

TRIARC COMPANIES INC
Form S-4/A
August 15, 2008

As filed with the Securities and Exchange Commission on August 14, 2008

Registration No. 333-151336

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Amendment No. 3 to
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

TRIARC COMPANIES, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware (State or Other Jurisdiction of Incorporation or Organization)	5812 (Primary Standard Industrial Classification Code Number)	38-0471180 (I.R.S. Employer Identification Number)
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1155 Perimeter Center West
Atlanta, Georgia 30338
(678) 514-4100
(Address, including zip code, and telephone number, including area code,
of registrant's principal executive offices)

Nils H. Okeson
Senior Vice President, General Counsel and Secretary
Triarc Companies, Inc.
1155 Perimeter Center West
Atlanta, Georgia 30338
(678) 514-4100
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: At the effective time of the merger referred to herein.

If the securities being registered on this form are to be offered in connection with the formation of a holding company and there is compliance with General Instruction G, 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, 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(d) 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.

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 the definitions 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

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 that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This document shall not constitute an offer to sell or the solicitation of any offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

PRELIMINARY SUBJECT TO COMPLETION DATED AUGUST 14, 2008

MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

As we previously announced, the boards of directors of Triarc Companies, Inc. and Wendy's International, Inc. have each approved a definitive merger agreement for an all-stock transaction in which Wendy's shareholders will receive a fixed ratio of 4.25 shares of Triarc Class A common stock for each Wendy's common share they own. When the merger is completed, Triarc will change its name to Wendy's/Arby's Group, Inc., which we refer to as Wendy's/Arby's. In connection with the merger, existing shares of Triarc Class B common stock, Series 1 will be converted into shares of Wendy's/Arby's common stock on a one-for-one basis. Existing shares of Triarc Class A common stock will remain outstanding as shares of Wendy's/Arby's common stock. Wendy's/Arby's common stock is expected to be quoted on the New York Stock Exchange, which we refer to as the NYSE, under the symbol WEN.

In the merger, approximately 377 million shares of Wendy's/Arby's common stock will be issued to Wendy's shareholders. Based on the number of outstanding shares of Triarc Class A common stock and Triarc Class B common stock, and the number of outstanding Wendy's common shares as of August 5, 2008, Wendy's shareholders are expected to hold approximately 80.6%, in the aggregate, of the outstanding Wendy's/Arby's common stock following the completion of the merger.

On April 23, 2008, the last full trading day before the merger agreement was signed, the closing sales price of Triarc Class A common stock, which trades on the NYSE under the symbol TRY, was \$6.30 per share, the closing sales price of Triarc Class B common stock, which trades on the NYSE under the symbol TRY.B, was \$6.50 per share, and the closing sales price of Wendy's common shares, which trade on the NYSE under the symbol WEN, was \$25.32 per share.

For a discussion of the risks relating to the merger, see Risk Factors beginning on page 28.

An annual meeting of Triarc's stockholders and a special meeting of Wendy's shareholders are being held to approve the transactions and related matters contemplated by the merger agreement. Triarc's stockholders also will elect directors and act on other matters normally considered at Triarc's annual meeting. Information about these meetings and the merger is contained in this joint proxy statement/prospectus. We encourage you to read this entire joint proxy statement/prospectus carefully, as well as the annexes and information incorporated by reference.

The Triarc board of directors unanimously recommends that the Triarc stockholders vote *for* the proposals to amend Triarc's certificate of incorporation and to approve the issuance of Wendy's/Arby's common stock, all of which are necessary to effect the merger. The Wendy's board of directors unanimously (with four abstentions due to actual or perceived conflicts of interest) recommends that the Wendy's shareholders vote *for* the proposal to adopt the merger agreement.

Roland C. Smith	Kerrii B. Anderson
Chief Executive Officer	Chief Executive Officer and President
Triarc Companies, Inc.	Wendy s International, Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the merger described in this joint proxy statement/prospectus or the securities to be issued pursuant to the merger or determined that this joint proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

This joint proxy statement/prospectus is dated August , 2008 and, together with the accompanying proxy card and annual report for Triarc, is first being mailed to Triarc stockholders and Wendy s shareholders on or about August , 2008.

