

TURBOCHEF TECHNOLOGIES INC

Form 10-K/A

December 06, 2004

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

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**Form 10-K/A**  
**Amendment No. 1**

**For Annual and Transition Reports pursuant to Sections 13 or**  
**15(d) of the Securities Exchange Act of 1934**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
**For the Fiscal Year Ended December 31, 2002**

**OR**

☐ **TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
**For the transition period from**

**to**

**Commission File Number 0-23478**

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**TurboChef Technologies, Inc.**

(Exact name of Registrant as specified in its Charter)

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**DELAWARE**  
(State or other jurisdiction of  
incorporation or organization)

**48-1100390**  
(IRS employer identification number)

**10500 Metric Drive, Suite 128 Dallas, Texas**  
(Address of principal executive offices)

**75243**  
(Zip Code)

**Registrant's telephone number, including area code:**

**(214) 379-6000**

**SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE EXCHANGE ACT:**

<b>Title of Each Class</b>	<b>Name of Each Exchange on Which Registered</b>
None	None

**SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE EXCHANGE ACT:**

**Common Stock, \$0.01 Par Value**

(Title of Class)

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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 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 Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the Registrant is an accelerated filer (as defined in rule 12b-2 of the Securities and Exchange Act of 1934). Yes ☐ No ☒

Aggregate Market Value of voting stock held by non-affiliates of the Registrant at

June 28, 2002: (the last business date of the Registrants most recently completed second fiscal quarter) \$32,512,451

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Indicate the number of shares outstanding of each of the Registrant's classes of Common Stock, as of the latest practicable date.

<u>Title of Each Class</u>	<u>Number of Shares Outstanding at April 11, 2003</u>
Common Stock, \$0.01 Par Value	19,419,240

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EXPLANATORY NOTE

This annual report on Form 10-K/A amends our original annual report on Form 10-K for the year ended December 31, 2002 as of the date of its original filing on April 16, 2003. We are amending and restating our original annual report on Form 10-K in its entirety to correct an error in reported financial results resulting from an oversight in applying offers contained in certain correspondence from 2002 pertaining to two significant sales transactions initiated at that time. This error resulted in recognition of revenue in 2002 and in 2003 that more properly has now been deferred to future periods.

This amended Annual Report on Form 10-K/A for the year ended December 31, 2002 reflects restatements of the following financial statements: (a) balance sheet as of December 31, 2002; (b) statement of operations for the year ended December 31, 2002; (c) statement of stockholders equity for the year ended December 31, 2002; and (d) statement of cash flows for the year ended December 31, 2002. For a more detailed description of the restatements made to the financial statements, see Note 1 Restatement of Financial Statements. Additionally, we have made the appropriate corresponding changes to Item 1 Business; Item 6 Selected Financial Data; Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations; Item 14 Controls and Procedures; and Note 14 Quarterly Financial Information (Unaudited) to the accompanying notes to the financial statements.

This amended Annual Report on Form 10-K/A speaks as of the end of our fiscal year 2002 as required by Form 10-K or as of the date of filing the original Form 10-K. Except as described for financial information, it does not update any of the statements contained therein. This Annual Report on Form 10-K/A contains forward looking statements that were made at the time the original Annual Report on Form 10-K was filed on April 16, 2003. It is subject to the factors described in Item 1 Business Risk Factors and must be considered in light of any subsequent statements, including forward looking statements, in any reports made by the Company subsequent to the filing of the original Form 10-K, including statements made in filings on Form 8-K.

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**Part I**

**Forward-looking Statements**

Certain statements in this Form 10-K constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of TurboChef Technologies, Inc. to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the following: the ability to obtain additional financing necessary to continue operations; the likelihood of incurring future losses; the uncertainty regarding the Company's ability to comply with the continued listing criteria necessary to maintain the listing of its common stock on NASDAQ; the Company's significant purchase commitments; the effect of the long manufacturing cycle on cash flow; the uncertainty of the outcome of the arbitration proceeding with Maytag; the uncertainty of consumer acceptance of new products or technologies that may be offered by TurboChef; the success of the Company's marketing strategy; the uncertainty inherent in new product development; potential liability for personal injury or property damage; the need to hire and retain key personnel; relationships with and dependence on third-party equipment manufacturers and suppliers; uncertainties relating to business and economic conditions in markets in which TurboChef operates; changing technologies and evolving industry standards; regulatory compliance burdens; the highly competitive environment in which TurboChef operates; competition in the markets served by TurboChef; uncertainties inherent in international manufacturing and sales including foreign currency fluctuations; uncertainty regarding strategic relationships and alliances and the ability to protect TurboChef's proprietary information. The words believe, expect, anticipate, intend and plan and similar expressions identify forward-looking statements. Readers are cautioned not to place undue reliance on any of these forward-looking statements, which speak only as of the date of the statement was made. TurboChef undertakes no obligation to update any forward-looking statement.

