

MAJESCO ENTERTAINMENT CO

Form 10-K/A

July 31, 2009

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K/A
(Amendment No. 1)**

**Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
OR**

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
for the Transition Period from _____ to _____**

**For the fiscal year ended
October 31, 2008**

Commission File No. 000-51128

MAJESCO ENTERTAINMENT COMPANY

(Exact name of registrant as specified in its charter)

Delaware

06-1529524

(State or other jurisdiction
of incorporation or organization)

(I.R.S. Employer
Identification No.)

160 Raritan Center Parkway
Edison, New Jersey 08837
(Address of principal
executive office)

Registrant's telephone number, including area code (732) 225-8910

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, Par Value \$0.001
(Title of each class)

NASDAQ Capital Market
(Name of Each Exchange on Which Registered)

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Exchange Act of 1934. Yes No

Indicate by check mark if the registrant is not required to file reports required to be filed by Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of large accelerated filer, accelerated filer and smaller reporting company in rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting
company

(Do not check if smaller
reporting company)

Indicate by check mark if the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the common stock held by non-affiliates as of April 30, 2008 was \$15.2 million.

The outstanding number of shares of common stock as of January 29, 2009 was 30,210,037.

The Registrant's proxy or information statement is incorporated by reference into Part III of this Annual Report on Form 10-K.

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EXPLANATORY NOTE

For the year ended October 31, 2008, Majesco Entertainment Company was obligated to include in its Form 10-K (the "10-K") a report on management's assessment of internal control over financial reporting. Our management performed that assessment and concluded that internal control over financial reporting was effective as of October 31, 2008. Following comments received from the staff of the Securities and Exchange Commission ("SEC") and subsequent discussions with the SEC staff, we have determined that even though our management performed the required assessment, and concluded that internal control over financial reporting was effective as of October 31, 2008, the presentation of the management's report on internal control over financial reporting should be revised to address the reporting requirements on this subject more directly. Based on their comments and discussion, the SEC did not believe the disclosure was adequate. We will continue to evaluate our disclosure controls and procedures to ensure that our periodic and current reports continue to comply with the requirements of the then-applicable Form and rules and regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

This Form 10-K/A continues to speak as of the date of the original Form 10-K and other than as specifically reflected in this Form 10-K/A does not reflect events occurring after the filing of the original Form 10-K or modify or update any related disclosures.

PART III

Item 9A(T). Controls and Procedures.

Evaluation of Disclosure Controls and Procedures. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Exchange Act Rules 13a-15(e) and 15d-15(e), as of the end of the period covered by this report.

In designing and evaluating our disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

No system of controls can prevent errors and fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur. Controls can also be circumvented by individual acts of some people, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with its policies or procedures. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Subject to the limitations above, management believes that the consolidated financial statements and other financial information contained in this report, fairly present in all material respects our financial condition, results of operations, and cash flows for the periods presented.

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Based on the evaluation of the effectiveness of our disclosure controls and procedures, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) were effective at a reasonable assurance level. Notwithstanding the evaluation, in light of comments received from the staff of the SEC and subsequent discussions with the SEC staff, it is possible that our disclosure controls could be viewed as ineffective solely as they relate to the presentation of our management's report on our internal controls over financial reporting in Item 9A of our 10-K. We will continue to evaluate our disclosure controls and procedures to ensure that our periodic and current reports continue to comply with the requirements of the then-applicable Form and rules and regulations under the Exchange Act.

There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

Management's Annual Report on Internal Control Over Financial Reporting. Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, or GAAP. Our internal control over financial reporting includes those policies and procedures that:

- (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect transactions involving our assets;
- (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. GAAP, and that our receipts and expenditures are being made only in accordance with the authorization of our management; and
- (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of October 31, 2008. In making this assessment, management used the framework set forth in the report entitled Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO. The COSO framework summarizes each of the components of a company's internal control system, including (i) the control environment, (ii) risk assessment, (iii) control activities, (iv) information and communication, and (v) monitoring. Based on this evaluation, management determined that our system of internal control over financial reporting was effective as of October 31, 2008.

This Report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management was not subject to attestation by our registered public accounting firm pursuant to temporary rules of the SEC that permit the Company to provide only a management's report in this Report.

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PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) (1) Financial Statements.

The Financial Statements were filed as part of our original Annual Report on Form 10-K for the fiscal year ended October 31, 2008.

(2) Financial Statement Schedules.

Schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in the financial statements or notes thereto.

(3) Exhibits.

The following is a list of exhibits filed with this Report, or incorporated by reference as noted as part of this Amendment No. 1 to Annual Report on Form 10-K:

31.1 Certification of Principal Executive Officer

31.2 Certification of Principal Financial Officer

(b) Exhibits.

See (a)(3) above.

(c) Financial Statement Schedules.

See (a)(2) above.

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SIGNATURES

In accordance with Section 13 or 15 of the Exchange Act, the Registrant caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

**MAJESCO ENTERTAINMENT
COMPANY
AND SUBSIDIARY**

Dated: July 30, 2009

By: /s/ Jesse Sutton
Jesse Sutton
Chief Executive Officer and Director
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|--|---------------|
| /s/ Jesse Sutton Jesse Sutton | Chief Executive Officer and Director | July 30, 2009 |
| /s/ John Gross John Gross | Chief Financial Officer (Principal Financial and Accounting Officer) | July 30, 2009 |
| /s/ Allan Grafman Allan Grafman | Chairman of the Board | July 30, 2009 |
| /s/ Laurence Aronson Laurence Aronson | Director | July 30, 2009 |
| /s/ Louis Lipschitz Louis Lipschitz | Director | July 30, 2009 |
| /s/ Keith McCurdy Keith McCurdy | Director | July 30, 2009 |
| Mark Stewart | Director | |
| /s/ Stephen Wilson Stephen Wilson | Director | July 30, 2009 |