TRIARC COMPANIES, INC.

1155 Perimeter Center West

Atlanta, Georgia 30338

www.triarc.com

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

Time: local time on Monday, September 15, 2008

Place:

Purpose:

To adopt the amendment to Triarc's certificate of incorporation to increase the number of authorized shares of Triarc Class A common stock to 1,500,000,000, in connection with the merger (shares of Triarc Class A common stock are referred to as Wendy's/Arby's common stock following completion of the merger);

To adopt the amendment to Triarc's certificate of incorporation to convert each issued and outstanding share of Triarc Class B common stock into one share of Wendy's/Arby's common stock and to provide that there shall only be one class of authorized common stock of Wendy's/Arby's, in connection with the merger;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to change the name of Triarc to Wendy's/Arby's Group, Inc. ;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to prohibit the issuance of preferred stock of Wendy's/Arby's to affiliates of Wendy's/Arby's unless offered ratably to the holders of Wendy's/Arby's common stock, subject to an exception in the event that Wendy's/Arby's is in financial distress and the issuance is approved by the audit committee of Wendy's/Arby's board of directors;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to amend the definition of Interested Stockholder, which is used in the certificate of incorporation in connection with requiring increased stockholder approval thresholds for transactions with affiliates, to remove the exception for DWG Acquisition Group L.P., a dissolved partnership formerly controlled by Nelson Peltz and Peter W. May, Triarc's non-executive Chairman and Vice Chairman, respectively, and its affiliates;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to provide that Wendy's/Arby's board of directors shall not have the power or authority to amend, alter or repeal Section 3 of Article I of the Wendy's/Arby's bylaws, as amended, which will provide that the headquarters of the Wendy's brand will be in the greater Columbus, Ohio area for a ten-year period following the completion of the merger;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to provide that the purpose of Wendy's/Arby's, subject to certain exceptions for acquisitions of businesses that derive at least a majority of their revenue, EBITDA or operating income from the restaurant business and for non-restaurant business assets owned by Triarc or Wendy's as of the effective date of the amendment, is to engage in the restaurant business and complementary, incidental or ancillary businesses;

(A copy of Triarc's current certificate of incorporation and a copy of the form of amendment to Triarc's certificate of incorporation described above are attached as Annexes D and E, respectively, to this joint proxy statement/prospectus. For more details about the proposed amendment, see The Amendment to

Triarc's Certificate of Incorporation.)

To approve the issuance of Wendy's/Arby's common stock, pursuant to the Agreement and Plan of Merger, dated as of April 23, 2008, among Triarc, Green Merger Sub, Inc., a wholly-owned subsidiary of Triarc, and Wendy's, a copy of which is attached as Annex A to this joint proxy statement/prospectus, in connection with the merger;

To approve any motion to adjourn the Triarc annual meeting to another time or place, if necessary, to solicit additional proxies if there are insufficient votes at the time of the Triarc annual meeting to approve the proposals related to the merger;

To elect eleven directors to hold office as specified in the accompanying joint proxy statement/prospectus;

To approve an amendment to Triarc's Amended and Restated 2002 Equity Participation Plan to increase the number of shares reserved for issuance under the plan by an additional 7,400,000 shares of Triarc Class B common stock, prohibit the repricing of outstanding awards without prior stockholder approval and eliminate the ability of Triarc to grant reload option awards or stock options or SARs with exercise prices below fair market value on the date of grant;

To ratify the appointment of Deloitte & Touche LLP as the independent registered public accounting firm for 2008; and

To conduct any other business that properly comes before the meeting and any adjournment or postponement of the meeting.

Each of the first eight proposals listed above relating to the merger is conditioned upon approval of each of the other seven and the approval of each such proposal is required for completion of the merger. None of the seven proposals relating to the adoption of the amendment to Triarc's certificate of incorporation or the proposal to issue Wendy's/Arby's common stock in the merger will be implemented unless all eight proposals related to the merger are approved by the Triarc stockholders and the merger is completed.

This joint proxy statement/prospectus, including the annexes, contains further information with respect to the business to be transacted at the Triarc annual meeting.

