

NATHANS FAMOUS INC
Form PRER14A
July 26, 2016

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

SCHEDULE 14A
(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

(Amendment No. 1)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under Rule 14a-12

Nathan's Famous, Inc.
(Name of Registrant as Specified in Its Charter)

(Name of Persons(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

PRELIMINARY PROXY STATEMENT
SUBJECT TO COMPLETION, DATED JULY 26, 2016

NATHAN'S FAMOUS, INC.

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
SEPTEMBER 14, 2016

To our Stockholders:

The Annual Meeting of Stockholders of NATHAN'S FAMOUS, INC. ("Nathan's" or the "Company"), will be held on Wednesday, September 14, 2016, at our offices located at One Jericho Plaza, Second Floor — Wing A, Jericho, New York 11753, at 10:00 a.m. At the meeting, you will be asked to consider and vote on:

- The election of eight directors to the Board of Directors;
- Approval of the Nathan's Famous, Inc. Fiscal 2017 Management Incentive Plan;
- Approval of the Nathan's Famous, Inc. Code Section 162(m) Bonus Plan; and
- Ratification of the appointment of Grant Thornton LLP as auditors of the Company for fiscal 2017.

Action will also be taken on any other matters that properly come before the meeting. If you are a stockholder of record at the close of business on July 20, 2016, you are entitled to vote at the meeting or at any adjournment or postponement of the meeting. This notice and proxy statement are first being mailed to stockholders on or about [_____], 2016.

Please sign, date and return the enclosed WHITE proxy card as soon as possible so your shares may be voted as you direct.

If you have any questions or need assistance voting your shares, please contact our proxy solicitor, MacKenzie Partners, Inc., at the contact information listed below:

105 Madison Avenue
New York, New York 10016
Stockholders call toll free at (800) 322-2885
Banks and Brokers may call collect at (212) 929-5500
proxy@mackenziepartners.com

By Order of the Board of Directors,

/s/ Ronald G. DeVos

Ronald G. DeVos
Secretary

Jericho, New York
July [__], 2016

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APPENDIX A

APPENDIX B

PRELIMINARY PROXY STATEMENT
SUBJECT TO COMPLETION, DATED JULY 26, 2016

NATHAN'S FAMOUS, INC.
One Jericho Plaza
Jericho, New York 11753

PROXY STATEMENT

ANNUAL MEETING OF STOCKHOLDERS
Wednesday, September 14, 2016

The Annual Meeting of Stockholders of Nathan's Famous, Inc. ("Nathan's" or the "Company"), will be held on Thursday, September 14, 2016, at our headquarters at One Jericho Plaza, Second Floor — Wing A, Jericho, New York 11753, at 10:00 a.m.

Our Board of Directors is soliciting your proxy to vote your shares of common stock at the annual meeting or any adjournments of that meeting. This proxy statement, which was prepared by our management for the Board of Directors, contains information about the matters to be considered at the meeting or any adjournments or postponements of the meeting. All proxies will be voted in accordance with the instructions they contain. If you do not specify your voting instructions on the proxy you submit for the meeting, it will be voted in accordance with the recommendation of the Board of Directors. You may revoke your proxy at any time before it is exercised at the meeting by giving our Secretary written notice to that effect. This proxy statement and our annual report is first being sent to stockholders on or about [_____], 2016.

Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on September 14, 2016. This proxy statement, the proxy card and annual report are available at <http://phx.corporate-ir.net/phoenix.zhtml?c=113414&p=proxy>.

ABOUT THE MEETING

What is being considered at the annual meeting?

You will be voting for:

- the election of eight directors for a term of one year or until their successors are elected and qualified;
 - approval of the Nathan's Famous, Inc. Fiscal 2017 Management Incentive Plan;
 - approval of the Nathan's Famous, Inc. Code Section 162(m) Bonus Plan; and
- the ratification of the appointment of Grant Thornton LLP as our auditors for fiscal 2017.

In addition, our management will report on our performance during fiscal 2016 and respond to your questions.

The Board of Directors does not intend to present to the meeting any matters not referred to in the form of proxy. If any proposal not set forth in this proxy statement should be presented for action at the meeting, and is a matter which should come before the meeting, it is intended that the shares represented by WHITE proxies will be voted with respect to such matters in accordance with the judgment of the persons voting them.