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**Item 1. Business**

**General**

TurboChef Technologies, Inc. ( "TurboChef" or the Company ) is engaged primarily in designing, developing and marketing its proprietary rapid cook technologies. TurboChef's proprietary rapid cook oven, which requires no ventilation, employs a combination of high speed forced air and microwave energy to cook-to-order a variety of food products at faster speeds and to quality standards comparable, and in many instances superior to, other conventional commercial and residential ovens currently available.

TurboChef was incorporated under the laws of the State of Delaware in April 3, 1991. The Company's principal executive offices are located at 10500 Metric Drive, Suite 128, Dallas, Texas 75243, and its telephone number is (214) 379-6000.

The Company's commercial oven employs the Company's proprietary cooking technologies to quickly, efficiently and evenly transfer, disperse and control the heat used in the cooking process. In addition, because of the TurboChef oven's moisture retention, browning, crisping and toasting capabilities, the Company believes that the characteristics of most food items cooked in a TurboChef cooking system (including their flavor, texture and appearance) are superior in quality to those achieved using most other cooking methods.

The Company believes its technology offers the following unique features to its customers:

Cooking speeds 5-10 times faster than a conventional oven

Quality is equal to or higher than a conventional oven

Maintains high consistency of cooked product

Versatility of cooking platform (bake, broil, grill, air fried, poached and steamed cooking profiles)

Ventless operation

Through the Company's Menu in a Minute software technology, the menus and cook settings can be easily changed with minimal labor cost

Through these unique features, the oven offers food service operators the ability to address many of the fundamental issues confronting the food service industry, namely slow top line revenue growth, weak return on average equity, a shortage of qualified labor and food waste.

The Company launched the current version of its commercial oven, the TurboChef C-3, in the second quarter of 2000. To date, the TurboChef C-3 rapid oven has provided cooking solutions to various quick service restaurants, convenience stores, hotels and traditional restaurants in the United Kingdom, Europe and the United States. In addition, the Company has provided cooking solutions to non-traditional operators in the food service business such as stadiums, movie theaters and service stations. As of March 1, 2003, there are approximately 1,050 C-3 ovens operating in the United Kingdom and Europe and approximately 1,125 C-3 ovens in the United States, Canada and Puerto Rico.





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The Company currently sells its C-3 oven primarily through a direct sales force in North America and through equipment distributors in the United Kingdom and Europe. Until May 2001, the Company's C-3 ovens were marketed in the United States through the Maytag Corporation ( Maytag ) and its subsidiary the G. S. Blodgett Corporation ( Blodgett ) pursuant to the terms of a series of agreements in which the Company granted them the exclusive right to sell its C-3 ovens in North America. Under the agreements the Company retained the right to sell directly outside of North America, with the exception of selling to U.S. based customers overseas. In the first quarter of 2001, the Company and Maytag entered into arbitration with respect to certain disputes under the agreements which arbitration is pending. (See Item 3: Legal Proceedings). In May 2001, the Company regained from Maytag and Blodgett the right to sell its C-3 ovens products directly in the United States and began building its own sales force to make direct oven sales. The Company's primary sales office is located in Dallas, Texas. In addition, the Company has a sale office in the Netherlands.

In addition to its direct sales force, the Company is seeking to develop multiple distribution channels through the use of third-party distributors, manufacturer's representatives, agents and wholesale food distributors. The Company is also considering entering into strategic marketing alliances with third parties who have established relationships or synergies with mutual prospective customers.

