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STEAK & SHAKE CO
Form 8-K
November 10, 2004

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

FORM 8-K

PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) November 5, 2004

THE STEAK N SHAKE COMPANY

(Exact name of registrant as specified in its charter)

INDIANA 000-08445 37-0684070

(State or other jurisdiction (Commission (IRS Employer
of incorporation) File Number) Identification No.)

36 SOUTH PENNSYLVANIA STREET, SUITE 500
INDIANAPOLIS, INDIANA 46204

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (317) 633-4100

NOT APPLICABLE

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On November 5, 2004, Steak n Shake Operations, Inc., a wholly owned

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subsidiary of the Registrant ("SNS Operations"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with Kelley Restaurants, Inc. the Registrant's largest franchisee ("KRI"), and SNS Merger Corp, a wholly owned subsidiary of SNS Operations ("Subcorp"), pursuant to which Subcorp will merge with and into KRI, with KRI being the surviving company (the "Merger"). If the Merger is completed, KRI will become a wholly owned subsidiary of SNS Operations.

Pursuant to the Merger Agreement, the shares of KRI common stock will be converted into the right to receive cash having an aggregate value of approximately \$20.5 million at closing, subject to adjustment. The net value transferred at closing is anticipated to be approximately \$17.5 million, which includes adjustments for debt repayment, working capital and other items. SNS Operations will deposit ten percent (10%) of the adjusted purchase price in escrow, which amount shall be held for up to 24 months from the closing of the transaction.

The Merger Agreement includes various customary representations, warranties and covenants of the parties for transactions of this kind. The obligations of the parties to complete the Merger are subject to various closing conditions, including, without limitation, (i) the satisfactory completion of the Registrant's due diligence review of KRI, (ii) the final approval of the Registrant's Acquisition Committee, (iii) the approval of the Merger Agreement by the KRI stockholders, and (iv) the execution of employment agreements with certain officers of KRI.

As indicated above, the consummation of the Merger is conditioned upon SNS Operations entering into employment agreements with Wayne Kelley and Steve McArthur, the President and Chief Financial Officer, respectively, of KRI. Mr. Kelley serves on the Board of Directors for both the Registrant and SNS Operations. Pursuant to his employment agreement, Mr. Kelley would remain a full-time employee of KRI for a period of two years and sixteen weeks after the date of the closing of the Merger. During this time, Mr. Kelley will receive an annual salary of \$205,000 and shall be entitled to a bonus of \$57,000 if he is still employed at the end of the employment period. Under his employment agreement, Mr. McArthur would remain a full-time employee of KRI for a period of two years. During this time Mr. McArthur will receive an annual salary of \$121,500 per year and shall be entitled to a bonus of \$13,500 per year if he is still employed at the end of each of the years in the employment period.

The proposed merger is also disclosed in the press release attached as Exhibit 99.1 to this report and the information set forth therein is incorporated herein by reference and constitutes a part of this report.

ITEM 2.02 RESULTS OF OPERATIONS AND FINANCIAL CONDITION

On November 10, 2004, The Steak n Shake Company (the "Registrant") reported its results of operations for its fiscal year 2004 fourth quarter and full year results. The Registrant's earnings release is attached as Exhibit 99.1 and the information set forth therein is incorporated herein by reference and constitutes a part of this report.

The Registrant is furnishing the information contained in this report, including the Exhibits, pursuant to Item 2.02 of Form 8-K promulgated by the Securities and Exchange Commission (the "SEC"). This information shall not be deemed to be "filed" with the SEC or incorporated by reference into any other filing with the SEC. By filing this report on Form 8-K and furnishing this information, the Registrant makes no admission as to the materiality of any information in this report, including the Exhibits.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

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Company-owned restaurants during the fiscal fourth quarter increased 5.2%, excluding the impact of the extra week.

Net earnings for the fiscal fourth quarter 2004 were \$7.6 million, or \$0.28 per diluted share, compared to \$3.6 million, or \$0.13 per diluted share, in the prior year period. The prior year period included a \$3.4 million charge, net of taxes, for closing nine underperforming restaurants.

