

CHECKERS DRIVE IN RESTAURANTS INC /DE

Form S-8

December 17, 2004

As filed with the Securities and Exchange Commission on December 17, 2004

Registration No. _____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CHECKERS DRIVE-IN RESTAURANTS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

58-1654960
(I.R.S. Employer Identification No.)

4300 West Cypress Street, Suite 600

Tampa, Florida 33607

(Address of Principal Executive Offices) (Zip Code)

Checkers Drive-In Restaurants, Inc. 2004 Stock Award Plan for Non-Employee Directors

(Full title of the plan)

Brian R. Doster, Esq.

Secretary and General Counsel

Checkers Drive-In Restaurants, Inc.

4300 West Cypress Street, Suite 600

Tampa, Florida 33607

(813) 283-7000

(Name, Address, and Telephone number, including area code, of Agent for Service)

Copies of all communications to:

John N. Giordano, Esq.

Bush Ross Gardner Warren & Rudy, P.A.

220 South Franklin Street

Tampa, Florida 33602

Phone: (813) 224-9255

Fax: (813) 223-9620

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered(1) | Proposed Maximum Offering Price per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|-----------------------------------|--|--|-----------------------------------|
| Common Stock, par value \$0.001 per share, reserved under Checkers Drive-In Restaurants, Inc. 2004 Stock Award Plan for Non-Employee Directors | 550,000 | \$13.07(2) | \$7,188,500(2) | \$846.09 |

- (1) The provisions of Rule 416 under the Securities Act of 1933 shall apply to this Registration Statement and the number of shares registered on this Registration Statement shall increase or decrease as a result of stock splits, stock dividends or similar transactions.

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- (2) The price is estimated in accordance with Rule 457 (h)(1) of the Securities Act of 1933 solely for the purpose of calculating the registration fee and is the product of multiplying 550,000 (the maximum number of shares issuable under the 2004 Stock Award Plan for Non-Employee Directors) by \$13.07, the average of the high and low sales prices for shares of common stock of the registrant as reported on the NASDAQ National Market System on December 16, 2004.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 (plan information and registrant information) will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act). Such documents need not be filed with the Securities and Exchange Commission as part of this Registration Statement pursuant to the Note in Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents are incorporated by reference in this Registration Statement:

(a) the Registrant's Annual Report on Form 10-K for the year ended December 29, 2003 (including information specifically incorporated by reference into the Registrant's Form 10-K from the Registrant's definitive Proxy Statement);

(b) all other reports filed by the Registrant pursuant to Sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Annual Report referenced in Item 3(a) above;

(c) the description of the common stock contained in the Registrant's Registration Statement on Form 8-A, dated October 24, 1991, filed pursuant to Section 12(g) of the Securities and Exchange Act of 1934.

All documents subsequently filed by the Registrant after the date of this Registration Statement pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Registrant is a Delaware corporation. The Registrant's Amended and Restated Certificate of Incorporation provides that, to the fullest extent permitted by Delaware law, its directors shall not be liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. This provision in the Amended and Restated Certificate of Incorporation does not eliminate the director's fiduciary duty, and in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

In addition, the Registrant's By-laws provide that the Registrant will indemnify its directors and officers and may indemnify its employees and other agents to the fullest extent permitted by Delaware law. The Registrant believes that indemnification under its By-laws covers at least negligence and gross negligence by indemnified parties, and permits the Registrant to advance litigation expenses in the case of stockholder derivative actions or other actions, against an undertaking by the indemnified party to repay such advances if it is ultimately determined that the indemnified party is not entitled to indemnification. The Registrant's By-laws permit, and its Board of Directors has authorized, the purchase of liability insurance for the Registrant's officers and directors.

The Registrant has entered into separate indemnification agreements with its directors and officers. These agreements require the Registrant, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers (other than liabilities arising from actions not taken in good faith or in a manner the director or officer believed to be opposed to the best interests of the Registrant), to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified subject to certain conditions, and to obtain liability insurance for any director with terms of insurance no less favorable than those provided to any other director of the Registrant, and for any officer with terms of insurance no less favorable than those provided to any other officer of the Registrant. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act of 1933 and is therefore unenforceable. The Registrant believes that its Amended and Restated Certificate of Incorporation, By-law provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

4.1 The 2004 Checkers Drive-In Restaurants, Inc. 2004 Stock Award Plan for Non-Employee Directors as filed with the Commission as Appendix B to the Registrant's definitive Proxy Statement dated April 20, 2004 is hereby incorporated by reference.

5.1 Opinion of Bush Ross Gardner Warren & Rudy, P.A. regarding the legality of the common stock.

23.1 Consent of KPMG LLP, Independent Registered Public Accounting Firm.

24.1 Powers of Attorney (included on signature page).

ITEM 9. UNDERTAKINGS.

(a) The undersigned Registrant hereby undertakes:

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

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

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

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities and Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant, Checkers Drive-In Restaurants, Inc., a corporation organized and existing under the laws of the State of Delaware, certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tampa, State of Florida, on December 17, 2004.

Checkers Drive-In Restaurants, Inc.

By: /s/ KEITH E. SIROIS
**Keith E. Sirois, President, Chief Executive Officer and
Director**

POWER OF ATTORNEY

KNOWN TO ALL PERSONS BY THESE PRESENTS, we, the undersigned officers and directors of Checkers Drive-In Restaurants, Inc., hereby severally constitute and appoint Brian R. Doster, acting as an attorney-in-fact with the full power of substitution, for him and in his name, place and stead in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorneys-in-fact, or either of their substitute or substitutes, may do or cause to be done by virtue hereof.

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

| <u>Signatures</u> | <u>Title</u> | <u>Date</u> |
|--|---|-------------------|
| By: <u> /s/ KEITH E. SIROIS</u> Keith E. Sirois | President, Chief Executive Officer and Director (Principal Executive Officer) | December 17, 2004 |
| By: <u> /s/ S. PATRIC PLUMLEY</u> S. Patric Plumley | Treasurer and Chief Financial Officer (Principal Financial and Accounting Officer) | December 17, 2004 |
| By: <u> /s/ PETER C. O HARA</u> Peter C. O Hara | Chairman of the Board of Directors | December 17, 2004 |
| By: <u> /s/ TERRY N. CHRISTENSEN</u> Terry N. Christensen | Director | December 17, 2004 |
| By: <u> /s/ BURT SUGARMAN</u> Burt Sugarman | Director | December 17, 2004 |
| By: <u> /s/ WILLIE D. DAVIS</u> Willie D. Davis | Director | December 17, 2004 |
| By: <u> /s/ DAVID GOTTERER</u> David Gotterer | Director | December 17, 2004 |
| By: <u> /s/ GARY LIEBERTHAL</u> Gary Lieberthal | Director | December 17, 2004 |

INDEX OF EXHIBITS

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