions to cost of goods sold as the product is sold.

**Landlord Contributions** — Landlord contributions are accounted for as an increase to noncurrent lease obligations and as an increase to prepaid and other current assets until collected. When collected, the Company records cash and reduces the prepaid and other current assets account. The landlord contributions are presented in the Condensed Consolidated Statements of Cash Flows as an operating activity. The noncurrent lease obligations are amortized over the life of the lease in a manner that is consistent with the Company's policy to straight-line rent expense over the term of the lease. The amortization is recorded as a reduction to sales and marketing expense which is consistent with the classification of lease expense.

**Stock Options** - In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123(R), "Share-Based Payment" ("SFAS 123R"), which revises SFAS No. 123, "Accounting for Stock-Based Compensation," as amended by SFAS No. 148, "Accounting for Stock Based Compensation-Transition and Disclosure." SFAS 123R supersedes APB Opinion No. 25, "Accounting for Stock Issued to Employees" and requires all stock-based compensation to be recognized as an expense in the financial statements and that such costs be measured according to the fair value of the award. SFAS 123R became effective for the Company at the beginning of the fiscal 2006, and the Company accounts for the effects of SFAS 123R under the modified prospective application. All stock options were fully vested prior to fiscal 2006. Therefore, adoption of the provisions of SFAS 123R did not have an impact on the Company's accompanying condensed consolidated balance sheets and statements of income. While there are currently no unvested options, the Company will continue to use the Black-Scholes option valuation model for future stock options granted, if any.

**Recently Issued Accounting Standards** — In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," which defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles, and expands disclosures about fair value measurements. SFAS No. 157 does not require any new fair value measurements, but provides guidance on how to measure fair value by providing a fair value hierarchy used to classify the source of the information. This statement is effective for the Company's fiscal year beginning February 3, 2008. The Company is currently assessing the impact, if any, of this statement on its consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities — including an amendment of FASB Statement No. 115," ("SFAS 159"). SFAS 159 permits entities to choose to measure many financial instruments and certain other assets and liabilities at fair value on an instrument-by-instrument basis (the fair value option). SFAS 159 becomes effective for the Company on February 3, 2008. The Company is currently assessing the impact, if any, of this statement on its consolidated financial statements.

Effective February 4, 2007, the Company adopted the FASB Emerging Issues Task Force ("EITF") Issue No. 06-3, "How Sales Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That Is, Gross Versus Net Presentation)" ("EITF 06-3"). The EITF reached a consensus that a company should disclose its accounting policy (i.e., gross or net presentation) regarding presentation of taxes within the scope of EITF 06-3. If taxes included in gross revenues are significant, a company should disclose the amount of such taxes for each period for which an income statement is presented. The Company conforms to a net presentation on its consolidated financial statements.

### 3. SUPPLEMENTAL CASH FLOW DISCLOSURE

The net change in operating working capital and other components consist of the following:

	<u>Nine Months Ended</u>	
	<u>October 28, 2006</u>	<u>November 3, 2007</u>
Increase in accounts receivable	\$ (2,601)	\$ (5,210)
Increase in inventories	(25,995)	(41,576)
Increase in prepaids and other assets	(3,587)	(2,181)
Increase (decrease) in accounts payable	(8,389)	14,545
Decrease in accrued expenses and other liabilities	(5,302)	(7,272)
Increase in noncurrent lease liabilities and other noncurrent liabilities	<u>4,164</u>	<u>5,229</u>
<b>Net increase in operating working capital and other components</b>	<b><u>\$ (41,710)</u></b>	<b><u>\$ (36,465)</u></b>

Interest and income taxes paid were as follows:

	<u>Nine Months Ended</u>	
	<u>October 28, 2006</u>	<u>November 3, 2007</u>
Interest paid	\$ 876	\$ 200
Income taxes paid	\$ 21,225	\$ 30,505

### 4. EARNINGS PER SHARE

Basic net income per share is calculated by dividing net income by the weighted average number of common shares outstanding for the period. Diluted net income per share is calculated by dividing net income by the diluted weighted average common shares, which reflects the potential dilution of stock options. The weighted average shares used to calculate basic and diluted earnings per share are as follows:

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 28, 2006</u>	<u>November 3, 2007</u>	<u>October 28, 2006</u>	<u>November 3, 2007</u>
Weighted average shares outstanding for basic EPS	18,016	18,165	17,967	18,111
Dilutive effect of common stock equivalents	<u>314</u>	<u>274</u>	<u>372</u>	<u>308</u>
Weighted average shares outstanding for diluted EPS	<u>18,330</u>	<u>18,439</u>	<u>18,339</u>	<u>18,419</u>

The Company uses the treasury stock method for calculating the dilutive effect of stock options. There were no anti-dilutive options as of October 28, 2006 and November 3, 2007.

## 5. INCOME TAXES

Effective February 4, 2007, the Company adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"). FIN 48 is an interpretation of SFAS Statement No. 109, "Accounting for Income Taxes," that 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. In addition, FIN 48 requires expanded disclosure with respect to the uncertainty in income taxes.

Also effective February 4, 2007, the Company adopted FASB Staff Position ("FSP") No. FIN 48-1, "Definition of Settlement in FASB Interpretation No. 48," ("FSP FIN 48-1"), which was issued on May 2, 2007. FSP FIN 48-1 amends FIN 48 to provide guidance on how an entity should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. The term "effectively settled" replaces the term "ultimately settled" when used to describe recognition, and the terms "settlement" or "settled" replace the terms "ultimate settlement" or "ultimately settled" when used to describe measurement of a tax position under FIN 48. FSP FIN 48-1 clarifies that a tax position can be effectively settled upon the completion of an examination by a taxing authority without being legally extinguished. For tax positions considered effectively settled, an entity would recognize the full amount of tax benefit, even if the tax position is not considered more likely than not to be sustained based solely on the basis of its technical merits and the statute of limitations remains open.

As a result of the evaluation and implementation of FIN No. 48 and FSP FIN 48-1, the Company concluded no adjustment in the consolidated financial statements was necessary. At the date of adoption, the total unrecognized tax benefits were approximately \$0.8 million, of which \$0.4 million represented accrued interest and penalties. If resolved in the Company's favor, approximately \$0.3 million (after considering the impact of income taxes) would favorably affect the Company's effective tax rate. The Company does not expect that the total amount of unrecognized tax benefits will significantly change in the next twelve months. The Company recognizes accrued interest and penalties related to unrecognized tax benefits in the provision for income taxes on the Consolidated Statement of Income.

The Company files income tax returns in the U.S. federal and various state jurisdictions. The Internal Revenue Service ("IRS") has audited tax returns through the year ended January 29, 2005 ("fiscal 2004") and has notified the Company of its intent to audit the year ended January 28, 2006 ("fiscal 2005"). The fiscal 2004 tax return examination resulted in a \$0.7 million reduction in fiscal 2006 of previously recorded income tax liabilities that were settled upon completion of the audit in that period. The majority of the Company's state returns are no longer subject to state examinations by taxing authorities for the years before the fiscal year ended February 1, 2003 ("fiscal 2002").