Record Date:

Triarc stockholders of record at the close of business on August 5, 2008 may vote at the Triarc annual meeting.

Your vote is important. Whether or not you plan to attend the annual meeting, please promptly complete and return your proxy card in the enclosed envelope, or authorize the individuals named on your proxy card to vote your shares by calling the toll-free telephone number or by using the Internet as described in the instructions included with your proxy card.

By order of the board of directors,

Atlanta, Georgia Nils H. Okeson
August 5, 2008 *Senior Vice President, General Counsel and Secretary*
Triarc Companies, Inc.
1155 Perimeter Center West
Atlanta, Georgia 30338

WENDY S INTERNATIONAL, INC.
4288 West Dublin-Granville Road
Dublin, Ohio 43017-0256
www.wendys-invest.com

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

Time: local time on Monday, September 15, 2008

Place: Wendy s Corporate Headquarters, One Dave Thomas Boulevard (4288 West Dublin-Granville Road),
Dublin, Ohio 43017

A map showing the location of the meeting is printed on Annex M to this joint proxy statement/prospectus.

Purpose:

To adopt the Agreement and Plan of Merger, dated as of April 23, 2008, among Triarc, Green Merger Sub, Inc., a wholly-owned subsidiary of Triarc, and Wendy s, a copy of which is attached as Annex A to this joint proxy statement/prospectus; and

To approve any motion to adjourn the Wendy s special meeting to another time or place, if necessary, to solicit additional proxies if there are insufficient votes at the time of the Wendy s special meeting to adopt the merger agreement.

Record Date:

Wendy's shareholders of record at the close of business on August 5, 2008 may vote at the Wendy's special meeting.

Wendy's shareholders have the right to dissent from the merger and assert dissenters' rights under Ohio law. In order to assert dissenters' rights, Wendy's shareholders must comply with the requirements of Ohio law as described under "The Merger Dissenters' Rights" beginning on page 81.

Your vote is important. Whether or not you plan to attend the special meeting, please promptly complete and return your proxy card in the enclosed envelope, or authorize the individuals named on your proxy card to vote your shares by calling the toll-free telephone number or by using the Internet as described in the instructions included with your proxy card.

By order of the board of directors,

Dublin, Ohio Leon M. McCorkle, Jr.
August 5, 2008 *Executive Vice President,*
 General Counsel and Secretary
 Wendy's International, Inc.
 4288 West Dublin-Granville Road
 Dublin, Ohio 43017-0256

**THIS JOINT PROXY STATEMENT/PROSPECTUS INCORPORATES
ADDITIONAL INFORMATION**

This joint proxy statement/prospectus incorporates important business and financial information about Triarc and Wendy's from other documents filed with the Securities and Exchange Commission, which we refer to as the SEC, that are not included in or delivered with this joint proxy statement/prospectus. For a listing of the documents incorporated by reference into this joint proxy statement/prospectus, see [Where You Can Find More Information](#) beginning on page 229.

In this joint proxy statement/prospectus, Triarc, Triarc Class A common stock and Triarc Class B common stock refer to Triarc Companies, Inc. and its Class A common stock and Class B common stock, Series 1, respectively, prior to the completion of the merger. Upon the consummation of the merger and thereafter, Triarc is referred to as Wendy's/Arby's and Triarc Class A common stock is referred to as Wendy's/Arby's common stock.

You may obtain documents incorporated by reference into this joint proxy statement/prospectus, without charge, by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

TRIARC COMPANIES, INC.	WENDY'S INTERNATIONAL, INC.
1155 Perimeter Center West	4288 West Dublin-Granville Road
Atlanta, Georgia 30338	Dublin, Ohio 43017-0256
(678) 514-4100	(614) 764-3100
Attention: Investor Relations	Attention: Investor Relations Department

You may also obtain documents incorporated by reference into this joint proxy statement/prospectus by requesting them in writing or by telephone from Innisfree M&A Incorporated, Triarc's proxy solicitor, or Georgeson Inc., Wendy's proxy solicitor, at the following addresses and telephone numbers:

Innisfree M&A Incorporated	Georgeson Inc.
501 Madison Avenue, 20th Floor	199 Water Street, 26th Floor
New York, NY 10022	New York, NY 10038
Stockholders Call Toll-Free: (888) 750-5834	Shareholders Call Toll-Free: (866) 346-1016
Banks and Brokers Call Collect: (212) 750-5833	Banks and Brokers Call Collect: (212) 440-9800

To receive timely delivery of the documents before your annual or special meeting, you must request them no later than , 2008.