In the second quarter of 2000, TurboChef established a manufacturing venture with Shandong Xiaoya Group ( Xiaoya ), in China in which Xiaoya was granted the manufacturing rights for the C-3 oven. In March 2002, TurboChef signed a new agreement to purchase 5,000 C-3 ovens totaling approximately \$14 million from Xiaoya by August 2003. In December 2002, the purchase requirement was extended for an additional 12 months to August 2004 and the Company agreed to purchase a minimum of 200 ovens per month. As a result of the Company's current cash position, the Company is not currently satisfying the minimum purchase requirements (See Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operation Liquidity and Capital Resources). As a result, Xiaoya could terminate the agreement at any time and seek monetary damages. Xiaoya is currently the Company's sole supplier of C-3 ovens.

## **Rapid Cook Technology**

Traditional ovens employ a wide range of processes for transferring heat energy to food. These include: conduction (direct energy transfer from a hot surface, as in a grill); natural convection (energy transfer to and from naturally moving air, as in a typical home oven); forced convection (energy transfer to and from mechanically circulated air, as in a typical convection oven); air impingement (forced convection with rapidly moving air directed at the food); induction (heating by the generation of electromagnetic fields); microwave radiation (heating by the dissipation of microwave energy in food); and infra-red radiation (heating by light whose wavelength falls below that of the color red in the electromagnetic spectrum).

Newer ovens have begun to incorporate two or more of these conventional sources of energy. For example, some ovens employ microwaves and convection impingement or

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microwave and halogen light (a form of infra-red radiation). However, the Company does not believe that these systems provide the speed of cooking or achieve the same quality of cooked food that is achieved by the TurboChef rapid cook ovens.

The Company's unique, patented oven couples rapidly circulating hot air with microwave energy. The close coupling of the two energy sources controlled by a microprocessor enables faster cooking at higher quality levels than is possible by each energy source operating independently. The air is forced down from the top of the oven and at the same time pulled out through a return path that results in a tight air wrap around food. This air wrap ensures that there is a constant interaction between the heated air and the entire surface area of the food product in the cooking cavity, resulting in not only evenly browned food products on the outside, but also creates temperature and moisture gradients that enable precisely targeted microwaves to energize water molecules that cook the food on the inside. The microwave energy is introduced from a direction directly opposite that of the direction of the airflow, thus capturing the food between the two opposing energy gradients resulting in faster cooking times and enhanced quality in the food products being cooked.

The circulated air is recycled through a proprietary catalytic converter system that breaks down the fumes and grease by-product resulting from the cooking process. This allows TurboChef to claim the C-3 oven offers a ventless cooking solution. In August 2002, TurboChef received Underwriter's Laboratory (UL) approval to operate the C-3 oven as a ventless oven. TurboChef believes that the operational efficiencies of a ventless solution are an important distinguishing feature of the TurboChef C-3 oven.

## **Other Products and Services**

TurboChef has developed a Menu in a Minute System (MIMs) technology, which when combined with the C-3 oven, offers a system by which a food service operator can download menus and cook settings for use by that operator's entire chain of restaurants through the use of a computer chip or internet connection. This MIMs technology will enable executive chefs of food service chains to program new cooking settings centrally and make changes to their menus with exact precision and very little added cost.

TurboChef also separately offers fee-based consulting services to its customers, where food service is not the primary source of revenue. These services include menu design, concept development and sourcing of food products.

TurboChef currently sells ceramic platters, cooking utensils and proprietary oven cleaner used in the C-3 oven. To date, such sales have not been material. The Company intends to expand these offerings as the base of installed ovens increases. The Company also offers replacement parts for profit after the expiration of the warranty period.

## **Opportunities and Strategy**

The commercial food service market continues to experience rising real estate costs, increased food product costs and intense competition and a shortage of qualified labor. These

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factors have forced many commercial food service operators to become more efficient and cost effective in their food preparation. While many operators have initiated cost saving mechanisms in their kitchens, their available options have been somewhat limited. The Company believes that its patented technologies not only provide operators the opportunity to achieve operating cost savings (i.e., energy, ventilation, food waste and labor), but enables operators to produce quality meals in less time from a smaller, more efficient and less labor intensive kitchen.

The Company believes that its long-term success is dependent upon the effectiveness of its sales efforts in demonstrating the versatility of its commercial ovens in providing a solution to large food service operators that seek top-line revenue growth. The Company further believes that acceptance of its cooking technologies in commercial products can be leveraged in the marketing of any future residential products that the Company may introduce. The Company's market research has revealed that time and quality are two of the most important considerations taken into account for food preparation. The Company believes that its products have proven that they can meet both the time and quality demand of the commercial food service marketplace. In addition, the Company believes that its patented cooking technology can be adapted for use in residential ovens should it decide in the future to pursue this market.