## 6. SEGMENT REPORTING

The Company has two reportable segments: Stores and Direct Marketing. The Stores segment includes all Company-owned stores excluding factory stores. The Direct Marketing segment includes all sales through catalog and Internet. While each segment offers to the customer a similar mix of goods, the Stores segment also provides complete alterations and the Direct Marketing segment only provides certain alterations.

The accounting policies of the segments are the same as those described in the Company's Annual Report on Form 10-K for fiscal 2006. The Company evaluates performance of the segments based on "four wall" contribution and excludes any allocation of "management company" costs, which consist primarily of general and administrative costs (except order fulfillment costs which are allocated to Direct Marketing), interest and income taxes.

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The Company's segments are strategic business units that offer and deliver similar products to the retail customer by two distinctively different methods. In Stores, typical customers travel to stores and purchase men's clothing and/or alterations and take their purchases with them. The Direct Marketing customers receive catalogs in their homes and/or offices and/or visit our website via the Internet and place orders by phone, mail, fax or online. The merchandise is then shipped to the customers. Segment data is presented in the following tables:

**Three months ended November 3, 2007**

	<u>Stores</u>	<u>Direct Marketing</u>	<u>Other</u>	<u>Total</u>
Net sales(a)	\$ 116,398	\$ 11,939	\$ 2,967	\$ 131,304
Depreciation and amortization	4,069	22	619	4,710
Operating income (loss) (b)	19,318	4,778	(12,599)	11,497
Capital expenditures(d)	7,748	3	234	7,985

**Three months ended October 28, 2006**

	<u>Stores</u>	<u>Direct Marketing</u>	<u>Other</u>	<u>Total</u>
Net sales(a)	\$ 104,870	\$ 11,726	\$ 2,915	\$ 119,511
Depreciation and amortization	3,436	18	607	4,061
Operating income (loss)(b)	17,203	4,453	(12,597)	9,059
Capital expenditures(d)	6,735	22	665	7,422

**Nine months ended November 3, 2007**

	<u>Stores</u>	<u>Direct Marketing</u>	<u>Other</u>	<u>Total</u>
Net sales(a)	\$ 346,727	\$ 40,095	\$ 8,293	\$ 395,115
Depreciation and amortization	11,846	60	1,847	13,753
Operating income (loss)(b)	63,837	15,428	(40,450)	38,815
Identifiable assets(c)	349,015	44,923	14,889	408,827
Capital expenditures(d)	18,805	24	682	19,511

**Nine months ended October 28, 2006**

	<u>Stores</u>	<u>Direct Marketing</u>	<u>Other</u>	<u>Total</u>
Net sales(a)	\$ 309,079	\$ 35,078	\$ 8,117	\$ 352,274
Depreciation and amortization	9,796	54	1,753	11,603
Operating income (loss)(b)	56,419	13,702	(38,328)	31,793
Identifiable assets(c)	289,149	37,645	17,009	343,803
Capital expenditures(d)	18,657	41	1,624	20,322

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- (a) Direct Marketing net sales represent catalog and Internet sales including catalog orders placed in new stores. Net sales from segments below the quantitative thresholds are attributable primarily to three operating segments of the Company. Those segments are factory stores, franchise stores and regional tailor shops. None of these segments have ever met any of the quantitative thresholds for determining reportable segments and are included in “Other.”
  - (b) Operating income for the Stores and Direct Marketing segments represents profit before allocations of overhead from the corporate office and the distribution center, interest and income taxes. Operating income (loss) for Other consists primarily of costs included in general and administrative costs. Total operating income represents profit before interest and income taxes.
  - (c) Identifiable assets include cash and cash equivalents, accounts receivable, inventories, prepaid expenses and other current assets and property, plant and equipment residing in or related to the reportable segment. Assets included in “Other” are primarily cash and cash equivalents, property, plant and equipment associated with the corporate office and distribution center, deferred tax assets, other noncurrent assets, and inventories, which have not been assigned to one of the reportable segments.
  - (d) Capital expenditures include purchases of property, plant and equipment made for the reportable segment.

## 7. LEGAL MATTERS

On July 24, 2006, a lawsuit was filed against the Company and Robert N. Wildrick, the Company’s Chief Executive Officer, in the United States District Court for the District of Maryland by Roy T. Lefkoe, Civil Action Number 1:06-cv-01892-WMN (the “Class Action”). On August 3, 2006, a lawsuit substantially similar to the Class Action was filed in the United States District Court for the District of Maryland by Tewas Trust UAD 9/23/86, Civil Action Number 1:06-cv-02011-WMN (the “Tewas Trust Action”). The Tewas Trust Action was filed against the same defendants as those in the Class Action and purported to assert the same claims and seek the same relief. On November 20, 2006, the Class Action and the Tewas Trust Action were consolidated under the Class Action case number (1:06-cv-01892-WMN) and the Tewas Trust Action was administratively closed.

Massachusetts Labor Annuity Fund has been appointed the lead plaintiff in the Class Action and has filed a Consolidated Class Action Complaint. R. Neal Black, the Company’s President, and David E. Ullman, the Company’s Executive Vice President and Chief Financial Officer, have been added as defendants. On behalf of purchasers of the Company’s stock between December 5, 2005 and June 7, 2006 (the “Class Period”), the Class Action purports to make claims under Sections 10(b) and 20(a) and Rule 10b-5 of the Securities Exchange Act of 1934, based on the Company’s disclosures during the Class Period. The Class Action seeks unspecified damages, costs, and attorneys’ fees. The Company’s Motion to Dismiss the Class Action was not granted. The Company intends to defend vigorously the Class Action.

On August 11, 2006, a lawsuit was filed against the Company’s directors and, as nominal defendant, the Company in the United States District Court for the District of Maryland by Glenn Hutton, Civil Action Number 1:06-cv-02095-BEL (the “Hutton Action”). The lawsuit purported to be a shareholder derivative action. The lawsuit purported to make claims for various violations of state law that allegedly occurred from January 5, 2006 through August 11, 2006 (the “Relevant Period”). It sought on behalf of the Company against the directors unspecified damages, costs and attorneys’ fees.

On August 28, 2006, a lawsuit substantially similar to the Hutton Action was filed in the United States District Court for the District of Maryland by Robert Kemp, Civil Action Number 1:06-cv-02232-BEL (the “Kemp Action”). The Kemp Action was filed against the same defendants as those in the Hutton Action and purported to assert substantially the same claims and sought substantially the same relief.

On October 17, 2006, the Hutton Action and the Kemp Action were consolidated under the Hutton Action case number (1:06-cv-02095-BEL) and are now known as *In re Jos. A. Bank Clothiers, Inc. Derivative Litigation* (the “Derivative Action”). The Amended Shareholder Derivative Complaint in the Derivative Action was filed against the same defendants as those in the Hutton Action, extended the Relevant Period to October 20, 2006 and purports to assert substantially the same claims and seek substantially the same relief.

