DENNYS CORP
Form DFAN14A
April 30, 2010

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.)

Filed by the Registrant o

Filed by a Party other than the Registrant x

Check the appropriate box:

o Preliminary Proxy Statement

¨ Confidential, for Use of the Commission Only (as permitted by Rule14a-6(e)(2))

o Definitive Proxy Statement

x Definitive Additional Materials

o Soliciting Material Under Rule 14a-12

DENNY'S CORPORATION
(Name of Registrant as Specified in Its Charter)

OAK STREET CAPITAL MASTER FUND, LTD.
OAK STREET CAPITAL MANAGEMENT, LLC
DAVID MAKULA
PATRICK WALSH
DASH ACQUISITIONS LLC
JONATHAN DASH
SOUNDPOST CAPITAL, LP
SOUNDPOST CAPITAL OFFSHORE, LTD.
SOUNDPOST ADVISORS, LLC
SOUNDPOST PARTNERS, LP
SOUNDPOST INVESTMENTS, LLC
JAIME LESTER
LYRICAL OPPORTUNITY PARTNERS II, L.P.

LYRICAL OPPORTUNITY PARTNERS II, LTD.
LYRICAL OPPORTUNITY PARTNERS II GP, L.P.
LYRICAL CORP III, LLC
LYRICAL PARTNERS, L.P.
LYRICAL CORP I, LLC
JEFFREY KESWIN
MURANO PARTNERS LP
MURANO CAPITAL LLC
MURANO HOLDINGS, LLC
MURANO GROUP LLC
JAY THOMSON
TONY C. LAI
PATRICK H. ARBOR
(Name of Persons(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x 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:

---

(5) Total fee paid:

¨ Fee paid previously with preliminary materials:

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

---

(1) Amount previously paid:

---

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

---

(3) Filing Party:

---

(4) Date Filed:

The Committee to Enhance Denny's (the "Committee"), together with the other Participants named herein, is filing materials contained in this Schedule 14A with the Securities and Exchange Commission (the "SEC") in connection with the solicitation of proxies for the election of its slate of director nominees at the 2010 annual meeting of stockholders (the "Annual Meeting") of Denny's Corporation. The Committee has made a definitive filing with the SEC of a proxy statement and accompanying GOLD proxy card to be used to solicit votes for the election of its slate of director nominees at the Annual Meeting.

Item 1: Presentation to stockholders posted to www.enhancedennys.com:

Item 2: Changes were made to the following web pages of www.enhancedennys.com:

Enhance Denny's

Important Notice

This website may contain forward-looking statements. These statements may be identified by the use of forward-looking terminology such as the words "expects," "intends," "believes," "anticipates" and other terms with similar meaning indicating possible future events or actions relating to the business or stockholders of Denny's Corporation (the "Company"). These forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties that could cause actual results to differ materially. These risks and uncertainties include, among others, the ability to successfully solicit sufficient proxies to elect the director nominees (the "Nominees") nominated by The Committee to Enhance Denny's (the "Committee") to the Company's board of directors at the Company's 2010 Annual Meeting of Stockholders (the "2010 Annual Meeting"), the ability of the Nominees to improve the corporate governance and performance of the Company and risk factors associated with the business of the Company, as described in the Company's Annual Report on Form 10-K for the fiscal year ended December 30, 2009, and in other periodic reports of the Company, which are available at no charge at the website of the Securities and Exchange Commission ("SEC") at http://www.sec.gov. Accordingly, you should not rely upon forward-looking statements as a prediction of actual results.

This website may be deemed to constitute proxy solicitation material and is intended solely to inform stockholders so that they may make an informed decision regarding the election of directors at the 2010 Annual Meeting.

THE COMMITTEE, TOGETHER WITH THE OTHER PARTICIPANTS (AS DEFINED BELOW), HAS FILED WITH THE SEC A DEFINITIVE PROXY STATEMENT AND ACCOMPANYING PROXY CARD TO BE USED TO SOLICIT PROXIES FOR THE ELECTION OF ITS SLATE OF DIRECTOR NOMINEES AT THE 2010 ANNUAL MEETING.

THE COMMITTEE STRONGLY ADVISES ALL STOCKHOLDERS OF THE COMPANY TO READ THE PROXY STATEMENT BECAUSE IT CONTAINS IMPORTANT INFORMATION. SUCH PROXY STATEMENT IS AVAILABLE AT NO CHARGE ON THE SEC'S WEBSITE AT HTTP://WWW.SEC.GOV. IN ADDITION, THE PARTICIPANTS IN THE SOLICITATION WILL PROVIDE COPIES OF THE PROXY STATEMENT WITHOUT CHARGE UPON REQUEST. REQUESTS FOR COPIES SHOULD BE DIRECTED TO THE PARTICIPANTS' PROXY SOLICITOR, MACKENZIE PARTNERS, INC., TOLL-FREE AT (800) 322-2885 OR COLLECT AT (212) 929-5500 OR VIA EMAIL AT ENHANCEDENNYS@MACKENZIEPARTNERS.COM.