## **Marketing Strategy**

TurboChef is primarily focused on sales of its products for use by commercial customers in the traditional and non-traditional food service markets. During 2001, the Company established its own sales force as a result of a shift in its marketing strategy to focus on direct sales in the United States. In Europe and the United Kingdom, the Company sells its C-3 ovens primarily through equipment distributors. Currently there are nine non-exclusive distributors of C-3 ovens in European countries including: Finland, Sweden, Iceland, Ireland, The Netherlands, Belgium, France, Spain, Greece, Switzerland and Germany. In March 2003, the Company signed a one-year agreement with an exclusive distributor in the United Kingdom. The Company intends to expand its relationships with manufacturer's representatives and equipment dealers and, to the extent the Company has the necessary financial resources to expand the direct sales and marketing efforts worldwide. The strategy will target both the non-traditional as well as the traditional food service markets.

**Non-Traditional Food Service:** This market segment represents food service operations where food is not the primary source of the operation's revenue. The TurboChef's C-3 oven offers customers a cooking platform which provides the food service customer with the potential for an additional revenue source, while requiring little, if any, additional investments in equipment other than the oven itself, staff or training. TurboChef offers customers in this segment the opportunity to combine the TurboChef oven with TurboChef's MIMs system and TurboChef's optional consulting services to provide a full-service offering. The C-3 oven offers speed, quality, consistency, wide versatility of food offerings, allows for the use of minimally skilled, inexpensive labor and offers the potential for ventless operation. Customers in this segment include:

Hotels

Movie Theatres

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Airports  
Stadiums  
Supermarkets  
Convenience Stores

**Traditional Food Service:** This market segment is defined as food service operations where food is the operation's primary source of revenue. The Company believes that while many of the characteristics sought by a traditional food service customer from a rapid cook oven are identical to those of the non-traditional food service customer, the needs of a traditional food service customer tend to be more specific around an existing menu and the cooking platform of the food service operation. Participants in this segment include:

Quick Service Restaurants  
Fine Dining

During the 2002 fiscal year, the Company sold ovens to new customers such as Aramark, Costco, AMC Theaters, HMS Host, StatOil Sweden, Chevron, the U.S. Armed Services (Army, Navy, Air Force and Marines), Sodexho, Restaurant Associates, TCBY, Bellagio Hotels and others. The Company anticipates that it may sell additional ovens to these customers in 2003.

For the years ended December 31, 2001 and 2002, sales of the Company's C-3 ovens were made to the following food service operators, respectively:

<b>C-3 Oven Sales by Food Service Operator</b>	<b>2001</b>	<b>2002</b>
<b>Non-Traditional Food Service Operator</b>		
Hotels	19	22
Movie Theatres	17	65
Airports	12	41
Stadiums	20	80
Supermarkets		16
Convenience Stores	128	67
Other		37
	<b>196</b>	<b>328</b>
<b>Traditional Food Service Operator</b>		
Quick Service Restaurants (Restated)	200	377
Fine Dining	15	6
	<b>215</b>	<b>383</b>
<b>Total Sales</b>	<b>411</b>	<b>711</b>

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During 2002 and 2001 the Company generated revenue from sales of its products to customers located in the United States, the United Kingdom and other countries in Europe and Asia. Total export sales to customers in the United Kingdom and countries in Europe and Asia for the fiscal years ended December 31, 2002 and 2001 were \$2,079,000 and \$2,284,000 respectively. These export sales accounted for approximately 37% and 72% of the Company's total product sales, respectively, during 2002 (as restated) and 2001.

For the years ending December 31, 2000 all revenues generated from product sales were the result of sales to customers in the United Kingdom, Europe and Asia. During these periods over 96% of product sales were made to customers located in the United Kingdom with the balance representing sales made to customers in Europe and Asia.

During the 2002 fiscal year, sales to Subway and its franchisees in the United States and Puerto Rico accounted for 22% of sales (as restated). During the 2001 fiscal year, sales to British Petroleum in the United Kingdom accounted for 35% of sales during fiscal 2000 sales to Little Chef, a subsidiary of Compass PLC, represented 71% of sales revenue. During each year, no other concentration of sales to one customer exceeded 10% of sales revenue.