The Company's Motion to Dismiss the Derivative Action was granted on September 13, 2007. Among the reasons for dismissal was the failure of the plaintiff to demand that the Board of Directors pursue on behalf of the Company the claims alleged in the Derivative Action. By letter dated September 17, 2007, the plaintiff made such demand and the Board is developing an appropriate response. In addition, by letter dated November 27, 2007, the Company received from the Norfolk County Retirement System (Massachusetts) a demand pursuant to Section 220 of the Delaware General Corporation Law for inspection of certain of the Company's books and records for the purpose of investigating, among other matters, claims that appear substantially similar to those raised in the Derivative Action.

The resolution of the foregoing matters cannot be accurately predicted and there is no estimate of costs or potential losses, if any. Accordingly, the Company cannot determine whether its insurance coverage would be sufficient to cover such costs or potential losses, if any, and has not recorded any provision for loss associated with these actions. It is possible that the Company's consolidated financial statements could be materially impacted in a particular fiscal quarter or year by an unfavorable outcome or settlement of these actions.

From time to time, other legal matters in which the Company may be named as a defendant arise in the normal course of the Company's business activities. The resolution of these legal matters against the Company cannot be accurately predicted. The Company does not anticipate that the outcome of such matters will have a material adverse effect on the business, net assets or financial position of the Company.

## **8. RIGHTS AGREEMENT**

On September 6, 2007, the Company entered into a Rights Agreement (the "Rights Agreement") with Continental Stock Transfer & Trust Company, as rights agent (the "Rights Agent"). The Rights Agreement replaced and updated the Company's existing rights agreement which expired on September 19, 2007. The following description of the Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement which is included as Exhibit 4.1 to the Company's Current Report on Form 8-K filed on September 7, 2007, and incorporated herein by reference.

In connection with the Rights Agreement, the Company's Board of Directors declared a dividend distribution of one preferred share purchase right (a "Right") for each outstanding share of the Company's common stock, par value \$0.01 per share (the "Common Shares"). The dividend was paid on September 20, 2007 (the "Record Date") to the stockholders of record on that date. Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share of Series A Junior Participating Preferred Stock, par value \$1.00 per share (the "Preferred Shares"), at a price of \$200 per one one-hundredth of a Preferred Share (the "Purchase Price"), subject to adjustment. Each one one-hundredth of a Preferred Share has designations and powers, preferences and rights, and the qualifications, limitations and restrictions which make its value approximately equal to the value of a Common Share.

Until the earlier to occur of (i) 10 days following a public announcement that a person, entity or group of affiliated or associated persons have acquired beneficial ownership of 20% or more of the outstanding Common Shares (such person, entity or group, an "Acquiring Person") or (ii) 10 business days (or such later date as may be determined by action of the Company's Board of Directors prior to such time as any person or entity becomes an Acquiring Person) following the commencement of, or announcement of an intention to commence, a tender offer or exchange offer the consummation of which would result in any person, entity or group becoming an Acquiring Person (the earlier of such dates being called the "Distribution Date"), the Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the Record Date, by such Common Share certificate with or without a copy of the Summary of Rights to Purchase Preferred Shares, which is included in the Rights Agreement as Exhibit C thereof (the "Summary of Rights").

Until the Distribution Date, the Rights will be transferable with and only with the Common Shares. Until the Distribution Date (or earlier redemption or expiration of the Rights), new Common Share certificates issued after the Record Date, upon transfer or new issuance of Common Shares, will contain a notation incorporating the Rights Agreement by reference. Until the Distribution Date (or earlier redemption or expiration of the Rights), the surrender or transfer of any Common Share certificates outstanding as of the Record Date, even without such notation or a copy of the Summary of Rights being attached thereto, will also constitute the transfer of the Rights associated with the Common Shares represented by such certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights, substantially in the form included as Exhibit 4.2 to the Company's Current Report on Form 8-K filed on September 7, 2007 and incorporated herein by reference ("Right Certificates"), will be mailed to holders of record of the Common Shares as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire on September 20, 2017 (the "Final Expiration Date"), unless the Rights are earlier redeemed or exchanged by the Company, in each case, as described below.

The number of outstanding Rights and the number of one one-hundredths of a Preferred Share issuable upon exercise of each Right are also subject to adjustment in the event of a stock split of the Common Shares or a stock dividend on the Common Shares payable in Common Shares or subdivisions, consolidation or combinations of the Common Shares occurring, in any case, prior to the Distribution Date. The Purchase Price payable, and the number of Preferred Shares or other securities or other property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution as described in the Rights Agreement.

Preferred Shares purchasable upon exercise of the Rights will not be redeemable. Each Preferred Share will be entitled to a minimum preferential quarterly dividend payment of \$1.00 per share, when, as and if declared by the Company's Board of Directors, but will be entitled to an aggregate dividend of 100 times any dividend declared per Common Share. In the event of liquidation, the holders of the Preferred Shares would be entitled to a minimum preferential liquidation payment of \$100.00 per share, but would be entitled to receive an aggregate payment equal to 100 times the payment made per Common Share. Each Preferred Share will have 100 votes, voting together with the Common Shares. Finally, in the event of any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 100 times the amount of consideration received per Common Share. These Rights are protected by customary anti-dilution provisions. The Preferred Shares would rank junior to any other series of the Company's preferred stock.

In the event that any person, entity or group of affiliated or associated persons becomes an Acquiring Person, each holder of a Right, other than Rights beneficially owned by the Acquiring Person and its associates and affiliates (which will thereafter be void), will have the right to receive upon exercise that number of Common Shares having a market value of two times the exercise price of the Right (or, if such number of shares is not and cannot be authorized, the Company may issue Preferred Shares, cash, debt, stock or a combination thereof in exchange for the Rights).

Generally, under the Plan, an "Acquiring Person" will not be deemed to include (i) the Company, (ii) a subsidiary of the Company, (iii) any employee benefit or compensation plan of the Company or any subsidiary of the Company, or (iv) any entity holding Common Shares for or pursuant to the terms of any such employee benefit or compensation plan of the Company or any subsidiary of the Company.

In addition, except in certain circumstances as set forth in the Rights Agreement, no person will become an Acquiring Person (x) as the result of an acquisition of Common Shares by the Company which, by reducing the number of Common Shares issued and outstanding, increases the percentage of Common Shares beneficially owned by such person to 20% or more of the Common Shares then outstanding or (y) as the result of the acquisition of Common Shares directly from the Company; unless, in either case, such person thereafter acquires additional Common Shares without the Company's prior written consent.

In the event that the Company is acquired in a merger or other business combination transaction or 50% or more of its consolidated assets or earning power are sold to an Acquiring Person, its associates or affiliates or certain other persons, proper provision will be made so that each holder of a Right will thereafter have the right to receive, upon the exercise thereof at the then current exercise price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction will have a market value of two times the exercise price of the Right.