Peter Dunn, President and Chief Executive Officer commented, "We are pleased with the continued progress we achieved in the fourth quarter, which reflects the outstanding contributions of our entire team in a less than optimal operating environment."

FISCAL 2004 RESULTS

For the 53-week period ended September 29, 2004, total revenues increased 10.9% to \$553.7 million, compared to \$499.1 million in the prior year 52-week period. Same-store sales for Company-owned restaurants during fiscal 2004 increased 7.7%, exclusive of the additional operating week. Net earnings for fiscal 2004 were \$27.7 million, or \$1.00 per diluted share, compared to \$20.9 million, or \$0.77 per diluted share in fiscal 2003. As noted above, the prior year period included a \$3.4 million charge, net of taxes, for closing nine underperforming restaurants. For the fiscal year, the Company opened 19 new restaurants, including three franchised units.

Mr. Dunn continued, "Over the last two years, our focus on the Virtuous Cycle has enabled us to lower manager and associate turnover, increase guest satisfaction, introduce successful new products, and generate strong same store sales gains. During fiscal year 2005 we will continue to focus on the fundamentals of the Virtuous Cycle while making critical investments in store level leadership and infrastructure. This will lead to accelerated store expansion, that should support sustained earnings growth over the long-term."

As of September 29, 2004, there were 425 Steak n Shake restaurants operating in 19 states, including 365 Company-owned restaurants and 60 franchised units. During the quarter, the Company opened eight new restaurants, primarily in Ohio, Indiana, Illinois and Texas.

ACQUISITION OF LARGEST FRANCHISEE

On November 5, 2004, subsequent to the end of the 2004 fiscal fourth quarter, the Company entered into an agreement to merge Kelley Restaurants, Inc., its largest franchisee, into one of the Company's subsidiaries for a net consideration of approximately \$17.5 million. Kelley Restaurants, Inc. operates 16 Steak n Shake restaurants in the Atlanta, Georgia and Charlotte, North Carolina markets. The transaction is subject to completion of due diligence, Kelley Restaurants, Inc. shareholder approval, and other contingencies. The transaction is expected to close by the end of December. The Company anticipates the acquisition will contribute diluted earnings per share in the range of \$0.01 to \$0.02 in fiscal 2005.

Mr. Dunn concluded, "Although we have not historically grown through acquisition, the opportunity to purchase this high performing franchisee group in two under-penetrated markets is consistent with our intent to continue expanding the Steak n Shake brand. Steak n Shake has a loyal customer following in Atlanta and Charlotte. We plan to build on the well-deserved reputation Kelley Restaurants, Inc. has cultivated for the brand and expand our presence in these two major markets."

2005 GUIDANCE

For the fiscal year 2005, the Company anticipates diluted earnings per share in the range of \$1.08-\$1.11, inclusive of the acquisition. Same store sales growth is expected to be between 2% - 3%. As previously announced, the Company

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anticipates opening 18-24 new Company-owned restaurants throughout fiscal year 2005.

INVESTOR CONFERENCE CALL AND WEBCAST

The Steak n Shake Company will broadcast its investor conference call live over the Internet at 5:00 p.m. Eastern Time, 4:00 p.m. Central Time today, Wednesday, November 10, 2004. Hosting the call will be Peter Dunn, President and Chief Executive Officer, and Jeffrey A. Blade, Senior Vice President and Chief Financial Officer. Interested investors and other parties may listen to a simultaneous webcast of the conference call by logging onto the Company's website at www.steaknshake.com or by dialing 1-877-297-4509.

ABOUT STEAK N SHAKE

Steak n Shake is a full service, casual dining restaurant serving a core menu of its famous Steakburger sandwiches, thin 'n crispy french fries, old fashioned hand-dipped milk shakes, chili, home style soups, fresh salads, a variety of desserts and breakfast. All of the food is prepared to the guest's order and served by friendly, well-trained associates. Steak n Shake restaurants feature full-service dining areas, counter service and drive-thru windows and are open 24 hours a day, seven days a week.

