**As filed with the Securities and Exchange Commission on November 16, 2005**

**Registration No. 333-128375**

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

# Amendment No. 1
# to
# FORM S-3
# REGISTRATION STATEMENT
***UNDER***
***THE SECURITIES ACT OF 1933***

# THE HERSHEY COMPANY
**(Exact Name of Registrant as Specified in Its Charter)**

| **Delaware** | **23-0691590** |
|---|---|
| **(State or Other Jurisdiction of Incorporation or Organization)** | **(I.R.S. Employer Identification Number)** |

**100 Crystal A Drive**
**Hershey, Pennsylvania 17033**
**(717) 534-6799**
**(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)**

**Burton H. Snyder, Esq.**
**The Hershey Company**
**100 Crystal A Drive**
**Hershey, Pennsylvania 17033**
**(717) 534-6799**
**(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)**

***With a copy to:***
**Risë B. Norman, Esq.**
**Simpson Thacher & Bartlett LLP**
**425 Lexington Avenue**
**New York, New York 10017**
**(212) 455-2000**

**Approximate date of commencement of proposed sale to public**: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, please check the following box. ☒

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ☐

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

Table of Contents

**PROSPECTUS**

# $750,000,000

## Debt Securities

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The Hershey Company may offer from time to time up to $750,000,000 (or its equivalent, based on the applicable exchange rate at the time of offering, in such foreign currencies, or units of two or more thereof as we shall designate) aggregate principal amount of our debt securities (the "Debt Securities"), on terms to be determined at the time of offering. The Debt Securities may be issued in one or more series with the same or various maturities. The terms of the Debt Securities in respect of which this Prospectus is being delivered (the "Offered Securities"), including, where applicable, the specific designation, aggregate principal amount offered, currency or currencies in which the principal (and premium, if any) and interest are payable, denominations, maturity, interest rate (which may be fixed or variable) or method of calculating and time of payment of interest, if any, terms for redemption at our option or the option of the holder, terms for sinking fund payments, terms for any other mandatory redemption, the public offering price, the stock exchanges, if any, on which the Offered Securities may be listed and any other terms in connection with the offering and sale of the Offered Securities, will be set forth in a prospectus supplement (the "Prospectus Supplement"). Offered Securities of a series may be issuable in registered form or in the form of one or more global securities (each a "Global Security").

THIS PROSPECTUS MAY NOT BE USED TO OFFER OR SELL ANY SECURITIES UNLESS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.

The Offered Securities may be sold (i) through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate; (ii) through agents or dealers designated from time to time; or (iii) directly to purchasers. The names of any underwriters or our agents involved in the sale of the Offered Securities in respect of which this Prospectus is being delivered and any applicable commissions or discounts will be set forth in the Prospectus Supplement or in the applicable pricing agreement. The net proceeds to us from such sale will also be set forth in the accompanying Prospectus Supplement or in the applicable pricing agreement. See "Plan of Distribution" for possible indemnification arrangements for any such underwriters and agents.

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**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED THAT THIS PROSPECTUS IS ACCURATE OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

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The date of this Prospectus is , 2005.

**No person has been authorized to give any information or to make any representations other than those contained or incorporated by reference in this Prospectus and, if given or made, such information or representations must not be relied upon as having been authorized. This Prospectus does not constitute an offer to sell or the solicitation of an offer to buy any of the Debt Securities or an offer to buy or the solicitation of an offer to sell the Debt Securities in any circumstances in which such offer or solicitation would be unlawful. The delivery of this Prospectus shall not, under any circumstances, create any implication that the information contained herein is correct as of any time subsequent to the date of such information.**

## TABLE OF CONTENTS


| | Page |
|---|---|
| Where You Can Find More Information | 1 |
| Documents Incorporated by Reference | 1 |
| The Hershey Company | 2 |
| Ratio of Earnings to Fixed Charges | 2 |
| Use of Proceeds | 2 |
| Description of Debt Securities | 3 |
| Plan of Distribution | 8 |
| Legal Matters | 9 |
| Experts | 9 |

### Where You Can Find More Information

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and, in accordance therewith, file reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). Such reports, proxy statements and other information can be read and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. Except as otherwise indicated in the Prospectus Supplement, copies of such materials may also be inspected at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005. In addition, the SEC maintains a website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of such site is http://www.sec.gov.

We have filed with the SEC a registration statement on Form S-3 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act") with respect to the Offered Securities. This Prospectus does not contain all of the information set forth in the Registration Statement, certain parts of which have been omitted in accordance with the rules and regulations of the SEC. Reference is made to the Registration Statement and to the exhibits relating thereto for further information with respect to us and the Offered Securities.

### Documents Incorporated by Reference

We "incorporate by reference" in this Prospectus the following documents that we have filed with the SEC (File No. 001-00183):

(a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed on March 7, 2005;

(b) Our Quarterly Reports on Form 10-Q for the quarterly periods ended April 1, 2005, July 3, 2005 and October 2, 2005, filed on May 11, 2005, August 9, 2005 and November 9, 2005, respectively; and

(c) Our Current Reports on Form 8-K and Form 8-K/A filed on February 18, 2005, July 21, 2005 (other than with respect to Item 2.02), August 16, 2005, September 28, 2005 and October 5, 2005.

We are not, however, incorporating by reference any documents or portions thereof that are not deemed "filed" with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of our Current Reports on Form 8-K or Form 8-K/A.

All documents we file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Prospectus and prior to the termination of the offering of the Debt Securities offered hereunder shall be deemed to be incorporated by reference in this Prospectus and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein or in any Prospectus Supplement modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

We will provide, without charge, a copy of any or all of the documents mentioned above to each person receiving this Prospectus who requests them in writing or by telephone. Requests for such copies should be addressed to The Hershey Company, Attn: Investor Relations Department, 100 Crystal A Drive, Hershey, Pennsylvania 17033-0810, Telephone: (717) 534-6799.

## The Hershey Company

We, our wholly-owned subsidiaries and entities in which we have a controlling financial interest are engaged in the manufacture, distribution and sale of confectionery, snack, refreshment and grocery products. We were organized under the laws of the State of Delaware on October 24, 1927, as a successor to a business founded in 1894 by Milton S. Hershey.