At any time after a person becomes an Acquiring Person and prior to the acquisition by such Acquiring Person of 50% or more of the outstanding Common Shares, the Company may exchange the Rights (other than Rights owned by such Acquiring Person or group which shall have become void), in whole or in part, at an exchange ratio of one Common Share per Right (or, at the election of the Company, the Company may issue cash, debt, stock or a combination thereof in exchange for the Rights), subject to adjustment.

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional Preferred Shares will be issued (other than fractions which are integral multiples of the number of one one-hundredths of a Preferred Share issuable upon the exercise of one Right, which may, at the Company's election, be evidenced by depositary receipts), and in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Shares on the last trading day prior to the date of exercise.

At any time prior to the earlier of (i) such time that a person has become an Acquiring Person or (ii) the Final Expiration Date, the Company may redeem all, but not less than all, of the outstanding Rights at a price of \$0.01 per Right (the "Redemption Price"). The Rights may also be redeemed at certain other times as described in the Rights Agreement. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

The terms of the Rights may be amended by the Company's Board of Directors without the consent of the holders of the Rights, except that from and after such time as the Rights become detached no such amendment may adversely affect the interest of the holders of the Rights other than the interests of an Acquiring Person or its affiliates or associates.

The Rights have certain anti-takeover effects. The Rights will cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by the Company's Board of Directors. The Rights should not interfere with any merger or other business combination approved by the Company's Board of Directors since the Rights may be amended to permit such acquisition or redeemed by the Company at the Redemption Price.

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

The following discussion should be read in conjunction with the unaudited condensed consolidated financial statements and notes thereto included in this Quarterly Report on Form 10-Q and with the Company's audited financial statements and notes thereto included in its Annual Report on Form 10-K for fiscal 2006.

**Overview** — For the third quarter of the Company's fiscal year ending February 2, 2008 ("fiscal 2007"), the Company's net income was \$7.1 million, as compared with net income of \$5.5 million for the third quarter of the Company's fiscal 2006. The Company earned \$0.38 per diluted share in the third quarter of fiscal 2007, as compared with \$0.30 per diluted share in the third quarter of fiscal 2006. As such, diluted earnings per share increased 27% as compared with the prior year period. The results of the third quarter of fiscal 2007 were primarily driven by:

- 9.9% increase in net sales over the third quarter of fiscal 2006, with increases in both the Stores and Direct Marketing segments;
- Gross profit margin increase of 310 basis points over the third quarter of fiscal 2006;
- As a percentage of net sales, a 60 basis point decrease in general and administrative expenses over the third quarter of fiscal 2006, primarily in corporate payroll and benefits costs;
- As a percentage of net sales, a 250 basis point increase in sales and marketing costs over the third quarter of fiscal 2006, primarily in store selling, advertising and occupancy costs; and
- The opening of 48 new stores, net of closing one store, since the end of the third quarter of fiscal 2006.

As of the end of the third quarter of fiscal 2007, the Company had 407 stores, which included 388 Company-owned full-line stores, seven Company-owned factory stores and 12 stores operated by franchisees. Management believes that the chain can grow to approximately 600 stores over the next five years. The Company plans to open approximately 50 stores in fiscal 2007, including the 32 stores opened in the first nine months of fiscal 2007. In the past six years, the Company has continued to increase its number of stores as infrastructure and performance have improved. As such, there were 21 new stores opened in the year ended February 2, 2002 ("fiscal 2001"), 25 new stores opened in fiscal 2002, 50 new stores opened in the year ended January 31, 2004 ("fiscal 2003"), 60 new stores opened in fiscal 2004, 56 new stores opened in fiscal 2005 and 52 new stores opened in fiscal 2006.

Capital expenditures in fiscal year 2007 are expected to be approximately \$30 — \$32 million in fiscal 2007, primarily to fund the opening of approximately 50 new stores, the renovation and/or relocation of several stores and the implementation of various systems initiatives. The capital expenditures include the cost of the construction of leasehold improvements, fixtures and equipment for new stores of which approximately \$11 — \$12 million is ultimately expected to be reimbursed through landlord contributions.

The Company also expects year-over-year inventories to increase in fiscal 2007 to support new store openings, the expansion of certain core products and sales growth in both the Company's Stores and Direct Marketing segments.

**Critical Accounting Policies and Estimates** — In preparing the Condensed Consolidated Financial Statements, a number of assumptions and estimates are made that, in the judgment of management, are proper in light of existing general economic and company-specific circumstances. For a detailed discussion on the application of these and other accounting policies, see Note 1 to the Consolidated Financial Statements in the Company's Annual Report on Form 10-K for fiscal 2006.

*Inventory.* The Company records inventory at the lower of cost or market ("LCM"). Cost is determined using the first-in, first-out method. The estimated market value is based on assumptions for future demand and related pricing. The Company reduces the carrying value of inventory to net realizable value where cost exceeds estimated selling price less costs of disposal.

Management's sales assumptions are based on the Company's experience that most of the Company's inventory is sold through the Company's primary sales channels with virtually no inventory being liquidated through bulk sales to third parties. In the past, the Company's LCM reserve estimates for inventory have been very reliable as a significant portion of its sales (over two-thirds in fiscal 2006) are classic traditional products that are on-going programs and that bear low risk of write-down. These products include items such as navy and gray suits, navy blazers, and white and blue dress shirts, etc. The portions of products that have fashion elements are monitored closely to ensure that aging goals are achieved to limit the need to sell significant amounts of product below cost. In addition, the Company's strong gross profit margins enable the Company to sell substantially all of its products at levels above cost.

To calculate the estimated market value of its inventory, the Company periodically performs a detailed review of all of its major inventory classes and stock-keeping units and performs an analytical evaluation of aged inventory on a quarterly basis. Semi-annually, the Company compares the on-hand units and season-to-date unit sales (including actual selling prices) to the sales trend and estimated prices required to sell the units in the future, which enables the Company to estimate the amount which may have to be sold below cost. The units sold below cost are sold in the Company's factory stores, through the Internet website or on clearance at the retail stores, typically within twenty-four months of the Company's purchase of these units. The Company's costs in excess of selling price for units sold below cost totaled \$1.9 million and \$1.3 million in fiscal 2005 and fiscal 2006, respectively. The Company has a reserve against its current inventory value for product in its inventory as of the end of the fiscal period that may be sold below its cost in future periods. If the amount of inventory which is sold below its cost differs from the estimate, the Company's inventory valuation reserve could change.

*Asset Valuation.* Long-lived assets, such as property, plant and equipment subject to depreciation, are reviewed for impairment to determine whether events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset. The asset valuation estimate is principally dependent on the Company's ability to generate profits at both the Company and store levels. These levels are principally driven by the sales and gross profit trends that are closely monitored by the Company. There were no asset valuation charges in either the first nine months of fiscal 2006 or the first nine months of fiscal 2007.