This press release contains forward-looking information. In general, forward-looking statements include estimates of future revenues, cash flows, capital expenditures, or other financial items, and assumptions underlying any of the foregoing. Forward-looking statements reflect management's current expectations regarding future events and use words such as "anticipate", "believe", "expect", "may", "will", and other similar terminology. These statements speak only as of the date they were made and involve a number of risks and uncertainties that could cause actual results to differ materially from those expressed in forward-looking statements. Several factors, many beyond our control, could cause actual results to differ significantly from our expectations, such as the following: effectiveness of operating initiatives; changes in economic conditions; effectiveness of advertising and marketing initiatives; harsh weather conditions, primarily in the first and second quarters; availability and cost of qualified restaurant personnel; changes in consumer tastes; changes in consumer behavior based on publicity or concerns relating to food safety or food-borne illnesses; effectiveness of our expansion plans; changes in minimum wage rates; changes in food commodity prices; completion of merger or acquisitions and successful integration of those transactions; and changes in applicable accounting policies and practices. The foregoing list of important factors is not intended to be all-inclusive as other general market, industry, economic, and political factors may also impact our operations. Readers are cautioned not to place undue reliance on our forward-looking statements, as we assume no obligation to update forward-looking statements. For further information, refer to the Company's Annual Report on Form 10-K for the year ended September 24, 2003.

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(317) 633-4100

THE STEAK N SHAKE COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS
(AMOUNTS IN \$000'S, EXCEPT SHARE AND PER SHARE DATA)

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	THIRTEEN WEEKS ENDED 9/29/2004 (UNAUDITED)	TWELVE WEEKS ENDED 9/24/2003 (UNAUDITED)	FIFTY-THREE WEEKS ENDED 9/29/2002 (UNAUDITED)
REVENUES			
Net sales	\$ 143,576	\$ 125,109	\$ 549,000
Franchise fees	1,226	999	4,000
	144,802	126,108	553,000
COSTS AND EXPENSES			
Cost of sales	34,436	29,379	129,000
Restaurant operating costs	70,527	62,052	270,000
General and administrative	10,341	8,628	42,000
Depreciation and amortization	6,077	5,799	24,000
Marketing	6,339	4,721	23,000
Interest	2,906	3,039	12,000
Rent	2,226	2,001	8,000
Provision for store closings	0	5,200	(1,000)
Pre-opening costs	775	427	2,000
Other income, net	(583)	(558)	(1,000)
	133,044	120,688	511,000
EARNINGS BEFORE INCOME TAXES	11,758	5,420	42,000
INCOME TAXES	4,110	1,811	14,000
NET EARNINGS	\$ 7,648	\$ 3,609	\$ 27,000
NET EARNINGS PER COMMON AND COMMON EQUIVALENT SHARE:			
Basic	\$ 0.28	\$ 0.13	\$ 1.00
Diluted	\$ 0.28	\$ 0.13	\$ 1.00
WEIGHTED AVERAGE SHARES AND EQUIVALENTS:			
Basic	27,481,743	27,052,774	27,385,000
Diluted	27,730,189	27,279,788	27,710,000

CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL POSITION

	9/29/2004	9/24/2003
ASSETS		
Current assets	\$ 45,400	\$ 39,256
Property and equipment - net	382,868	364,600
Other assets	5,195	10,780

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Total assets	\$	433,463	\$	414,636
		=====		=====
LIABILITIES AND SHAREHOLDERS' EQUITY				
Current liabilities	\$	58,940	\$	61,795
Deferred income taxes and credits		3,407		2,898
Obligations under capital leases		141,972		145,125
Senior note		9,429		16,203
Shareholders' equity		219,715		188,615
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Total liabilities and shareholders' equity	\$	433,463	\$	414,636
		=====		=====