Our principal product groups include: confectionery and snack products sold in the form of bar goods, bagged items and boxed items; refreshment products sold in the form of gum and mints; and grocery products in the form of baking ingredients, chocolate drink mixes, peanut butter, dessert toppings and beverages. We believe we are a leader in many of these product groups in the United States, Canada and Mexico. Operating profit margins vary among individual products and product groups.

## Ratio of Earnings to Fixed Charges

| | For the Nine Months Ended October 2, 2005 | For the Years Ended December 31, | | | | |
|---|---|---|---|---|---|---|
| | | 2004 | 2003 | 2002 | 2001 | 2000 |
| Ratio of earnings to fixed charges(a) | 8.44 | 11.37 | 10.14(b) | 8.86(c) | 4.90(d) | 6.75 |

(a) For purposes of computing these ratios, (i) earnings consist of income from continuing operations before income taxes and fixed charges and (ii) fixed charges consist of interest expense and the portion of rents representative of the interest factor, which includes all rental expense pertaining to off-balance sheet operating lease arrangements and one-third of rental expense for other operating leases, the amortization of debt expense and capitalized interest.
(b) Includes total charges for business realignment initiatives of $25.5 million before tax and a gain on sale of business of $8.3 million before tax.
(c) Includes total charges for business realignment initiatives of $34.0 million before tax and costs related to the potential sale of the Company of $17.2 million before tax.
(d) Includes total charges for business realignment initiatives of $278.4 million before tax.

## Use of Proceeds

Except as may be otherwise set forth in a Prospectus Supplement accompanying this Prospectus, the net proceeds from the sale of the Debt Securities will be added to our general funds to meet capital additions and working capital requirements, to repay outstanding debt, to fund the repurchase of shares of our Common Stock and/or to fund acquisitions which we may make from time to time. Pending our use, we may invest such proceeds temporarily in short-term marketable securities.

## Description of Debt Securities

The Debt Securities offered hereby will be issuable in one or more series under an indenture dated as of September 16, 2005 (the "Indenture") between us and Citibank, N.A., as Trustee (the "Trustee"). The following statements are subject to the detailed provisions of the Indenture, which is filed as an exhibit to the Registration Statement of which this Prospectus forms a part. Wherever references are made to particular provisions of the Indenture or terms defined therein are referred to, such provisions or definitions are incorporated by reference as a part of the statements made and such statements are qualified in their entirety by such references.

### General

The Indenture does not limit the amount of Debt Securities which may be issued thereunder. Except as described in "Covenants" below and as otherwise provided in the Prospectus Supplement relating to a particular series of Debt Securities, the Indenture does not limit the amount of other debt, secured or unsecured, which we may issue. We may issue the Debt Securities in one or more series, as we may authorize from time to time (Section 2.5).

Reference is made to the Prospectus Supplement relating to the Offered Securities for the following terms, where applicable, of the Offered Securities: (1) the designation, the aggregate principal amount and the authorized denominations of the Offered Securities; (2) the percentage of their principal amount at which the Offered Securities will be issued; (3) the currency or currencies (including composite currencies) in which the principal of and interest, if any, on the Offered Securities will be payable; (4) the date or dates on which the Offered Securities will mature; (5) the rate or rates at which the Offered Securities will bear interest, if any, or the method by which such rate or rates will be determined and the date or dates from which such interest will accrue; (6) the dates on which and places at which interest, if any, will be payable and the record dates for payment of such interest; (7) the terms of any mandatory or optional repayment or redemption (including any sinking fund); and (8) any other terms of the Offered Securities (Section 2.5). The Indenture provides that Debt Securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates (Section 2.5).

The Offered Securities will be our unsecured, unsubordinated indebtedness and will rank on parity with all of our other unsecured, unsubordinated indebtedness.

Debt Securities of a series may be issued in fully registered form or in the form of one or more Global Securities and, with regard to each series of Debt Securities in respect of which this Prospectus is being delivered, in the denominations set forth in the Prospectus Supplement relating to such series. With regard to each series of Debt Securities, we will maintain in the Borough of Manhattan, The City of New York and in such other place or places, if any, specified in the Prospectus Supplement relating to such series, an office or agency where the Debt Securities of such series may be transferred or exchanged and may be presented for payment of principal, premium, if any, and interest; provided that if such securities are not Global Securities, at our option, payment of interest may be made by check mailed to the address of the person entitled thereto as it appears in the register for the Debt Securities (Section 3.2). No service charge will be made for any transfer or exchange of the Debt Securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith (Section 2.10).

Some of the Debt Securities may be issued as discounted Debt Securities (bearing no interest or interest at a rate which at the time of issuance is below market rates) to be sold at a substantial discount below their stated principal amount. Such discounted Debt Securities will be treated as having been issued with original issue discount for United States federal income tax purposes pursuant to Section 1273 of the Internal Revenue Code of 1986, as amended, if the discount is in excess of a minimum threshold amount. Federal income tax consequences and other special considerations applicable to any Debt Securities with original issue discount will be described in the Prospectus Supplement relating thereto.

### Definitions

"Attributable Debt" is defined, in brief, to mean, as to any lease under which any person is at the time liable, at any date as of which the amount thereof is to be determined, the total net amount of rent required to be paid by such person under such lease during the remaining term thereof (including in respect of contingent rents, amounts based on the amount thereof, if any, being paid on the date of determination and excluding amounts on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges), discounted from the respective due dates thereof at the weighted average of the rates of interest (and Yields to Maturity, in the case of Original Issue Discount Securities) borne by the Debt Securities then Outstanding, compounded annually (Section 1.1).

"Consolidated Net Tangible Assets" is defined to mean the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom (a) all current liabilities (excluding any portion thereof constituting Funded Debt by reason of being renewable or extendible) and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all as set forth on our and our Domestic Subsidiaries' most recent consolidated balance sheet, prepared in accordance with U.S. generally accepted accounting principles (Section 1.1).

"Debt" is defined to mean any notes, bonds, debentures or other similar evidences of indebtedness for money borrowed and does not include Attributable Debt (Section 1.1).

"Domestic Subsidiary" is defined to mean a subsidiary of ours except a subsidiary (a) which neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its fixed assets within the States of the United States, or (b) the principal purpose of which is to engage in financing our operations or the operations of our subsidiaries, or both, outside the States of the United States (Section 1.1).