How many votes must be present to hold the meeting?

Your shares are counted as present at the meeting if you attend the meeting and vote in person or if you properly return a proxy by mail. In order for us to conduct our meeting, a majority of our outstanding shares as of July 20, 2016, the record date, must be present at the meeting, in person or by proxy. This is referred to as a quorum. On July 20, 2016, we had 4,172,055 shares issued and outstanding, excluding treasury shares.

Who can vote at the meeting?

You may vote if you owned stock as of the close of business on July 20, 2016. Each share of stock is entitled to one vote.

Are any other directors being nominated?

No. A stockholder that previously advised the Company of his intention to nominate himself for election as a director at the annual meeting has advised the Board of Directors that he has withdrawn his nomination and will not be seeking his election at the annual meeting. Accordingly, the only director candidates nominated for election at the annual meeting are Robert J. Eide, Eric Gatoff, Brian S. Genson, Barry Leistner, Howard M. Lorber, Wayne Norbitz, A. F. Petrocelli and Charles Raich.

What should I do if I receive more than one WHITE proxy card or other set of proxy materials from the Company?

If you hold your shares in multiple accounts or registrations, or in both registered and street name, you will receive a WHITE proxy card for each account. Please sign, date and return all WHITE proxy cards you receive from the Company. Only your latest dated proxy for each account will be voted. We recommend that you contact your broker and/or our transfer agent to consolidate as many accounts as possible under the same name and address. Our transfer agent is American Stock Transfer & Trust Company, 800-937-5449.

How do I vote?

If you are a record holder of shares of common stock, you can vote in four ways:

1. Over the Internet: Refer to the enclosed WHITE proxy card or voting instruction form for instructions on voting your shares over the Internet, which will include the website and the control number to access your account and vote your shares. You must specify how you want your shares voted or your Internet vote cannot be completed and you will receive an error message. Your shares will be voted according to your instructions.
2. By Telephone: Refer to the enclosed WHITE proxy card or voting instruction form for instructions on voting your shares by telephone, which will include a toll-free number for the United States, Canada and Puerto Rico and the control number to access your account. Simply follow the recorded instructions. You must specify how you want your shares voted and confirm your vote at the end of the call or your telephone vote cannot be completed. Your shares will be voted according to your instructions.
3. By Mail: If you received your proxy materials by mail, complete and sign your WHITE proxy card or voting instruction form and mail it in the enclosed postage prepaid envelope we provided so that it is received by September 13, 2016, the day before the annual meeting, to be sure it is received in time to count.
4. In Person at the Meeting: If you attend the annual meeting, you may deliver your completed proxy card in person or you may vote by completing a ballot, which we will provide to you at the annual meeting.

Can I vote if my shares are held in “street name”?

If the shares you own are held in “street name” by a brokerage firm, your brokerage firm, as the record holder of your shares, is required to vote your shares according to your instructions. In order to vote your shares, you will need to follow the directions your brokerage firm provides you. Many brokers also offer the option of voting over the Internet or by telephone, instructions for which would be provided by your brokerage firm on your vote instruction form.

Will my shares be voted if I do not provide my proxy?

Under applicable rules, if you do not give instructions to your brokerage firm, it will still be able to vote your shares with respect to certain “discretionary” items, but it will not be allowed to vote your shares with respect to certain “non-discretionary” items. The ratification of Grant Thornton LLP as our independent registered public accounting firm (Proposal 4) is considered to be a discretionary item under applicable rules and your brokerage firm will be able to vote on that item even if it does not receive instructions from you, so long as it holds your shares in its name. The remaining items of business at the annual meeting are “non-discretionary” and if you do not instruct your broker how to vote with respect to such proposals, your broker may not vote with respect to these proposals and those votes will be counted as “broker non-votes.” “Broker non-votes” are shares that are held in “street name” by a bank or brokerage firm that indicates on its proxy that it does not have or did not exercise discretionary authority to vote on a particular matter. Please see “What vote is required to approve each of the matters to be considered at the meeting?” for information regarding the vote required to approve the matters being considered at the Annual Meeting and the treatment of broker non-votes.