## **Production and Supply**

The Company has been and will continue to be dependent on third parties for the supply and manufacture of all of its component and electronic parts, including both standard components and specially-designed component parts, such as the printed circuit computer boards and wiring harnesses used in the TurboChef ovens. The Company generally does not maintain supply agreements with such third parties, but instead purchases components and electronic parts pursuant to purchase orders in the ordinary course of business. The Company is substantially dependent on the ability of its manufacturers and suppliers to, among other things, meet the Company's design, performance and quality specifications. Failure by the Company's manufacturers and suppliers to comply with these and other requirements could have a material adverse effect on the Company.

The Company requires that its contract manufacturers follow generally accepted industry standard quality control procedures. In addition, the Company maintains its own quality assurance personnel and testing capabilities to assist its contract manufacturers with their respective quality programs and performs routine audits of both manufacturing facilities and finished products to ensure the highest quality and reliability.

The Company's manufacturing cycle, which extends from the execution of a purchase order for component parts until the actual shipment of finished product to the customer, generally ranges from sixteen to twenty four weeks.

In the second quarter of 2000, the Company established a manufacturing venture with Xiaoya in China which acts as the sole manufacturer of the Company's C-3 oven. The Company received its first model C-3 commercial oven from Xiaoya in August 2001. In March 2002, the Company signed an agreement with Xiaoya to purchase 5,000 C-3 ovens totaling approximately \$14 million by August 2003. In December 2002, this purchase requirement was extended for an additional 12 months to August 2004 and the Company agreed to purchase a minimum of 200

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ovens per month. As a result of the Company's current cash position, the Company is not currently satisfying the minimum purchase requirements (See Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources). As a result, Xiaoya could terminate the agreement at any time and seek monetary damages. Xiaoya is currently the Company's sole supplier of C-3 ovens.

## **Research and Development**

During the years ended December 31, 2002, 2001, and 2000, the Company incurred costs related to research and development activities in the amounts of approximately \$400,000, \$800,000 and \$3,600,000, respectively. During 2000, substantially all of this research and development was funded from third parties. In 2001, the Company substantially completed the development related to its C-3 oven and focused new efforts on the development of the next generation commercial oven. Several prototypes have been developed recently and are currently being tested.

The Company intends to invest in the continued development of its core technologies and related applications and to continue improving the performance of its current commercial oven. The Company believes its technology can be readily adopted in a residential oven and has developed a prototype.

At this time, the Company's strategy is to focus on opportunities in the non-traditional and traditional commercial food service markets and pursue opportunities in the residential oven market at such time when the Company believes it has the necessary financial resources to do so.

## **Competition**

The commercial rapid cook segment of the foodservice equipment market is characterized by intense competition. The Company competes with numerous well-established manufacturers and suppliers of conventional commercial ovens, grills and fryers (including those that cook through the use of conduction, convection, induction, air impingement, infrared, halogen and/or microwave heating methods). In addition, the Company is aware of others who are developing, and in some cases have introduced, commercial ovens based on high-speed heating methods and technologies. Most of the Company's competitors possess substantially greater financial, marketing, personnel and other resources than the Company and have established reputations relating to the development, manufacture, marketing and service of cooking equipment. Among the Company's major competitors in the rapid cook segment of the foodservice equipment market are: The commercial foodservice equipment division of Enodis LLP, including, Lincoln Foodservice Products, Inc. and MerryChef; Quadlux, Inc.; Vulcan-Hart Corporation, a subsidiary of Premark International, Inc.; Groen, Inc., a subsidiary of Dover Corporation; Amana, Fujimak and Enersyst (a technology licensing company) and Duke Manufacturing Company.

Although the Company is not aware of any competitive products currently being marketed which it believes are functionally equivalent to the TurboChef cooking system (i.e., products that have the same capabilities to cook a variety of food items to the same high quality

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standards and speeds), there can be no assurance that other companies with greater financial resources are not or will not develop functionally equivalent competitive products in the near future.