"Funded Debt" is defined to mean all indebtedness for money borrowed having a maturity of more than 12 months from the date as of which the amount thereof is to be determined or having a maturity of less than 12 months but by its terms being renewable or extendible beyond 12 months from such date at the option of the borrower (Section 1.1).

"Government Obligations" is defined to mean either (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof (Section 13.1).

"Mortgage" is defined to mean any pledge, mortgage, lien, encumbrance or security interest (Section 1.1).

"Original Issue Discount Security" is defined to mean any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to the Indenture (Section 1.1).

"Principal Domestic Operating Property" is defined, in brief, to mean any land or any facility (together with the land on which it is erected and fixtures comprising a part thereof) located in the United States used primarily for manufacturing, processing or production, owned or leased by us or any of our subsidiaries and having a gross book value in excess of 2% of Consolidated Net Tangible Assets other than any such land, facility or portion thereof which in the opinion of our Board of Directors, is not of material importance to the total business conducted by us and our subsidiaries as an entity (Section 1.1).

"Subsidiary of the Corporation" is defined to mean a corporation a majority of the outstanding voting stock of which is owned, directly or indirectly, by us or by one or more of our subsidiaries (Section 1.1).

Other capitalized terms used in this "Description of Debt Securities" have the meanings given them in the Indenture, unless otherwise indicated or unless the context otherwise requires.

**Covenants**

*Limitation on Liens*

If we or any Domestic Subsidiary shall incur, issue, assume or guarantee any Debt secured by a Mortgage on any Principal Domestic Operating Property or on any shares of stock or Debt, held by us or any Domestic Subsidiary, of any Domestic Subsidiary, we will secure, or cause such Domestic Subsidiary to secure, the Debt Securities equally and ratably with (or prior to) such Debt, unless after giving effect thereto the aggregate amount of all such Debt so secured together with all Attributable Debt in respect of sale and leaseback transactions involving Principal Domestic Operating Properties would not exceed 15% of our and our Domestic Subsidiaries' Consolidated Net Tangible Assets. This restriction will not apply to, and there shall be excluded in computing secured Debt for the purpose of such restriction, Debt secured by (a) Mortgages on property of, or on any shares of stock or Debt of, any corporation existing at the time such corporation becomes a Domestic Subsidiary, (b) Mortgages in our favor or in favor of any Domestic Subsidiary, (c) Mortgages in favor of U.S. governmental bodies to secure progress, advance or other payments pursuant to any contract or provision of any statute, (d) Mortgages on property, shares of stock or Debt existing at the time of acquisition thereof (including acquisition through merger or consolidation), purchase money Mortgages and construction cost Mortgages, and (e) any extension, renewal or refunding of any Mortgage referred to in the foregoing clauses (a) through (d), inclusive (Section 3.4). The Indenture will not restrict our or our subsidiaries' ability to incur unsecured debt.

*Merger and Consolidation*

The Indenture will provide that no consolidation or merger of our company with or into any other corporation and no sale or conveyance of its property as an entirety, or substantially as an entirety, may be made to another corporation if, as a result thereof, any Principal Domestic Operating Property or any shares of stock or Debt, held by us or any Domestic Subsidiary, of a Domestic Subsidiary would become subject to a Mortgage, unless either (i) the Debt Securities shall be equally and ratably secured with (or prior to) the Debt secured by such Mortgage or (ii) such Mortgage could be created pursuant to Section 3.4 (See "Limitation on Liens" above) without equally and ratably securing the Debt Securities (Section 9.3). In addition, as a result of the consolidation, merger or conveyance, either we shall be the continuing corporation or the successor corporation shall be a corporation organized and existing under the laws of the United States or a state thereof and the successor corporation shall expressly assume the due and punctual payment of principal of (and premium, if any) and interest on all Debt Securities and our obligations under the Indenture in a supplemental indenture satisfactory to the Trustee (Section 9.1).

*Limitations on Sales and Leasebacks*

Neither we nor any Domestic Subsidiary may enter into any sale and leaseback transaction involving any Principal Domestic Operating Property, completion of construction and commencement of full operation of which has occurred more than 120 days prior thereto, unless (a) we or such Domestic Subsidiary could mortgage such property pursuant to Section 3.4 (see “Limitation on Liens” above) in an amount equal to the Attributable Debt with respect to the sale and leaseback transaction without equally and ratably securing the Debt Securities or (b) we, within 120 days after completion of the sale and leaseback transaction, apply to the retirement of our Funded Debt an amount (subject to credits for certain voluntary retirements of Funded Debt) not less than the greater of (i) the net proceeds of the sale of the Principal Domestic Operating Property so leased or (ii) the fair market value of the Principal Domestic Operating Property so leased. This restriction will not apply to any sale and leaseback transaction (a) between us and a Domestic Subsidiary or between Domestic Subsidiaries or (b) involving the taking back of a lease for a period of not more than three years (Section 3.5).

Unless otherwise indicated in a Prospectus Supplement, certain of the covenants described above would not necessarily afford holders of the Debt Securities protection in the event of a highly leveraged transaction involving us, such as a leveraged buyout. In this regard, however, it should be noted that voting control of our company is held by Hershey Trust Company, as Trustee for the benefit of Milton Hershey School (the “Milton Hershey School Trust”), which as of December 31, 2004 held approximately 78.1% of the combined voting power of both classes of our outstanding Common Stock. The Milton Hershey School Trust maintains voting control of our company and must approve the issuance of shares of Common Stock or any other action that would result in the Milton Hershey School Trust not continuing to have voting control of our company. On July 25, 2002, we confirmed that the Milton Hershey School Trust, which at that time controlled 77.6% of the combined voting power of both classes of our outstanding Common Stock, had informed us that it had decided to diversify its holdings and in this regard wanted us to explore a sale of the entire company. On September 17, 2002, the Milton Hershey School Trust informed us that it had elected not to sell its controlling interest and requested that the process to explore a sale be terminated.

**Events of Default, Waiver and Notice**

Except as may otherwise be provided in the Prospectus Supplement, as to any series of Debt Securities, an Event of Default is defined in the Indenture as (a) default in the payment of any installment of interest, if any, on the Debt Securities of such series when due and the continuance of such default for a period of 30 days; (b) default in payment of the principal of (and premium, if any, on) any of the Debt Securities of such series when due, whether at maturity, upon redemption, by declaration or otherwise; (c) default in the payment of a sinking fund installment, if any, on the Debt Securities of such series when due; (d) default by us in the performance of any other covenant or agreement contained in the Indenture, other than a covenant expressly included in the Indenture solely for the benefit of series of Debt Securities other than such series, and the continuance of such default for a period of 90 days after appropriate notice; (e) certain events of bankruptcy, insolvency and reorganization of our company; and (f) any other Event of Default established with respect to Debt Securities of that series (Sections 2.5 and 5.1).