*Lease Accounting.* The Company uses a consistent lease period (generally, the initial non-cancelable lease term plus renewal option periods provided for in the lease that can be reasonably assured) when calculating depreciation of leasehold improvements and in determining straight-line rent expense and classification of its leases as either an operating lease or a capital lease. The lease term and straight-line rent expense commences on the date when the Company takes possession and has the right to control use of the leased premises. Funds received from the lessor intended to reimburse the Company for the costs of leasehold improvements are recorded as a deferred credit resulting from a lease incentive and amortized over the lease term as a reduction to rent expense.

While the Company has taken reasonable care in preparing these estimates and making these judgments, actual results could and probably will differ from the estimates. Management believes any difference in the actual results from the estimates will not have a material effect upon the Company's financial position or results of operations.

*Recently Issued Accounting Standards* — In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," which defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles, and expands disclosures about fair value measurements. SFAS No. 157 does not require any new fair value measurements, but provides guidance on how to measure fair value by providing a fair value hierarchy used to classify the source of the information. This statement is effective for the Company's fiscal year beginning February 3, 2008. The Company is currently assessing the impact, if any, of this statement on its consolidated financial statements.

In February 2007, the FASB issued SFAS 159, which permits entities to choose to measure many financial instruments and certain other assets and liabilities at fair value on an instrument-by-instrument basis (the fair value option). SFAS 159 becomes effective for the Company on February 3, 2008. The Company is currently assessing the impact, if any, of this statement on its consolidated financial statements.

Effective February 4, 2007, the Company adopted EITF 06-3. The EITF reached a consensus that a company should disclose its accounting policy (i.e., gross or net presentation) regarding presentation of taxes within the scope of EITF 06-3. If taxes included in gross revenues are significant, a company should disclose the amount of such taxes for each period for which an income statement is presented. The Company conforms to a net presentation on its consolidated financial statements.

**Results of Operations**

The following table is derived from the Company's Condensed Consolidated Statements of Income and sets forth, for the periods indicated, the items included in the Condensed Consolidated Statements of Income expressed as a percentage of net sales.

	<u>Percentage of Net Sales Three Months Ended</u>		<u>Percentage of Net Sales Nine Months Ended</u>	
	<u>October 28, 2006</u>	<u>November 3, 2007</u>	<u>October 28, 2006</u>	<u>November 3, 2007</u>
Net sales	100.0%	<b>100.0%</b>	100.0%	<b>100.0%</b>
Cost of goods sold	39.4	<b>36.3</b>	38.5	<b>37.1</b>
Gross profit	60.6	<b>63.7</b>	61.5	<b>62.9</b>
General and administrative expenses	10.5	<b>9.9</b>	10.6	<b>10.0</b>
Sales and marketing expenses	42.5	<b>45.0</b>	41.9	<b>43.0</b>
Operating income	7.6	<b>8.8</b>	9.0	<b>9.8</b>
Interest income (expense), net	(0.3)	<b>0.2</b>	(0.3)	<b>0.3</b>
Income before provision for income taxes	7.2	<b>9.0</b>	8.7	<b>10.1</b>
Provision for income taxes	2.6	<b>3.6</b>	3.5	<b>4.1</b>
Net income	4.6	<b>5.4</b>	5.2	<b>6.0</b>

**Net Sales** — Net sales increased 9.9% or \$11.8 million to \$131.3 million in the third quarter of fiscal 2007, as compared with \$119.5 million in the third quarter of fiscal 2006. Net sales for the first nine months of fiscal 2007 increased 12.2% to \$395.1 million, as compared with \$352.3 million in the first nine months of fiscal 2006. The sales increases were primarily related to a) increases in Store sales, including comparable store sales increases of 3.1% for both the third quarter and first nine months of fiscal 2007 and b) Direct Marketing sales increases of approximately 1.8% and 14.3% for the third quarter and first nine months of fiscal 2007, respectively. Substantially all major product categories generated sales increases in the first nine months of fiscal 2007, led by sales of suits, shirts and neckwear.

For comparable stores, average dollars per transaction increased in the third quarter of fiscal 2007, while traffic (as measured by transactions) and items per transaction decreased, as compared with the third quarter of fiscal 2006. For the first nine months of fiscal 2007, traffic increased while average dollars and items per transaction decreased, as compared with the first nine months of fiscal 2006

The following table summarizes store opening and closing activity during the respective periods.

	Three Months Ended				Nine Months Ended			
	October 28, 2006		November 3, 2007		October 28, 2006		November 3, 2007	
	Stores	Square Feet*	Stores	Square Feet*	Stores	Square Feet*	Stores	Square Feet*
Stores open at the beginning of the period	340	1,603	391	1,804	324	1,543	376	1,745
Stores opened	19	80	16	68	35	140	32	135
Stores closed	—	—	—	—	—	—	(1)	(8)
Stores open at the end of the period	<u>359</u>	<u>1,683</u>	<u>407</u>	<u>1,872</u>	<u>359</u>	<u>1,683</u>	<u>407</u>	<u>1,872</u>

\* Square feet is presented in thousands and excludes the square footage of the Company's franchise stores. Square feet amounts reflect reductions to square footage due to renovations or relocations.

**Gross profit** — Gross profit (net sales less cost of goods sold) totaled \$83.6 million or 63.7% of net sales in the third quarter of fiscal 2007, as compared with \$72.5 million or 60.6% of net sales in the third quarter of fiscal 2006. For the first nine months of fiscal 2007 gross profit totaled \$248.5 million or 62.9% of net sales, as compared with \$216.5 million or 61.5% of net sales for the same period of fiscal 2006. Gross profit margins increased in substantially all major product categories in the third quarter and substantially all major categories except sportswear in the first nine months of fiscal 2007, as compared with the third quarter and first nine months of fiscal 2006.

The Company's gross profit classification may not be comparable to the classification used by certain other entities. Some entities include distribution costs (including depreciation), store occupancy, buying and other costs in cost of goods sold. Other entities (including the Company) exclude such costs from gross profit, including them instead in general and administrative and/or sales and marketing expenses.

**Sales and Marketing Expenses** — Sales and marketing expenses increased to \$59.1 million or 45.0% of sales in the third quarter of fiscal 2007 from \$50.8 million or 42.5% of sales in the third quarter of fiscal 2006. Sales and marketing expenses increased to \$170.0 million or 43.0% of sales in the first nine months of fiscal 2007 from \$147.5 million or 41.9% of sales in the first nine months of fiscal 2006. Sales and marketing expenses consist primarily of a) Stores, factory store and Direct Marketing occupancy, payroll, selling and other variable costs and b) total Company advertising and marketing expenses.