Competition has also increased in the emerging residential rapid cook sector as well. Certain companies have already introduced products into the rapid cook sector, including; the General Electric Advantium (utilizing microwave and halogen light technology), the Quadlux Flashbake wall oven (utilizing infrared and invisible light technology), the Whirlpool Speedcook wall oven (utilizing convection, microwave and halogen light technology) and the Amana Lightwave (utilizing microwave and infrared light technology). In addition, other competitive products are scheduled to be launched in the near future including the GE Rapid Cook Wall Oven (utilizing microwave and other heat transfer technology). Although the Company currently does not have a residential product offering, it has developed a prototype residential oven and intends to enter into the residential oven appliance market at such time when it has the financial resources to do so. There can be no assurance that the Company will ever enter the residential oven market or if it does, that it can successfully market a residential oven.

## **Regulation and Accreditation**

The Company is subject to regulations administered by various federal, state, local and international authorities, such as the United States Food and Drug Administration, the Federal Communication Commission, the European Community Council and the Japanese Government's Ministry of International Trade (MITI) (including those regulations limiting radiated emissions from the Company's cooking system products), which impose significant compliance burdens on the Company. Failure to comply with these regulatory requirements may subject the Company to civil and criminal sanctions and penalties. While the Company believes that its products are in compliance with all material applicable laws and regulations regulating such products, there can be no assurance of such compliance. The Company tests, from time to time, the ovens in order to confirm continued compliance with applicable regulatory requirements. Management believes that compliance with these laws and regulations will not require substantial capital expenditures or have a material adverse effect on the Company's future operations.

New legislation and regulations, as well as revisions to existing laws and regulations (at the federal, state and local levels, in the United States and/or in foreign markets) affecting the foodservice equipment and residential appliance industries may be proposed in the future. Such proposals could affect the Company's operations, result in material capital expenditures, affect the marketability of the Company's existing products and technologies and/or could limit or create opportunities for the Company with respect to modifications of its existing products or with respect to its new or proposed products or technologies. In addition, an expanded level of operations of the Company in the future could require the Company to modify or alter its methods of operation at costs, which could be substantial and could subject the Company to increased regulation, and expansion of the Company's operations into additional foreign markets may require the Company to comply with additional regulatory requirements.

The Company has received certification from Underwriter's Laboratory (UL) requirements relating to product safety accreditation standards and with the applicable

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requirements of the National Sanitation Federation ( NSF ) relating to cleanability and sanitation accreditation standards. NSF are agencies which have established certain standards for a variety of categorized products and can be engaged to inspect a manufacturer's products for compliance with the applicable standards. Certification by each agency authorizes the marking of any such product with the agency's labels, which indicates that the product is approved by the agency for such use. Such certifications, which require periodic renewal, only represent compliance with established standards and are not legally required. However, failure by the Company to comply with these accreditation standards in the future could have a material adverse effect on the Company's marketing efforts. In addition, the Company has met the requirements necessary to apply the CE mark (which indicates compliance with the European Community Council directive relating to electromagnetic compatibility and low voltage) to its model C-3 TurboChef cooking systems. As an equipment manufacturer, the Company is allowed to self-certify compliance with this directive and has had an independent third party, TÜV America, a leading technical service company, attest to the results. The Company is required by law to meet this European Community Council directive in order to apply the CE mark and thereby sell its cooking systems in the European Union.

## **Warranty and Service**

The Company generally offers purchasers a one-year limited warranty covering the TurboChef cooking system's workmanship and materials, during which period the Company or its authorized service representative will make repairs and replace parts which become defective due to normal use. Pursuant to the Company's warranty policy, the Company will accept the return of a cooking system that does not perform according to product specifications, within one year from the date of installation. Component parts furnished to the Company by its suppliers and manufacturers are generally covered by an one-year limited warranty and contract manufacturers furnish a limited warranty for any of their manufacturing or assembly defects. There can be no assurance that future warranty expenses incurred on the one-year warranty will not have a material adverse effect upon the Company.

In those areas where TurboChef cooking systems are located, the Company has established relationships with independent factory authorized service representatives who provide installation and/or repair services and carry a parts inventory. The Company expects its distributors to establish parts and service capabilities in the markets in which they sell TurboChef licensed products.

## **Insurance**

The Company is engaged in a business which could expose it to possible liability claims from others, including from foodservice operators and their staffs, as well as from consumers, for personal injury or property damage due to design or manufacturing defects of the Company's products or otherwise. The Company maintains various insurance policies, which the Company believes provides adequate coverage for the type of products it currently markets. In addition, the Company believes that its third-party suppliers and manufacturers currently maintain adequate levels of liability insurance. No assurance can be given that the Company's insurance coverage will be adequate to cover any claim against the Company.