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Annex A copy of Agreement and Plan of Merger

Annex B copy of Opinion of Wachovia Capital Markets, LLC

Annex C copy of Opinion of Greenhill & Co., LLC

Annex D copy of Triarc Companies, Inc. Certificate of Incorporation

Annex E form of Amendment to Triarc Companies, Inc. Certificate of Incorporation

Annex F copy of Triarc Companies, Inc. Bylaws

Annex G form of Amendment to Triarc Companies, Inc. Bylaws

Annex H form of Amendment No. 3 to Triarc Companies, Inc. Amended and Restated 2002 Equity Participation Plan

Annex I Ohio Revised Code Section 1701.85

Annex J copy of Triarc Voting Agreement

Annex K copy of Wendy s Voting Agreement

Annex L copy of Side Letter Agreement

Annex M Map to the Wendy s Special Meeting

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QUESTIONS AND ANSWERS ABOUT THE MEETINGS

Q: Why am I receiving this document?

A: We are delivering this document to you as both a joint proxy statement of Triarc and Wendy's and a prospectus of Triarc. It is a joint proxy statement because each of our boards of directors is soliciting proxies from its stockholders/shareholders. It is a prospectus because Triarc will issue shares of Wendy's/Arby's common stock in exchange for Wendy's common shares in the merger and convert shares of its Triarc Class B common stock into shares of Wendy's/Arby's common stock in connection with the merger.

Q: What do I need to do now?

A: After carefully reading and considering the information contained in this joint proxy statement/prospectus, please vote your shares as soon as possible to ensure that your shares will be represented at your company's annual or special meeting, as the case may be. You may vote your shares prior to the meeting, even if you plan to attend your company's meeting in person. Please follow the instructions set forth on the proxy card or on the voting instruction form provided

by the record holder if your shares are held in the name of your broker or other nominee.

Q: How do I vote?

A: You may vote before your annual or special meeting, as the case may be, in one of the following ways:

use the toll-free number shown on your proxy card;

visit the website shown on your proxy card to vote via the Internet; or

complete, sign, date and return the enclosed proxy card in the enclosed postage-paid envelope.

You may also vote your shares in person at your meeting.

Q: What voting requirements must be met in order for the matters relating to the merger to be approved?

A: For the matters to be approved by Triarc stockholders:

the affirmative vote of a majority of the total voting power of the outstanding shares of Triarc Class A common stock (for purposes of the class vote, holders of Triarc Class A common stock have one full vote for each share of that stock), voting together as a separate class, and the affirmative vote of a majority of the total voting power of the outstanding shares of Triarc Class A common stock and Triarc Class B common stock entitled to vote (for purposes of this vote, holders of Triarc Class B common stock have 1/10 vote for each share of that stock and holders of

Triarc Class
A common
stock have
one full vote
for each share
of that stock),
voting
together as a
single class,
are required
to adopt the
amendment to
Triarc s
certificate of
incorporation
to increase
the number of
authorized
shares of
Triarc Class
A common
stock;

the
affirmative
vote of a
majority of
the total
voting power
of the
outstanding
shares of
Triarc Class
B common
stock (for
purposes of
the class vote,
holders of
Triarc Class
B common
stock have
one full vote
for each share
of that stock),
voting
together as a
separate class,
and the
affirmative
vote of a
majority of

the total
voting power
of the
outstanding
shares of
Triarc Class
A common
stock and
Triarc Class
B common
stock entitled
to vote (for
purposes of
this vote,
holders of
Triarc Class
B common
stock have
1/10 vote for
each share of
that stock and
holders of
Triarc Class
A common
stock have
one full vote
for each share
of that stock),
voting
together as a
single class,
are