The increase in sales and marketing expenses relates primarily to the opening of 48 new stores, net of closing one store, since the end of the third quarter of fiscal 2006 and consists of a) \$3.2 million and \$9.4 million for the third quarter and first nine months of fiscal 2007, respectively, related to additional occupancy costs, b) \$2.7 million and \$6.9 million for the third quarter and first nine months of fiscal 2007, respectively, related to additional store employee compensation costs, and c) \$2.4 million and \$6.2 million for the third quarter and first nine months of fiscal 2007, respectively, of additional other variable selling costs (relating primarily to increases in advertising of \$1.7 million and \$3.8 million in the third quarter and first nine months of fiscal 2007, respectively). The Company expects sales and marketing expenses to continue to increase for the remainder of fiscal 2007 as compared to fiscal 2006 primarily as a result of opening new stores, the full year operation of stores that were opened during fiscal 2006, and an increase in advertising expenditures.

**General and Administrative Expenses** — General and administrative expenses ("G&A"), which consist primarily of corporate payroll costs (including all annual incentive compensation) and overhead and distribution center costs, increased \$0.4 million and \$2.4 million in the third quarter and the first nine months of fiscal 2007, respectively, as compared with the same respective periods of fiscal 2006. The increase for the third quarter of fiscal 2007 was primarily due to increases in corporate payroll and travel costs, as compared to the third quarter of fiscal 2006 due to growth in the Stores and Direct Marketing segments. The increase for the first nine months of fiscal 2007 was primarily due to increases in corporate payroll, benefits and travel costs as compared to prior year period. Continued growth in the Stores and Direct Marketing segments may result in further increases in G&A expenses.

**Other Income (Expense)** — Other income (expense) increased to \$0.3 million and \$1.1 million in the third quarter and first nine months of fiscal 2007, respectively, as compared with \$(0.4) million and \$(1.0) million in the third quarter and first nine months of fiscal 2006. The change was due primarily to a \$0.4 million and \$1.3 million increase in interest income earned on higher average cash and cash equivalent balances in the third quarter and first nine months of fiscal 2007, respectively, as compared with the same periods of fiscal 2006. In addition, interest expense decreased \$0.3 million and \$0.8 million during the third quarter and first nine months of fiscal 2007, respectively, as a result of the Company having no revolver loan borrowings. In contrast, revolver loan borrowings averaged \$14.7 million and \$8.4 million for the third quarter and first nine months of fiscal 2006, respectively, with an average interest rate (excluding unused line fees) of 6.8%, for both periods.

**Income Taxes** — The effective income tax rate for the first nine months of fiscal 2007 was 40.7% as compared with 40.5% in the first nine months of fiscal 2006. The rate for fiscal 2007 benefited from increased profitability in 2007 which provided greater leverage against certain non-deductible expenses as compared to fiscal 2006. That benefit was not as significant, however, as the effect on the rate for fiscal 2006 resulting from the settlement of certain income tax matters.

**Seasonality** — The Company’s net sales, net income and inventory levels fluctuate on a seasonal basis and therefore the results for one quarter are not necessarily indicative of the results that may be achieved for a full fiscal year. The increased traffic during the holiday season and the Company’s increased marketing efforts during this peak selling time have resulted in profits generated during the fourth quarter becoming a larger portion of annual profits. Seasonality is also impacted by growth as more new stores are opened in the second half of the year. During the fourth quarters of fiscal years 2004, 2005 and 2006, the Company generated approximately 51%, 53% and 58%, respectively, of its annual net income.

**Liquidity and Capital Resources** — The Company maintains a bank credit agreement (“Credit Agreement”), which provides for a revolving loan whose limit is determined by a formula based on the Company’s inventories and accounts receivable. The Credit Agreement allows the Company to borrow a maximum revolving amount under the facility up to \$100 million. In addition, the Company has the option to increase the amount which may be borrowed to \$125 million if requested prior to April 29, 2008, if needed and if supported by its borrowing base formula under the Credit Agreement. Interest rates under the Credit Agreement vary with the prime rate or LIBOR and may include a spread over or under the applicable rate. The spreads, if any, are based upon the Company’s excess availability from time to time. Aggregate borrowings are secured by substantially all assets of the Company with the exception of its distribution center and certain equipment.

Under the provisions of the Credit Agreement, the Company must comply with certain covenants if the availability under the line of credit in excess of outstanding borrowings is less than \$7.5 million. The covenants include a minimum earnings before interest, taxes, depreciation and amortization (“EBITDA”), limitations on capital expenditures and additional indebtedness, and restrictions on cash dividend payments. There were no revolving loan borrowings outstanding under the Credit Agreement as of November 3, 2007, while revolving loan borrowings outstanding at October 28, 2006 were \$16.7 million. Additionally, the Company had \$0.4 million of term debt as of November 3, 2007 compared to \$5.5 million of term debt as of October 28, 2006.

The Company’s availability in excess of outstanding borrowings, as supported by the existing borrowing base under its Credit Agreement, was \$99.6 million at both November 3, 2007 and February 3, 2007.

The following table summarizes the Company’s sources and uses of funds as reflected in the Condensed Consolidated Statements of Cash Flows (in thousands):

	<u>Nine Months Ended</u>	
	<u>October 28, 2006</u>	<u>November 3, 2007</u>
Cash provided by (used in):		
Operating activities	\$ (13,265)	\$ 73
Investing activities	(20,322)	(19,221)
Financing activities	27,797	2,676
Net decrease in cash and cash equivalents	<u>\$ (5,790)</u>	<u>\$ (16,472)</u>

The Company's cash balance was \$26.6 million at November 3, 2007, as compared with \$1.6 million at October 28, 2006. In addition, the Company has \$0.4 million of outstanding debt at November 3, 2007, as compared with \$22.2 million at October 28, 2006. Cash was \$43.1 million at the beginning of fiscal 2007 and the significant changes through November 3, 2007 are discussed below.

Cash provided by the Company's operating activities in the first nine months of fiscal 2007 was primarily impacted by net income of \$23.7 million and depreciation and amortization of \$13.8 million, offset by an increase in operating working capital of \$36.5 million. The increase in operating working capital included an increase of \$41.6 million in inventories primarily related to the new store growth and the expansion of certain core products during fiscal 2007. In addition, the increase in operating working capital included a reduction of accrued expenses of \$7.3 million related primarily to the payment of incentive compensation and taxes that had been accrued at the end of fiscal 2006 and an increase in accounts receivable of \$5.2 million primarily due to higher credit card receivables from increased sales near the end of the third quarter of fiscal 2007 as compared with the fourth quarter of fiscal 2006. Cash used in investing activities in the first nine months of 2007 relates primarily to payments for capital expenditures for new stores, information systems and renovated stores. Cash provided by financing activities for the first nine months of fiscal 2007 relates to net proceeds from the exercise of stock options (including the related tax benefits).