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### **Patents and Proprietary Rights**

The Company holds patents that cover certain fundamental aspects of the Company's rapid cook technologies. The Company has pending patent applications or patents corresponding to one or more of these patents filed in at least seven countries (including the United States, Japan and various countries of the European Patent Convention). Its United States patents will expire at various dates between 2011 and 2018. The Company believes that its patents and patent applications provide it with a competitive advantage and that patent protection is important to the Company's business. There can be no assurance as to the breadth or degree of protection which existing or future patents, if any, may afford the Company, or that any patent applications will result in issued patents, or that the Company's patent rights will be upheld if challenged, or that competitors will not develop similar or superior methods or products outside the protection of any patents issued to the Company. (See Item 3: Legal Proceedings)

There is rapid technological development in the Company's markets. Although the Company believes that its technologies have been independently developed and do not infringe the patents or intellectual property rights of others, certain components of the Company's products could infringe patents, either existing or which may be issued in the future, in which event the Company may be required to modify its designs or obtain a license. No assurance can be given that the Company will be able to do so in a timely manner or upon acceptable terms and conditions; and the failure to do either of the foregoing could have a material adverse effect upon the Company's business.

The Company believes that product and brand name recognition is an important competitive factor in the food service equipment industry. Accordingly, the Company promotes the *TurboChef*® name in connection with its marketing activities. The Company holds trademarks in the United States and United Kingdom for the *TurboChef*® and *TurboChef Technologies, Inc*® names. In certain countries in Europe, the Company licenses the *TurboChef* name from a third party.

The Company also relies on trade secrets and proprietary know-how, and typically enters into confidentiality and non-competition agreements with its employees and appropriate suppliers and manufacturers, to protect the concepts, ideas and documentation relating to its proprietary technologies. However, such methods may not afford the Company complete protection. There can be no assurance that others will not independently obtain access to the Company's trade secrets and know-how or independently develop products or technologies similar to those of the Company. Since the Company believes that its proprietary technologies are important to its business, failure to protect such information could have a material adverse effect on the Company.

### **Employees**

As of April 11, 2003 the Company employed 34 persons, of which 31 are full-time employees, including 4 executive officers and 3 senior managers. Of its employees, 5 are engaged in technological support and development, 17 in administration, and 12 in sales,

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marketing, and customer service. None of the Company's employees are represented by labor unions. The Company considers its relations with its employees to be good.

### **Item 2 Properties**

The Company owns no real estate. The Company leases approximately 20,698 square feet of space at 10500 Metric Drive, Dallas, Texas, which it uses for executive offices, technology development, limited assembly and other purposes, under a lease agreement, which expires on January 31, 2005. The annual base rental expense on this property is \$193,000.

The Company believes that its facilities are generally well maintained, in good operating condition and adequate for its current needs.

### **Item 3 Legal Proceedings**

In 2001, the Company commenced an arbitration proceeding in Texas against its former strategic partner, the Maytag Corporation ( "Maytag" ). In July 2002, in response to an Iowa court proceeding brought by Maytag which is discussed below, the Company filed an amended arbitration claim removing two of the Company's pending claims from the Texas arbitration. Those claims have been filed in the Boston arbitration discussed below. Maytag has made certain counterclaims against the Company in the Texas arbitration and is seeking in excess of \$70 million in damages under its counterclaims.

The Company believes that Maytag's Texas claims are without merit and intends to vigorously defend against Maytag's allegations.

In May 2002, Maytag filed a complaint in Iowa federal court seeking, among other things, to require that two of the Company's claims originally filed and pending in the Texas arbitration be decided only in a separate arbitration proceeding in Boston, Massachusetts. Maytag's complaint in the Iowa proceeding also alleges that the Company publicized false and misleading statements about Maytag's use of the Company's intellectual property in its residential appliances in a January 2002 press release and in certain other unidentified statements. Based upon this allegation, Maytag asserts claims that the Company caused false advertising with respect to Maytag's goods and services that the Company has intentionally interfered with Maytag's prospective business, that the Company has defamed Maytag and that the Company has unfairly competed with Maytag. Unlike Maytag's counterclaims in the Texas arbitration proceeding, its complaint in the Iowa proceeding does not specify the dollar amount of damages sought. In July 2002, the Company filed a motion to dismiss the Maytag complaint or, in the alternative, stay the Iowa proceeding pending resolution of the Texas arbitration. On July 30, 2002, Maytag filed a Motion for Leave to File First Amended Complaint adding a claim that TurboChef failed to pay a promissory note in the amount of \$327,478. On January 6, 2003, the Federal Court in the Iowa proceeding granted a summary judgment against TurboChef in the amount of \$359,371.66, which is accrued and included in notes payable in the December 31, 2002 financial statements and stayed the remainder of Maytag's claims pending the final resolution of the Texas claims.