An Event of Default with respect to a particular series of Debt Securities issued under the Indenture does not necessarily constitute an Event of Default with respect to any other series of Debt Securities issued thereunder.

The Indenture provides that the Trustee shall, within 90 days after the occurrence of a default with respect to Debt Securities of any series, give all the holders of Debt Securities of such series then outstanding notice of all uncured defaults known to it (the term default to mean the events specified above, not including grace periods); provided that, except in the case of a default in the payment of principal of (and premium, if any) or interest, if any, on any Debt Security of any series, or in the payment of any sinking fund installment with respect to Debt Securities of any series, the Trustee shall be protected in withholding such notice if it in good faith determines that the withholding of such notice is in the interest of all the holders of Debt Securities of such series then outstanding (Section 5.11).

The Indenture provides that if an Event of Default with respect to any series of Debt Securities shall have occurred and be continuing, either the Trustee or the holders of at least 25% in principal amount (calculated as provided in the Indenture) of the Debt Securities of such series then outstanding may declare the principal (or, in the case of Original Issue Discount Securities, the portion thereof as may be specified in the Prospectus Supplement relating to such series) of all of the Debt Securities of such series and the interest accrued thereon, if any, to be due and payable immediately (Section 5.1).

Upon certain conditions such declarations of acceleration with respect to Debt Securities of any series may be annulled and past defaults (except for defaults in the payment of principal (or premium, if any) or interest, if any, on such Debt Securities not theretofore cured or in respect of a covenant or provision of the Indenture which cannot be amended or modified without the consent of the holder of each outstanding Debt Security of that series affected) may be waived with respect to such series by the holders of not less than a majority in principal amount (calculated as provided in the Indenture) of the Debt Securities of such series then outstanding (Section 5.10).

The Indenture requires that we file with the Trustee annually a written statement as to the presence or absence of certain defaults under the terms thereof and as to performance and fulfillment of certain covenants or agreements therein (Section 3.6).

The Indenture provides that the holders of not less than a majority in principal amount (calculated as provided in the Indenture) of the Debt Securities of any series then outstanding shall have the right to direct the time, method and place of conducting any proceeding or remedy available to the Trustee, or exercising any trust or power conferred on the Trustee by the Indenture with respect to defaults or Events of Default with respect to Debt Securities of such series (Section 5.9).

The Indenture provides that the Trustee shall be under no obligation, subject to the duty of the Trustee during default to act with the required standard of care, to exercise any of the rights or powers vested in it by the Indenture at the direction of the holders of Debt Securities unless such holders shall have offered to the Trustee reasonable security or indemnity against expenses and liabilities (Section 6.2).

**Defeasance**

The Indenture provides that we may terminate our obligations under Sections 3.4, 3.5 and 9.3 of the Indenture (being the restrictions described under "Covenants—Limitation on Liens" and "Covenants—Limitations on Sales and Leasebacks" and the first sentence under "Covenants—Merger and Consolidation" above) with respect to the Debt Securities of any series, on the terms and subject to the conditions contained in the Indenture, by depositing in trust with the Trustee money or Government Obligations sufficient to pay the principal of (and premium, if any) and interest on the Debt Securities of such series and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates therefor. Such deposit and termination is conditioned upon, among other things, our delivery of an opinion of counsel that the holders of the Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and termination and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case had such deposit and termination not occurred. Such termination will not relieve us of our obligation to pay when due the principal of or interest on the Debt Securities of such series if the Debt Securities of such series are not paid from the money or Government Obligations held by the Trustee for the payment thereof (Section 13.1).

**Modification of the Indenture**

The Indenture contains provisions permitting us and the Trustee, with the consent of the holders of not less than a majority in principal amount (calculated as provided in the Indenture) of the outstanding Debt Securities of each series affected by such modification, to modify the Indenture or any supplemental indenture or the rights of the holders of the Debt Securities of any series; provided that no such modification shall, without the consent of the holders of each Debt Security affected thereby, extend the maturity of any Debt Security, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce the portion of the principal amount of an Original Issue Discount Security due and payable upon acceleration of the maturity thereof or the portion of the principal amount thereof provable in bankruptcy, or reduce any amount payable upon redemption of any Debt Security, or reduce the overdue rate thereof, or impair any right of repayment at the option of the holder of any Debt Security or change the currency of payment of principal or interest on any Debt Security or reduce the percentage in principal amount of Outstanding Debt Securities of any series the consent of the holders of which is required for modification or amendment of the Indenture or for waiver of compliance with certain provisions of the Indenture or for waiver of certain defaults (Section 8.2).

[Table of Contents](#)

The holders of not less than a majority in principal amount of the Outstanding Debt Securities of any series may on behalf of the holders of all Debt Securities of such series waive, insofar as that series is concerned, our compliance with certain restrictive provisions (Limitation on Liens and Limitations on Sales and Leasebacks) of the Indenture (Section 3.8).

The Indenture also permits us and the Trustee to amend the Indenture in certain circumstances without the consent of the holders of any Debt Securities to evidence the merger of our company or the replacement of the Trustee and for certain other purposes (Section 8.1).

**Regarding the Trustee**

The Trustee extends credit facilities to us and we maintain bank accounts, borrow money and have other customary banking relationships with the Trustee, all in the ordinary course of business.

[Table of Contents]

### Plan of Distribution

We may sell Debt Securities to or through underwriters or dealers and also may sell Debt Securities directly to one or more other purchasers or through agents. The Prospectus Supplement sets forth the names of any underwriters or agents involved in the sale of the Offered Securities and any applicable commission or discounts.

The distribution of Debt Securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices.

In connection with the sale of Debt Securities, underwriters may receive compensation from us or from purchasers of Debt Securities for whom they may act as agents in the form of discounts, concessions or commissions. Underwriters may sell Debt Securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of Debt Securities may be deemed to be underwriters, and any discounts or commissions received by them from us and any profit on the resale of Debt Securities by them may be deemed to be underwriting discounts and commissions under the Securities Act. Any such underwriter or agent will be identified, and any such compensation received from us will be described in the Prospectus Supplement.