For fiscal 2007, the Company expects to spend approximately \$30 — \$32 million on capital expenditures, primarily to fund the opening of approximately 50 new stores, the renovation and/or relocation of several stores and the implementation of various systems initiatives. The Company spent \$19.5 million on capital expenditures in the first nine months of fiscal 2007. The capital expenditures include the cost of the construction of leasehold improvements, fixtures and equipment for new and renovated stores, of which approximately \$11 — \$12 million is ultimately expected to be reimbursed through landlord contributions. These amounts are typically paid by the landlords after the completion of construction by the Company and the receipt of appropriate lien waivers from contractors. For the stores opened and renovated in fiscal 2006, the Company negotiated approximately \$12.1 million of landlord contributions, of which approximately \$10.9 million have been collected, including approximately \$6.4 million which was collected in the first nine months of fiscal 2007. The majority of the remaining amount is expected to be received by the end of the first quarter of fiscal 2008. For the stores opened in the first nine months of fiscal 2007, the Company negotiated approximately \$8.6 million of landlord contributions, of which the majority is expected to be received over the next twelve months. Management believes that the Company's cash from operations, existing cash and cash equivalents and availability under its Credit Agreement will be sufficient to fund its planned capital expenditures and operating expenses through at least the next twelve months.

**Rights Agreement** — On September 6, 2007, the Company entered into a Rights Agreement with Continental Stock Transfer & Trust Company, as rights agent, to replace and update the Company's existing rights agreement which expired on September 19, 2007. See "Note 8 — Rights Agreement" of the consolidated financial statements contained herein.

**Off-Balance Sheet Arrangements** — The Company has no off-balance sheet arrangements other than its operating lease agreements and letters of credit outstanding as discussed below.

#### **Disclosures about Contractual Obligations and Commercial Commitments**

The Company's principal commitments are non-cancelable operating leases in connection with its retail stores, certain tailoring facilities and equipment. The majority of the store lease agreements include provisions for base annual rent and other lease costs, such as common area maintenance and other miscellaneous variable costs. Under the terms of certain leases, the Company is required to pay a base annual rent, plus a contingent amount based on sales ("contingent rent"). In addition, many of these leases include scheduled rent increases. Base annual rent and scheduled rent increases are included in the contractual obligations table below for operating leases, as these are only rent-related commitments that are determinable at this time.

The following table reflects a summary of the Company's contractual cash obligations and other commercial commitments for the periods indicated, including amounts paid in the first nine months of fiscal 2007.

	<b>Payments Due by Fiscal Year</b>				<b>Total (d)</b>
	<b>(in thousands)</b>				
	<b>2007</b>	<b>2008-2010</b>	<b>2011-2012</b>	<b>Beyond 2012</b>	
Long-term debt	\$ —	\$ 421	\$ —	\$ —	\$ 421
Operating leases(a) (b)	45,922	140,172	82,568	105,625	374,287
Stand-by letter-of-credit(c)	—	400	—	—	400
License agreement	165	495	—	—	660

- (a) Includes various lease agreements for stores to be opened and equipment placed in service subsequent to November 3, 2007. See Note 9 to the Consolidated Financial Statements in the Company's Annual Report on Form 10-K for fiscal 2006.
- (b) Excludes contingent rent and other lease costs.
- (c) To secure the payment of rent at one leased location included in "Operating Leases" above and is renewable each year through the end of the lease term (2009).
- (d) Obligations related to unrecognized tax benefits of \$0.8 million have been excluded from the above table as the amount to be settled in cash and the specific payment dates are not known.

**Cautionary Statement**

This Quarterly Report on Form 10-Q includes and incorporates by reference certain statements that may be deemed to be forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for certain forward-looking statements so long as such information is identified as forward-looking and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those projected in the information. When used in this Quarterly Report on Form 10-Q, the words "estimate," "project," "plan," "will," "anticipate," "expect," "intend," "outlook," "may," "believe," and other similar expressions are intended to identify forward-looking statements and information.

Actual results may differ materially from those forecast due to a variety of factors outside of the Company's control that can affect the Company's operating results, liquidity and financial condition. Such factors include risks associated with economic, weather, public health and other factors affecting consumer spending, higher energy and security costs, the successful implementation of the Company's growth strategy, including the ability of the Company to finance its expansion plans, the mix and pricing of goods sold, the effectiveness and profitability of new concepts, the market price of key raw materials such as wool and cotton, seasonality, fashion trends and changing consumer preferences, the effectiveness of the Company's marketing programs, the availability of lease sites for new stores, the ability to source product from its global supplier base, litigations and other competitive factors as described under the caption "Item 1A. Risk Factors" in the Company's Annual Report on Form 10-K for fiscal 2006. These cautionary statements qualify all of the forward-looking statements the Company makes herein. The Company cannot assure you that the results or developments anticipated by the Company will be realized or, even if substantially realized, that those results or developments will result in the expected consequences for the Company or affect the Company, its business or its operations in the way the Company expects. The Company cautions you not to place undue reliance on these forward-looking statements, which speak only as of their respective dates. The Company does not undertake an obligation to update or revise any forward-looking statements to reflect actual results or changes in the Company's assumptions, estimates or projections. The identified risk factors and others are more fully described under the caption "Item 1A. Risk Factors" in Part I of the Company's Annual Report on Form 10-K for fiscal 2006. Also see "Item 1A. Risk Factors" in Part II of this report.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

At November 3, 2007, the Company was not a party to any derivative financial instruments. In addition, the Company does not believe it is materially at risk for changes in market interest rates or foreign currency fluctuations. The Company's interest on borrowings under its Credit Agreement is at a variable rate based on the prime rate or LIBOR, and may include a spread over or under the applicable rate.

### **Item 4. Controls and Procedures**

*Limitations on Controls and Procedures and Changes in Internal Control Over Financial Reporting.* Because of their inherent limitations, disclosure controls and procedures and internal control over financial reporting (collectively, "Control Systems") may not prevent or detect all failures or misstatements of the type sought to be avoided by Control Systems. Also, projections of any evaluation of the effectiveness of the Company's Control Systems to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Management, including the Company's Chief Executive Officer (the "CEO") and Chief Financial Officer (the "CFO"), does not expect that the Company's Control Systems will prevent all errors or all fraud. A Control System, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the Control System are met. Further, the design of a Control System must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all Control Systems, no evaluation can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. The following reports by management, including the CEO and CFO, on the effectiveness of the Company's Control Systems express only reasonable assurance of the conclusions reached.

*Disclosure Controls and Procedures.* The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

Management, with the participation of the CEO and CFO, has evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a — 15(e) and 15d — 15(e) of the Exchange Act) as of November 3, 2007. Based on that evaluation, the CEO and CFO have concluded that the Company's disclosure controls and procedures were effective as of November 3, 2007.