THE PARTICIPANTS IN THE PROXY SOLICITATION ARE OAK STREET CAPITAL MASTER FUND, LTD., OAK STREET CAPITAL MANAGEMENT, LLC, DAVID MAKULA, PATRICK WALSH, DASH ACQUISITIONS LLC, JONATHAN DASH, SOUNDPOST CAPITAL, LP, SOUNDPOST CAPITAL OFFSHORE, LTD., SOUNDPOST ADVISORS, LLC, SOUNDPOST PARTNERS, LP, SOUNDPOST INVESTMENTS, LLC, JAIME LESTER, LYRICAL OPPORTUNITY PARTNERS II, L.P., LYRICAL OPPORTUNITY PARTNERS II, LTD., LYRICAL OPPORTUNITY PARTNERS II GP, L.P., LYRICAL CORP III, LLC, LYRICAL PARTNERS, L.P., LYRICAL CORP I, LLC, JEFFREY KESWIN, MURANO PARTNERS LP, MURANO CAPITAL LLC, MURANO HOLDINGS, LLC, MURANO GROUP LLC, JAY THOMSON, TONY C. LAI AND PATRICK H. ARBOR (COLLECTIVELY, THE "PARTICIPANTS").

THE PARTICIPANTS COLLECTIVELY OWN AN AGGREGATE OF 7,046,127 SHARES OF COMMON STOCK OF THE COMPANY.

This communication is not a solicitation of a proxy, which may be done only pursuant to a definitive proxy statement.

I have read and agree to the terms of this website

I disagree (You will not gain access to this website without agreeing to the above terms).

Use of this website and the information contained herein is subject to the restrictions and limitations described in Terms and Conditions. By accessing or retrieving information from this website, the user acknowledges and agrees to be bound by the terms specified in Terms and Conditions.

The Committee to Enhance Denny's

The Committee to Enhance Denny's, headed by Oak Street Capital Management, LLC and Dash Acquisitions LLC, owns approximately 7.1% of the outstanding shares of Denny's Corporation. We are seeking your support to elect our three highly qualified director nominees – Patrick Arbor, Jonathan Dash and David Makula – to the Denny's board of directors at the 2010 Annual Meeting of Shareholders to be held on May 19, 2010. We created this website to serve as a forum to share our concerns regarding Denny's and to present our nominees' plans to create value for all shareholders.

Our concerns include, but are not limited to, the following:

- Failure to grow system-wide restaurants
- Ceding the #1 market position to International House of Pancakes
- Unacceptable declines in key operating trends such as guest traffic
- Inappropriately high general and administrative expenses
- Expensive and ineffective marketing strategies
- Imprudent capital allocation decisions
- Lack of accountability for management at the board level
- Marginalization of shareholders and franchisees, and
- Extremely poor share price performance

Denny's is an iconic American brand and we believe shareholder value can be restored with the help of our highly qualified director nominees. If elected at the Annual Meeting, our nominees would seek to work with the other board members to address the concerns outlined above and discussed in further detail in our proxy statement, which has been posted to this website.

We invite you to read the materials on this website to learn more about our campaign at Denny's and how you can help.

Documents

o The Committee to Enhance Denny's Proxy Statement, Including Supplement [PDF]

o The Committee to Enhance Denny's GOLD Proxy Card [PDF]

o The Committee to Enhance Denny's Shareholder Letter 4-13-10 [PDF]

o DFA Letter to BOD 3-20-2009 [PDF]

o DFA Letter to BOD 11-09-2009 [PDF]

o Investor Presentation [PDF]

Item 3: The Committee has posted to www.enhancedennys.com the following article from The New York Times:

April 29, 2006

Stock Options at Wholesale

By ERIC DASH

For leading the turnaround of the Denny's restaurant chain, Nelson J. Marchioli was all but given an extra $500,000 last year, slightly more than his reported bonus for 2005.

But Denny's shareholders would be hard pressed to discover that added part of their chief executive's pay.

Instead of writing Mr. Marchioli a check, Denny's board handed him about 333,000 stock options that came with a built-in paper gain. The amount was not mentioned in Denny's compensation committee report. It was not counted in the company's summary compensation chart.

Only by carefully studying a table, deep in the proxy statement from the year before, would an ordinary investor realize that Denny's awarded those options last December with a "buy" price of $2.42 when Denny's shares were selling for $3.91, a 38 percent discount.

"We basically felt we wanted to reward employees for the work before," said Jay C. Gilmore, the restaurant chain's controller. "These were intended to give some upside."