Under agreements which we may enter into, underwriters and agents who participate in the distribution of Debt Securities may be entitled to indemnification by us against certain liabilities, including liabilities under the Securities Act.

If so indicated in the Prospectus Supplement, we will authorize underwriters or other persons acting as our agents to solicit offers by certain institutions to purchase Debt Securities from us pursuant to contracts providing for payment and delivery on a future date. Institutions with which such contracts may be made include commercial savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others, but in all cases we must approve such institutions. The obligations of any purchaser under any such contract will be subject to the condition that the purchase of the Offered Securities shall not at the time of delivery be prohibited under the laws of the jurisdiction to which such purchaser is subject. The underwriters and such other agents will not have any responsibility in respect of the validity or performance of such contracts.

## Legal Matters

The validity of, and certain other legal matters with respect to, the Offered Securities will be passed upon for us by Simpson Thacher & Bartlett LLP, New York, New York. Certain legal matters in connection with this offering will be passed upon for the underwriters by Cleary Gottlieb Steen & Hamilton LLP, New York, New York.

## Experts

The consolidated financial statements and schedules of The Hershey Company and its subsidiaries incorporated by reference in this Prospectus and elsewhere in the Registration Statement by reference to its most recently filed Annual Report on Form 10-K have been audited by KPMG LLP, an independent registered public accounting firm, as indicated in their reports with respect thereto, and are incorporated by reference herein in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

Table of Contents

## PART II

## INFORMATION NOT REQUIRED IN THE PROSPECTUS

### ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table lists the expenses expected to be incurred in connection with the preparation and filing of the registration statement, including amendments thereto, and the printing and distribution of the prospectus contained therein, all of which will be paid by the registrant. All amounts listed below, other than the Securities and Exchange Commission registration fee, are estimates.

| | |
|---|---|
| Securities and Exchange Commission registration fee | $ 88,275 |
| Printing and duplicating expenses | 1,000 |
| Rating agency fees | 156,000 |
| Trustee fees and expenses | 2,500 |
| Accounting fees and expenses | 7,500 |
| Legal fees and expenses | 110,000 |
| Total | $365,275 |

### ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law (the “DGCL”) grants each corporation organized thereunder the power to indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise, against expenses, including attorneys’ fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of being or having been in any such capacity, if such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the person’s conduct was unlawful.

Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which the director derived an improper personal benefit.

The Sixth Article of the registrant’s Restated Certificate of Incorporation provides that to the fullest extent permitted by the DGCL, no director of the registrant shall be personally liable to the registrant or its stockholders for monetary damages for breach of fiduciary duty as a director and that the registrant may indemnify directors and officers of the registrant.

Article VI of the By-Laws of the registrant provides that the registrant shall indemnify, in the manner and to the fullest extent permitted by the DGCL, any person who is, was or is threatened to be made a defending party to any proceeding (including any pending or threatened civil or criminal action, suit, arbitration, alternate dispute resolution mechanism, investigation or administrative hearing) by reason of the fact that such person is or was a director or officer of the registrant or is or was serving, at the request of the registrant, in such capacity for another enterprise. The registrant will pay in advance of final disposition all expenses incurred by a director or officer in defending a proceeding which is subject to indemnification. The registrant has the burden of proving that a director or officer was not entitled to indemnification.

The registrant’s directors and officers are insured against losses arising from any claim against them as such for wrongful acts or omissions, subject to certain limitations.

**ITEM 16. EXHIBITS.**

See Index to Exhibits.

**ITEM 17. UNDERTAKINGS.**

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, as amended (the “Securities Act”);

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

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

*Provided, however,* that paragraphs (1)(i) and (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 Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are incorporated by reference in the registration statement.

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

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

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

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

Table of Contents

## SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No. 1 to this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Hershey, State of Pennsylvania, on November 16, 2005.

The Hershey Company

By: /s/ David J. West

Name: David J. West
Title: Senior Vice President and Chief Financial Officer

Pursuant to the requirements of the Securities Act, this Amendment No. 1 to this registration statement has been signed by the following persons in their capacities indicated on November 16, 2005:

| Signature | Title |
|---|---|
| * <br> Richard H. Lenny | Chief Executive Officer and Director (Principal Executive Officer) |
| /s/ David J. West <br> David J. West | Chief Financial Officer (Principal Financial Officer) |
| * <br> David W. Tacka | Chief Accounting Officer (Principal Accounting Officer) |
| * <br> Jon A. Boscia | Director |
| * <br> Robert H. Campbell | Director |

[Table of Contents]

| | |
|---|---|
| * | Director |
| Robert F. Cavanaugh | |
| * | Director |
| Gary P. Coughlan | |
| * | Director |
| Harriet Edelman | |
| * | Director |
| Bonnie G. Hill | |
| * | Director |
| Alfred F. Kelly, Jr. | |
| * | Director |
| Mackey J. McDonald | |
| * | Director |
| Marie J. Toulantis | |

*By: /S/ DAVID J. WEST

**David J. West**
**Attorney-in-Fact**

Table of Contents

## INDEX TO EXHIBITS

| Exhibit Number | Description of Exhibits |
|---|---|
| 1.1 | Form of Underwriting Agreement for Debt Securities* |
| 4.1 | Indenture between The Hershey Company and Citibank, N.A., as Trustee* |
| 4.2 | Form of Debt Security (previously included in Indenture filed as Exhibit 4.1)* |
| 5.1 | Opinion of Simpson Thacher & Bartlett LLP* |
| 12.1 | Computation of Ratio of Earnings to Fixed Charges (incorporated by reference from Exhibit 12 to Annual Report on Form 10-K of The Hershey Company for the fiscal year ended December 31, 2004, filed on March 7, 2005, and from Exhibit 12 to Quarterly Report on Form 10-Q of The Hershey Company for the quarterly period ended October 2, 2005, filed on November 9, 2005) |
| 23.1 | Consent of KPMG LLP, Independent Registered Public Accounting Firm† |
| 23.2 | Consent of Simpson Thacher & Bartlett LLP (previously included in Opinion filed as Exhibit 5.1)* |
| 24.1 | Powers of Attorney (previously included on signature pages to this registration statement)* |
| 25.1 | Form T-1 Statement of Eligibility of Citibank, N.A. as Trustee for Indenture under the Trust Indenture Act of 1939* |

* Previously filed.