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Maytag has also initiated an arbitration in Boston, claiming damages in the amount in excess of \$1,300,000 for failure to pay for ovens. TurboChef has filed its counterclaim alleging that Maytag breached its warranty and committed fraud and that TurboChef has been damaged in an amount in excess of \$1,500,000.

The parties are currently seeking to negotiate a settlement. There can be no assurance that a settlement will be reached or that any settlement will be favorable to the Company.

The outcome of any litigation, however, is uncertain and an unfavorable outcome could have an adverse effect on our operating results and future operations. Since the outcomes of the arbitration proceedings are uncertain, no adjustments have been made to the financial statements.

**Item 4 Submission of Matters to a Vote of Security Holders**

On December 19, 2002, the Annual Meeting of Stockholders of the Company was held in Dallas, Texas. At the Annual Meeting, the Company's stockholders elected four (4) individuals to serve as the Company's Board of Directors until the next Annual Meeting of the Stockholders and until their successors are elected and duly qualified. The table presented below indicates the number of votes cast in favor of the election of such persons as directors and the number of votes withheld.

<u>Name of Director</u>	<u>Number of Votes For</u>	<u>Withheld Votes</u>
Jeffery B. Bogatin	16,065,974	296,365
Vincent A. Gennaro (1)	16,064,634	297,705
Donald J. Gogel	16,045,124	317,215
Mitchell E. Rudin	16,044,924	317,415

(1) On April 15, 2003, Mr. Gennaro resigned from the Board of Directors.

In addition to the election of the Company's Board of Directors, the stockholders approved the following proposal at the Annual Meeting:

A proposal to amend the Company's 1994 Stock Option Plan, as amended, to increase the number of shares of Common Stock reserved for issuance under the plan by 2,000,000 shares. Aggregates of 8,967,912 shares were voted for this proposal, 480,389 shares voted against this proposal and 19,000 shares abstained. There were 6,895,038 broker non-votes with respect to this proposal.

**Part II****Item 5 Market for Registrant's Common Equity and Related Stockholder Matters**

## Edgar Filing: TURBOCHEF TECHNOLOGIES INC - Form 10-K/A

The Company's common stock traded on the over-the counter market through the NASDAQ National Market under the symbol TRBO from March 1, 1999 until July 11, 2001. Since July 12, 2001, the Company's common stock has been listed on the NASDAQ Small Cap Market and since March 12, 2003 the Company's common stock has traded under the symbol TRBOC. The Company expects that its common stock will be delisted from NASDAQ by

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mid-April 2003 and is likely to trade on the OTB Bulletin Board. The following table sets forth the high and low bid quotations for the common stock for the periods indicated as reported by NASDAQ. The per share quotations represent inter-dealer prices without adjustment for retail mark-ups, mark-downs or commissions and may not necessarily represent actual transactions.

<u>Period</u>	<u>Per Share Price</u>	
	<u>High</u>	<u>Low</u>
<u>Fiscal Year 2002</u>		
First Quarter	\$ 4.32	\$ 2.40
Second Quarter	\$ 2.93	\$ 1.55
Third Quarter	\$ 2.78	\$ 0.47
Fourth Quarter	\$ 1.28	\$ 0.29
<u>Fiscal Year 2001</u>		
First Quarter	\$ 2.69	\$ 0.75
Second Quarter	\$ 2.50	\$ 0.75
Third Quarter	\$ 3.19	\$ 2.00
Fourth Quarter	\$ 5.68	\$ 1.60

As of April 11, 2003, there were approximately 153 stockholders of record of the Company's common stock. In addition, the Company believes that there are more than 400 round lot holders.

**Dividends**

The Company has not paid cash dividends on its common stock since its organization and does not expect to pay any cash dividends on the common stock in the foreseeable future. Rather, the Company intends to use all available funds for the Company's operations and planned expansion of i