*Changes in Internal Control over Financial Reporting.* During the quarter ended November 3, 2007, the Company implemented a new financial reporting software system. Other than the implementation of this new financial reporting system, there were no changes in the Company's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Rule 13a-15 of the Exchange Act that occurred during the fiscal quarter covered by this report that 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**

On July 24, 2006, a lawsuit was filed against the Company and Robert N. Wildrick, the Company's Chief Executive Officer, in the United States District Court for the District of Maryland by Roy T. Lefkoe, Civil Action Number 1:06-cv-01892-WMN (the "Class Action"). On August 3, 2006, a lawsuit substantially similar to the Class Action was filed in the United States District Court for the District of Maryland by Tewas Trust UAD 9/23/86, Civil Action Number 1:06-cv-02011-WMN (the "Tewas Trust Action"). The Tewas Trust Action was filed against the same defendants as those in the Class Action and purported to assert the same claims and seek the same relief. On November 20, 2006, the Class Action and the Tewas Trust Action were consolidated under the Class Action case number (1:06-cv-01892-WMN) and the Tewas Trust Action was administratively closed.

Massachusetts Labor Annuity Fund has been appointed the lead plaintiff in the Class Action and has filed a Consolidated Class Action Complaint. R. Neal Black, the Company's President, and David E. Ullman, the Company's Executive Vice President and Chief Financial Officer, have been added as defendants. On behalf of purchasers of the Company's stock between December 5, 2005 and June 7, 2006 (the "Class Period"), the Class Action purports to make claims under Sections 10(b) and 20(a) and Rule 10b-5 of the Securities Exchange Act of 1934, based on the Company's disclosures during the Class Period. The Class Action seeks unspecified damages, costs, and attorneys' fees. The Company's Motion to Dismiss the Class Action was not granted. The Company intends to defend vigorously the Class Action.

On August 11, 2006, a lawsuit was filed against the Company's directors and, as nominal defendant, the Company in the United States District Court for the District of Maryland by Glenn Hutton, Civil Action Number 1:06-cv-02095-BEL (the "Hutton Action"). The lawsuit purported to be a shareholder derivative action. The lawsuit purported to make claims for various violations of state law that allegedly occurred from January 5, 2006 through August 11, 2006 (the "Relevant Period"). It sought on behalf of the Company against the directors unspecified damages, costs and attorneys' fees.

On August 28, 2006, a lawsuit substantially similar to the Hutton Action was filed in the United States District Court for the District of Maryland by Robert Kemp, Civil Action Number 1:06-cv-02232-BEL (the "Kemp Action"). The Kemp Action was filed against the same defendants as those in the Hutton Action and purported to assert substantially the same claims and sought substantially the same relief.

On October 17, 2006, the Hutton Action and the Kemp Action were consolidated under the Hutton Action case number (1:06-cv-02095-BEL) and are now known as *In re Jos. A. Bank Clothiers, Inc. Derivative Litigation* (the "Derivative Action"). The Amended Shareholder Derivative Complaint in the Derivative Action was filed against the same defendants as those in the Hutton Action, extended the Relevant Period to October 20, 2006 and purports to assert substantially the same claims and seek substantially the same relief.

The Company's Motion to Dismiss the Derivative Action was granted on September 13, 2007. Among the reasons for dismissal was the failure of the plaintiff to demand that the Board of Directors pursue on behalf of the Company the claims alleged in the Derivative Action. By letter dated September 17, 2007, the plaintiff made such demand and the Board is developing an appropriate response. In addition, by letter dated November 27, 2007, the Company received from the Norfolk County Retirement System (Massachusetts) a demand pursuant to Section 220 of the Delaware General Corporation Law for inspection of certain of the Company's books and records for the purpose of investigating, among other matters, claims that appear substantially similar to those raised in the Derivative Action.

The resolution of the foregoing matters cannot be accurately predicted and there is no estimate of costs or potential losses, if any. Accordingly, the Company cannot determine whether its insurance coverage would be sufficient to cover such costs or potential losses, if any, and has not recorded any provision for loss associated with these actions. It is possible that the Company's consolidated financial statements could be materially impacted in a particular fiscal quarter or year by an unfavorable outcome or settlement of these actions.

From time to time, other legal matters in which the Company may be named as a defendant arise in the normal course of the Company's business activities. The resolution of these legal matters against the Company cannot be accurately predicted. The Company does not anticipate that the outcome of such matters will have a material adverse effect on the business, net assets or financial position of the Company.

**Item 1A. Risk Factors**

In addition to the other information set forth in this report, you should carefully consider the factors discussed under the caption “Item 1A. Risk Factors” in the Company’s Annual Report on Form 10-K for fiscal 2006, which could materially affect the Company’s business, financial condition or future results. The risks described in the Company’s Annual Report on Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to the Company or that the Company currently deems to be immaterial also could materially adversely affect the Company’s business, financial condition and/or operating results. There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K for fiscal 2006.

**Item 6. Exhibits**

Exhibits

- 4.1 Rights Agreement dated as of September 6, 2007 between Jos. A. Bank Clothiers, Inc. and Continental Stock Transfer & Trust Company.\*<sup>(1)</sup>
- 4.2 Form of Right Certificate.\*<sup>(1)</sup>
- 31.1 Certification of Principal Executive Officer pursuant to Rule 13a-14 or 15d-14(a).
- 31.2 Certification of Principal Financial Officer pursuant to Rule 13a-14 or 15d-14(a).
- 32.1 Certification by Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification by Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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\*<sup>(1)</sup> Incorporated by reference to the Company’s Current Report on Form 8-K, dated September 7, 2007.

**SIGNATURE**

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.

Dated: December 13, 2007

Jos. A. Bank Clothiers, Inc.  
(Registrant)

/s/ David E. Ullman  
David E. Ullman  
Executive Vice President,  
Chief Financial Officer  
(Principal Financial and Accounting Officer  
and Duly Authorized Officer)

**Exhibit Index**

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\*<sup>(1)</sup> Incorporated by reference to the Company's Current Report on Form 8-K, dated September 7, 2007.

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

I, Robert N. Wildrick, certify that:

1. I have reviewed this report on Form 10-Q of Jos. A. Bank Clothiers, 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 control 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: December 13, 2007

/s/ Robert N. Wildrick

Robert N. Wildrick  
Executive Chairman, Chief Executive Officer and  
Director

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

I, David E. Ullman, certify that:

1. I have reviewed this report on Form 10-Q of Jos. A. Bank Clothiers, 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 control 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: December 13, 2007

/s/ David E. Ullman

David E. Ullman  
Chief Financial Officer

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 906 OF THE  
SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Jos. A. Bank Clothiers, Inc. (the "Company") on Form 10-Q for the period ended November 3, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert N. Wildrick, Chief Executive 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 to the best of my knowledge:

(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.

December 13, 2007

/s/ Robert N. Wildrick

Robert N. Wildrick  
Executive Chairman, Chief Executive Officer and  
Director

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 906 OF THE  
SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Jos. A. Bank Clothiers, Inc. (the "Company") on Form 10-Q for the period ended November 3, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David E. Ullman, Chief Financial 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 to the best of my knowledge:

(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.

December 13, 2007

/s/ David E. Ullman

David E. Ullman  
Chief Financial Officer