† Filed herewith.

**Exhibit 23.1**

Consent of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
The Hershey Company:

We consent to the incorporation by reference in the registration statement No. 333-128375 on Form S-3 of The Hershey Company of our report dated March 3, 2005, with respect to the consolidated balance sheets of The Hershey Company as of December 31, 2004 and 2003, and the related consolidated statements of income, cash flows, and stockholders' equity for each of the years in the three-year period ended December 31, 2004, and all related financial statement schedules, management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2004, and the effectiveness of internal control over financial reporting as of December 31, 2004, incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

Our report on the consolidated financial statements refers to The Hershey Company's adoption of Financial Accounting Standards Board Interpretation No. 46, *Consolidation of Variable Interest Entities, an interpretation of ARB No. 51,* on June 30, 2003.

/s/ KPMG LLP

New York, New York
November 16, 2005

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE
NEW YORK, N.Y. 10017-3954
(212) 455-2000

FACSIMILE (212) 455-2502

November 16, 2005

**VIA FEDEX AND EDGAR**

H. Roger Schwall
Assistant Director
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7010

**Re: The Hershey Company**
**Registration Statement on Form S-3**
**Filed September 16, 2005**
**File No. 333-128375**

**Form 10-K for the year ended December 31, 2004**
**Filed March 7, 2005**
**File No. 01-00183**

**Form 10-Q for the quarters ended April 1, 2005 and July 3, 2005 Filed May 11, 2005 and August 9, 2005, respectively**

Dear Mr. Schwall:

On behalf of The Hershey Company, a Delaware corporation (the “Company”), enclosed is a copy of Amendment No. 1 to the above-referenced Registration Statement (the “Registration Statement”), as filed with the United States Securities and Exchange Commission (the “Commission”) on the date hereof, marked to show composite changes from the Registration Statement filed with the Commission on September 16, 2005.

The changes reflected in Amendment No. 1 include those made by the Company in response to the comments of the staff of the Division of Corporation Finance of the Commission (the “Staff”) set forth in your letter dated October 14, 2005 to Burton H. Snyder, Esq., Senior Vice President, General Counsel and Secretary of the Company, with respect to the Registration Statement. Amendment No. 1 also includes other changes that are intended to update, clarify and render more complete the information contained therein.

For your convenience, we set forth each comment from your comment letter in bold typeface and include the Company's response below it. Capitalized terms used and not defined herein have the respective meanings assigned to them in Amendment No. 1. All references to page numbers and captions correspond to the page numbers and captions in Amendment No. 1, which includes the prospectus as revised.

In connection with our response, we are submitting the following materials:

1. Three revised, clean courtesy copies of Amendment No. 1; and
2. Three courtesy copies of Amendment No. 1, marked to show changes from the initial document filed on September 16, 2005.

**General**

**1. Where comments on one document or section also relate to disclosure in another document or section, please make parallel changes to all affected disclosure. This will eliminate the need for us to repeat similar comments.**

The Company notes the Staff's comment and has made appropriate changes to the Registration Statement in accordance with the Staff's comment. In addition, the Company undertakes to make parallel changes to all affected disclosure in all of the Company's future filings.

**2. We note that you do not include a risk factors section in either your Form S-3 or your Form 10-K. But several factors appear to merit special emphasis. For example, you rely heavily on cocoa for your business. You disclose at page 4 of the Form 10-K that the Ivory Coast, the world's largest cocoa-producing country, has experienced continued civil unrest, resulting in volatile market conditions. While it is unclear from your disclosure what percentage of your cocoa supply in recent periods has come from the Ivory Coast, it would appear that the potential disruption of the supply from such a substantial world supplier would necessarily have an adverse impact on your business and results of operations. Include enhanced disclosure regarding what percentage of your past, current and future cocoa needs you have obtained and expect to obtain from the Ivory Coast. Also include appropriate Risk Factors disclosure to identify the risks and potential harm to your business and results of operations that could result from the uncertain political situation in that country.**

**Another issue deserving of Risk Factors disclosure is the substantial control wielded by your largest shareholder and its ability to determine to a large degree your corporate direction. We note for example the aborted decision to put the company up for sale several years ago.**

**Disclose any trends towards substantially increased leverage as well as a decreased current asset to current liability ratio, along with the potential implications on your ability to continue to borrow or to repurchase your shares in the amounts contemplated. Similarly discuss any risks relating to current and future pension**

**plan obligations, if material. We note the substantial increase in recent contributions to your plans as well as your widespread rationalization efforts in recent periods.**

**To the extent that your recent acquisitions make less likely your ability to achieve your stated goals regarding increased margin, as the disclosure at page 17 of your most recent Form 10-Q suggests, consider whether this represents merely a trend worthy of disclosure in your current MD&A section or also constitutes a risk.**

**Lastly, if there are any particular risks associated with the debt securities you will be offering, include those in the prospectus or corresponding prospectus supplement. For example, it appears that you are entitled to continue paying dividends and to incur substantial additional debt, even if those actions make less likely your ability to satisfy the terms of the debt you are issuing.**

The Company advises the Staff that, at the present time, the Company does not believe any of the issues referenced above pose a material risk to the Company. Consequently, the Company does not intend to disclose these risk factors in the Registration Statement. However, if the current facts or circumstances change, the Company will include such disclosures in its Annual Report on Form 10-K or a Prospectus Supplement, as appropriate. However, the Company supplementally advises the Staff of the following in connection with each of the issues referenced in Comment 2 above:

a. *Cocoa Production in the Ivory Coast*. As noted on page 4 of the Company’s 2004 Annual Report on Form 10-K, “Continued civil unrest in the world’s largest cocoa producing country, the Ivory Coast, has resulted in volatile market conditions, but has not materially affected the harvesting and marketing of the cocoa crop.” Further, as disclosed on page 4, “The Company believes that the supply of raw materials is adequate to meet its manufacturing requirements.”