If you hold your shares directly in your own name, they will not be voted if you do not provide a proxy.

If your shares are held in street name, you must bring an account statement or letter from your bank or brokerage firm showing that you are the beneficial owner of the shares as of the record date (July 20, 2016) in order to be admitted to the meeting on September 14, 2016. To be able to vote your shares held in street name at the meeting, you will need to obtain a proxy card from the holder of record.

Can I change my mind after I vote?

Yes, you may revoke your proxy and change your vote at any time before the polls close at the meeting. You can do this by (1) signing another proxy with a later date and returning it to us prior to the meeting, or (2) voting again at the meeting.

What if I return my WHITE proxy card but do not include voting instructions?

WHITE proxy cards that are signed and returned but do not include voting instructions will be voted “FOR” the election of the nominee directors recommended by the Board of Directors, “FOR” approval of the Nathan’s Famous, Inc. Fiscal 2017 Management Incentive Plan, “FOR” approval of the Nathan’s Famous, Inc. Code Section 162(m) Bonus Plan and “FOR” the ratification of the appointment of Grant Thornton LLP.

What vote is required to approve each of the matters to be considered at the meeting?

Proposal 1: Election of Directors. Directors of the Company are elected by a plurality of the votes cast in contested and uncontested elections. The election at the annual meeting will be uncontested. “Plurality” means that the eight individuals who receive the highest number of “FOR” votes will be elected as directors. You may vote either “FOR” or “WITHHOLD” your vote from any one or more of the nominees. Proxy cards specifying that votes should be withheld with respect to one or more nominees will result in those nominees receiving fewer votes but will not count as a vote against the nominees. If you do not instruct your broker how to vote with respect to this item, your broker may not vote your shares with respect to the election of directors. Any shares not voted by a customer will be treated as broker non-votes, and broker non-votes will have no effect on the results of the election of directors.

Proposal 2: Approval of the Nathan’s Famous, Inc. Fiscal 2017 Management Incentive Plan. To be approved, this proposal to approve the Nathan’s Famous, Inc. Fiscal 2017 Management Incentive Plan must receive an affirmative vote from stockholders present in person or represented by proxy at the annual meeting representing a majority of the votes cast on the proposal. Abstentions will have the same effect as a vote “AGAINST” this proposal. For this proposal, brokerage firms do not have authority to vote shares of their customers that are in held “street name.” Broker non-votes will have no effect on the outcome of this proposal.

Proposal 3: Approval of the Nathan’s Famous, Inc. Code Section 162(m) Bonus Plan. To be approved, this proposal to approve the Nathan’s Famous, Inc. Code Section 162(m) Bonus Plan must receive an affirmative vote from stockholders present in person or represented by proxy at the annual meeting representing a majority of the votes cast on the proposal. Abstentions will have the same effect as a vote “AGAINST” this proposal. For this proposal, brokerage firms do not have authority to vote shares of their customers that are held in “street name.” Broker non-votes will have no effect on the outcome of this proposal.

Proposal 4: Ratification of Independent Registered Public Accounting Firm. To be approved, this proposal to ratify our selection of an independent registered public accounting firm must receive an affirmative vote from stockholders present in person or represented by proxy at the annual meeting representing a majority of the votes cast on the proposal. Abstentions will have the same effect as a vote “AGAINST” this proposal. For this proposal, brokerage firms have authority to vote shares of their customers that are held in “street name.” If a broker does not exercise this authority, it will result in a broker non-vote. Broker non-votes will have no effect on the outcome of this proposal.

How will votes be counted?

Each share of common stock will be counted as one vote according to the instructions contained on a proper proxy card, whether submitted in person, by mail, on a ballot voted in person at the meeting or in accordance with the instructions provided by your broker. With respect to all proposals, shares will not be voted in favor of the matter, and will not be counted as voting on the matter, if they are broker non-votes. Assuming the presence of a quorum, abstentions and broker non-votes for a particular proposal will not be counted as votes cast to determine the outcome of a particular proposal.

Who will count the votes?

Representatives of American Stock Transfer & Trust Company, the transfer agent for our common stock, par value \$.01 per share ("Common Stock") will tabulate the votes.

Will my vote be kept confidential?