While civil unrest in the Ivory Coast has resulted in volatile prices, the Company does not believe that there is a material risk related to its supply of cocoa. Though the Company believes significant disruption of cocoa supplies from the Ivory Coast is unlikely, in the event such disruption does occur, the Company believes adequate supplies would be available because current physical cocoa stocks in consuming countries equal approximately 50% of the annual worldwide consumption. In the Company’s view, these current physical cocoa stocks would provide a significant supply buffer to any delay or reduction in cocoa exports from the Ivory Coast. Moreover, historically there have been numerous examples of weather catastrophes, crop disease, civil disruptions, embargoes and other problems in cocoa producing countries that have never resulted in total loss of a particular producing country’s cocoa crop and/or exports. In addition, in the case of the Ivory Coast, the Company believes that a complete disruption of cocoa supplies is extremely unlikely given the country’s heavy reliance on the exportation of cocoa as a source of its revenue and foreign currency.

The Company also believes that it has other alternatives to purchase cocoa from other countries, if necessary. For example, the Company could, as it has on numerous occasions in the past, purchase cocoa from Ghana, Indonesia, Ecuador, Nigeria, Brazil or Cameroon. These alternatives mitigate substantially the risk that sufficient quantities of cocoa would not be available to meet the Company's manufacturing requirements in the unlikely event that there is a disruption in cocoa supplies from the Ivory Coast.

b. *Control of the Company by the Hershey Trust Company, as Trustee for the benefit of Milton Hershey School (the "Milton Hershey School Trust")*. The Milton Hershey School Trust maintains voting control over the Company. However, the Milton Hershey School Trust has not taken an active role in setting policy for the Company, nor has it exercised influence with regard to the ongoing business decisions of the Company's board of directors or management. As disclosed in the Company's filings, the Milton Hershey School Trust decided to explore the sale of the Company in June 2002 but subsequently decided to terminate the sale process in September 2002. In connection with these events, Pennsylvania enacted legislation that would require state Attorney General approval and, if challenged by the state Attorney General, court approval prior to any sale of the Company. Therefore, the Company does not currently consider the majority control by the Milton Hershey School Trust to be a risk factor that needs to be disclosed at this time.

c. *Leverage, Current Asset to Current Liability Ratio and Pension Obligations*. During 2005, the Company increased leverage due primarily to one-time transactions. Though minor with respect to overall financing requirements, the Company acquired two small companies that will allow it to expand and improve its position in the premium chocolate market. After limited activity in 2004, the Company has increased its share repurchases to offset stock-option-related dilution and enhance shareholder value. Lastly, the Company made contributions to its pension plans that enabled it to realize tax benefits while also allowing it to meet its funded status objectives. Given the Company's historically strong cash flows, the Company expects its liquidity ratios and leverage to improve in the fourth quarter of 2005 and in 2006. The Company's proven strong financial performance supports its ability to access capital markets. The Company continues to experience strong demand for its commercial paper and bonds and does not foresee any impediments to its ability to raise capital.

d. *Recent Acquisitions*. While recent business acquisitions have had a near-term impact on the achievement of the Company's goals for margin improvement, plans are being put in place to improve the profitability of these businesses. The Company believes that the disclosure of the short-term impact on the Company's margins is important and, therefore, the Company disclosed the expected impact on page 34 of its 2004 Annual Report on Form 10-K, as well as the impact in each 2005 quarterly period in the MD&A section of its Quarterly Reports on Form 10-Q. However, the Company does not believe that a reduction in margins resulting from recent acquisitions represents a trend that constitutes a material risk to the Company.

e. *Debt Securities*. If there are any particular risks associated with the Debt Securities the Company will be offering, the Company undertakes to include those in a corresponding Prospectus Supplement.

**Form S-3**

**Prospectus Cover Page**

**3. You indicate that the Debt Securities may be listed for trading. If you are in the process of making any applications in that regard, please advise us of the status in each case. Also explain the statement at page 9 under "Legal Matters" which suggests that underwriters may already have been identified. We may have additional comments.**

The Company confirms that it has not made any application to list, and at this time does not plan to list, the Debt Securities for trading.

In addition, the Company confirms that at this time no underwriter has been identified in connection with any offering of Debt Securities. The statement at page 9 of the Registration Statement under "Legal Matters" serves to disclose only that the Company has designated Cleary Gottlieb Steen & Hamilton LLP, New York, New York, as underwriters' counsel for any future offerings. The Company will choose the underwriter or underwriters for any offering of Debt Securities at the time of a shelf take-down of Debt Securities and will disclose the name of any such underwriters as well as any applicable commission or discounts in the relevant Prospectus Supplement.

**Documents Incorporated by Reference, page 1**

**4. For purposes of clarity, we suggest that you specify the periods involved and dates filed in each case. Separately list each incorporated document, including amendments.**

The Registration Statement has been amended to reflect the Staff's comment. See page 1 of Amendment No. 1.

**Description of Debt Securities, page 2**

**5. Define "original issue discount" when you first use the term. In the case of Original Issue Discount Securities, advise us of your consideration to including an opinion as to the tax effects of such securities. Also confirm that you will file a new "clean" legality opinion with each issuance of securities, which opinion will not include the assumptions relating to the future issuance and approvals required.**

In response to the Staff's comment, the Company has defined "Original Issue Discount Security" under the heading "Definitions" on page 4 of Amendment No. 1 and added disclosure on page 3 of Amendment No. 1. The Company advises the Staff that currently it does not intend to include an opinion as to the tax consequences of Original Issue

Discount Securities and does not believe that it is current market practice to provide such an opinion. As noted on page 3 of Amendment No. 1, the Company will describe any special United States federal income tax consequences of Original Issue Discount Securities offered in the applicable Prospectus Supplement relating to any such securities.

In addition, the Company confirms that it will file, or cause to be filed on its behalf, a new "clean" legality opinion with each issuance of securities, which opinion will not include the assumptions relating to the future issuance and approvals required.

**Signatures**

**6. Rather than using initials for all signatories, please include each individual's first name as well.**

The Registration Statement has been amended to reflect the Staff's comment. See the signature pages of Amendment No. 1. In addition, the Company undertakes to include each individual's first name for all signatories in all of the Company's future filings.

**Form 10-K for the Year Ended December 31, 2004**

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

**Results of Operations, page 16**

**7. We note your explanation of the lower effective tax rate in 2004 due to the adjustment to contingency reserves from the settlement of tax audits related to the deductibility and timing of certain expenses. We also note your statutory income tax reconciliations provided in the income tax footnotes to your financial statements for the years 1999 through 2004.**

**With regard to each of the items settled in these audits, tell us:**

- **the nature and amount of each item of income or expense,**
- **the years in which each item arose,**
- **the amount of the tax reserve associated with each item,**
- **your classification of each item as a temporary or other than temporary item as it relates to your SFAS 109 income tax disclosure,**
- **the effect that each such tax reserve item had in your effective income tax rate reconciliation, and**
- **the rationale for such classification**

**In addition, tell us how you have accounted for and disclosed in your financial statements and footnotes any tax benefits associated with non-qualified stock option exercises.**

**We may have further comment.**

The Company supplementally advises the Staff of the following regarding items that were settled as a result of the aforementioned tax audits. All such items were classified as other than temporary because reported amounts of such items in the financial statements will not result in taxable or deductible amounts in future periods.

Items Settled in All Audits:

($ in millions)

| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | Total | Impact on Tax Rate |
|---|---|---|---|---|---|---|---|---|
| Charges to Tax Provision: | | | | | | | | |
| Valuation of Non-cash Contributions | $ 2.9 | $ 3.6 | $ 2.7 | $ — | $— | $— | $ 9.2 | (1.1)% |
| Deductibility of Costs of Business Process Changes | 2.9 | — | 3.3 | 3.2 | 3.2 | — | 12.6 | (1.5)% |
| Deductibility of Fees Paid to Prior Business Owners | 2.0 | 1.6 | 1.6 | — | — | — | 5.2 | (.6)% |
| Transfer Pricing Issues | 1.4 | 1.5 | 3.3 | — | — | — | 6.2 | (.8)% |
| Income Allocation Issues Among States | 4.0 | .1 | .1 | — | — | — | 4.2 | (.5)% |
| Interest on Tax Assessments | — | 2.0 | 4.2 | 7.4 | 6.3 | .2 | 20.1 | (2.4)% |
| Total Tax Reserve Charges to Tax Provision | 13.2 | 8.8 | 15.2 | 10.6 | 9.5 | .2 | 57.5 | (6.9)% |
| Tax Rate Impact of Above Reserves By Year | 1.8% | 1.6% | 4.4%[(a)] | 1.7% | 1.3% | — | | |
| Internal Revenue Service Refund, net of assessments | | | | | | 3.6 | 3.6 | (.4)% |
| | | | | | | | 61.1 | (7.3)% |
| Charges to Goodwill: | | | | | | | | |
| Acquisition Tax Attributes | 8.4 | — | — | — | — | — | 8.4 | |
| Acquisition Valuation | 1.0 | 3.2 | — | — | — | — | 4.2 | |
| Total Charges to Goodwill | 9.4 | 3.2 | — | — | — | — | 12.6 | |
| | $22.6 | $12.0 | $15.2 | $10.6 | $ 9.5 | $ 3.8 | $73.7 | |

(a) The tax rate impact would have been 2.5% excluding the effect of the 2001 business realignment initiatives and sale of the Luden’s throat drop business.

The Company advises the Staff that its policy is to accrue interest on tax assessments as a component of income tax expense.

The charges to goodwill were accounted for in accordance with paragraph 40 of Statement of Financial Accounting Standards (SFAS) No. 141, Business Combinations, which states that income tax uncertainties related to an acquisition (for example, an uncertainty related to the tax basis of an acquired asset that will ultimately be agreed to by the taxing authority) shall be accounted for in accordance with SFAS No. 109, Accounting for Income Taxes (SFAS No. 109). In accordance with paragraph 30 of SFAS No. 109, changes in such uncertainties after the acquisition date shall be applied first to reduce goodwill related to the acquisition. This accounting treatment is consistent with EITF No. 93-7, Uncertainties Related to Income Taxes in a Purchase Business Combination, which states that “At the date of a change in management’s best estimate of

the ultimate tax basis of acquired assets, liabilities, and carryforwards, and at the date that the tax basis is settled with the tax authority, deferred tax assets and liabilities should be adjusted to reflect the revised tax basis and the amount of any settlement with the tax authority for prior-year income taxes. The effect of those adjustments should be applied to increase or decrease the remaining balance of goodwill attributable to that acquisition."

In accordance with paragraphs 16 and 17 of Accounting Principles Board Opinion No. 25 Accounting for Stock Issued to Employees, an amount that is deductible for income tax purposes that does not affect net income should be included in additional capital. Accordingly, with respect to the accounting for tax benefits associated with non-qualified stock options, such benefits are accounted for as a charge to accrued income taxes and a credit to additional paid-in capital. The impact of such tax benefits is included under the caption "Exercise of stock options" disclosed on the Consolidated Statements of Stockholders' Equity, the details of which are presented below:

Impact on Additional Paid-in Capital from Stock Options Exercises

| | 2002 | 2003 | 2004 |
|---|---|---|---|
| Value of treasury stock issued, net of proceeds from exercise of stock options | $(26,582) | $(13,487) | $ (1,441) |
| Tax benefit from exercise of stock options | 23,065 | 15,006 | 24,689 |
| Impact from exercise of stock options | $ (3,517) | $ 1,519 | $23,248 |

The charges to additional paid-in capital relate to the value of the Company's treasury stock which was reissued in connection with stock options exercises, reduced by the proceeds received for the options exercised.

**Off-Balance Sheet Arrangements, Contractual Obligations . . . , page 21**

**8. Make a statement as to what source(s) you expect to use to fund these obligations.**

The Company advises the Staff that it will disclose the sources needed to fund these obligations in future filings. Such sources primarily include cash provided from operations, short-term and long-term borrowings.

**Directors and Executive Officers of the Registrant, page 76**

**9. Your disclosure is ambiguous with regard to several periods in the five year sketches. To the extent that there are gaps of two months or more in any sketch you include or incorporate by reference, revise to cover all periods during the five years, as Item 401 of Regulation S-K requires.**

The Company advises the Staff that there were no gaps regarding the positions held by Executive Officers of the Company during the last five years. In future filings, the Company will include the month and year of the periods during which each position was held.

* * * * * * * * * *

Please do not hesitate to call A.J. Kess at 212-455-2711 or Reza Odouli at 212-455-2693 with any questions or further comments you may have regarding this filing or if you wish to discuss the above responses.

Very truly yours,

/s/ SIMPSON THACHER & BARTLETT LLP

SIMPSON THACHER & BARTLETT LLP

cc: U.S. Securities and Exchange Commission
Gary Newberry
April Sifford
Jason Wynn
Timothy Levenberg