Yes, your vote will be kept confidential and we will not disclose your vote, unless (1) we are required to do so by law (including in connection with the pursuit or defense of a legal or administrative action or proceeding), or (2) there is a contested election for the Board of Directors. The inspector of elections will forward any written comments that you make on the proxy card to management without providing your name, unless you expressly request disclosure on your proxy card.

How does the Board of Directors recommend that I vote on the proposals?

The Board of Directors recommends that you vote on the WHITE proxy card:

"FOR" the election of each of the eight nominees, Robert J. Eide, Eric Gatoff, Brian S. Genson, Barry Leistner, Howard M. Lorber, Wayne Norbitz, A. F. Petrocelli and Charles Raich, proposed by the Board of Directors to serve as directors, each for a term of one year (Proposal 1);

"FOR" approval of the Nathan's Famous, Inc. Fiscal 2017 Management Incentive Plan (Proposal 2);

"FOR" approval of the Nathan's Famous, Inc. Code Section 162(m) Bonus Plan (Proposal 3); and

“FOR” the ratification of the selection of Grant Thornton LLP as our independent registered public accounting firm for the 2017 fiscal year (Proposal 4).

Where can I find the voting results?

We will report the voting results in a Form 8-K within four business days after the end of our annual meeting.

How and when may I submit a stockholder proposal, including a stockholder nomination for director, for the 2017 Annual Meeting?

If you are interested in submitting a proposal for inclusion in our proxy statement for the 2017 Annual Meeting, you need to follow the procedures outlined in Rule 14a-8 of the Securities Exchange Act of 1934, or the Exchange Act. To be eligible for inclusion, we must receive your stockholder proposal for our proxy statement for the 2017 Annual Meeting of Stockholders at our principal corporate offices in Jericho, New York no later than March 27, 2017.

In addition, our bylaws require that we be given advance written notice for nominations for election to our Board of Directors and other matters that stockholders wish to present for action at an annual meeting other than those to be included in our proxy statement under Rule 14a-8.

Any stockholder who wants to nominate a candidate for election to the Board must deliver timely notice to our Secretary at our principal executive offices. Pursuant to our bylaws, in order to be timely, the notice must be delivered:

- in the case of an annual meeting, not later than 60 days and not earlier than 90 days prior to the anniversary date of the immediately preceding annual meeting of stockholders, although if we did not hold an annual meeting or the annual meeting is called for a date that is more than 30 days before or more than 60 days after the anniversary date of the prior year’s annual meeting, the notice must be received no earlier than 90 days prior to the meeting and not later than the close of business on the later of (i) the 60th day prior to the meeting or (ii) the 10th day following the day on which we publicly announce the date of the meeting; and
- in the case of a special meeting of stockholders called for the purpose of electing directors, the notice must be received not earlier than the close of business on the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting.

The stockholder’s notice to the Secretary must set forth (1) as to each person whom the stockholder proposes to nominate for election as a director (a) his name, age, business address and residence address, (b) his principal occupation and employment, (c) the number of shares of Common Stock of Nathan’s which are owned beneficially or of record by him and (d) any other information relating to the nominee that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder; and (2) as to the stockholder giving the notice (a) his name and record address and (b) the number of shares of Nathan’s Common Stock which are owned beneficially or of record by him. The notice delivered by a stockholder must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected. The stockholder must be a stockholder of record on the date on which he gives the notice described above and on the record date for the determination of stockholders entitled to vote at the meeting.

Pursuant to our bylaws, if notice of any stockholder proposal is received before June 16, 2017, or after July 16, 2017, then the notice will be considered untimely and we are not required to present such proposal at the 2016 Annual Meeting. Additionally, if the Board of Directors chooses to present a proposal submitted after July 16, 2017, at the 2017 Annual Meeting, then the persons named in proxies solicited by the Board of Directors for the 2017 Annual Meeting may exercise discretionary voting power with respect to such proposal.

These requirements are separate from and in addition to the requirements of the Securities and Exchange Commission (the "SEC") that a stockholder must meet in order to have a stockholder proposal included in our proxy statement.

Any proposals, nominations or notices should be sent to:

Nathan's Famous, Inc.
One Jericho Plaza
Second Floor — Wing A
Jericho, New York 11573