Stock options have long been used to link managers' interests to those of shareholders and have been a main driver in the escalation of executive pay. During the market boom of the 1990's, boards handed out piles of incentives to top managers that turned into mountains of cash.

But less well known was the use of discounted options at dozens of companies, where a spike in the stock price was not required for executives to reap big rewards. A profit was already baked in.

Today, stock options in general are falling out of favor, as markets are more subdued and accounting rules require companies to book them as an expense. And tough new tax rules are quickly causing discounted options to become extinct.

Yet while regulatory changes have stopped most companies from issuing thousands of new discounted options, executives have continued to benefit as previous awards vest.

Grants of discounted stock options are yet another way some top executives have insulated themselves from the market forces affecting their equity pay. When share values fell as the dot-com bubble burst in 2000, many boards repriced their managers' options to ensure that they could still profit. Others just awarded huge amounts of new ones at lower rates.

The Securities and Exchange Commission is conducting a broad inquiry to see whether options at many companies were backdated around the same time to give executives an extra profit, possibly violating securities rules.

Discounted stock options have been around since at least the 1987 stock market crash, when pay consultants promoted their use at companies like Digital Equipment as a way to keep executives motivated as share prices fell.

Throughout the 1990's, discounted stock options were hailed as a good management-retention incentive for troubled companies or small start-ups that were short on cash. Until recently, many compensation experts considered them a more attractive alternative than restricted stock.

In many ways, they worked like ordinary options on steroids. Instead of granting stock options at the market price, the company set the exercise price — typically 10 to 50 percent below the price its shares traded at the grant date — to create a built-in gain.

A company, for example, could grant 100,000 stock options that immediately vested with an exercise price at $7. If the market price was $10, the discount automatically gave the executive a $300,000 paper profit.

If the share price rose, the executive would collect even more money. And if the share price plummeted? So long as it did not drop below $7, the executive could still cash the options out.

While most ordinary investors rarely paid attention to the stock option exercise price, discounting was known among compensation consultants as a trick of the trade.

For some companies, its purpose was to defer compensation. From 1998 to 2002, for example, Dell let Michael S. Dell and several of his top lieutenants choose to receive their pretax cash bonuses in the form of a large discounted option grant. Until last year, OfficeMax directors were eligible to be paid that way for several years, too.

Lionel Menchaca, a Dell spokesman, said the company ended the practice in 2002, but the built-in spread from the discount was justified because the executive was placing his cash bonus at risk if the stock went down. William Bonner, an OfficeMax spokesman, did not reply to a request for comment.

Other companies tried discounted options as an executive-retention tool. From 1997 to 2003, Swift Transportation, a national trucking company based in Phoenix, granted its executives stock options at a 15 percent discount in exchange for unusually long vesting cycles of 5 to 10 years. But David Berry, a Swift spokesman, said the board ultimately determined that the discounted options "had not provided the desired retention incentive." In 2004, the company switched to shorter-vesting conventional ones.

Still other companies chose discounted options instead of issuing more regular options or restricted stock. In 2000, Hewlett-Packard granted many of its executives thousands of stock options at a 25 percent discount so long as certain performance hurdles were met. But the program was quietly halted after shareholders complained. Ryan J. Donovan, a Hewlett-Packard spokesman, declined to comment.

Of course, most companies avoided discounted option awards. Accounting and tax rules made them less attractive than their conventional cousins, and the built-in profits made the pay-for-performance links of discounted options far more tenuous. Companies worried that shareholders might see discounted options as a sign of lost confidence in the stock. And corporate governance advocates considered it an outrageous extra on top of already outsize pay.

Consider Paul S. Pressler, the chief executive of Gap. He was a superstar theme park executive at the Walt Disney Company when the retail chain hired him away in 2002.

According to his employment contract, Gap's directors gave him a $1.5 million salary. They guaranteed him at least a $1.88 million bonus for the next 18 months. And they paid him an $885,000 signing bonus.

Then the board gave him an unusual grant of five million stock options that vested over 10 years: Mr. Pressler would be able to buy 1.5 million shares at Gap's $11.83 market price at the time of the grant. He would be able to buy another 1.5 million options at a premium price of $14.79 to $20.70 a share.

The remaining two million options would be available at half their market value, or $5.92 a share. So long as Gap's stock price remained flat, Mr. Pressler was guaranteed more than $11.8 million, or $2.37 million annually for his first five years at Gap.

Last November, Gap eliminated the discounted option program after a 2004 change to the tax code placed Mr. Pressler in the cross hairs of a 20 percent penalty tax.

To avoid it, Gap paid Mr. Pressler $2.56 million to cover the built-in spread on his remaining discounted options. Then, in accordance with the new rules, it issued new stock options with a buy price of $11.83, its 2002 market price, when Gap shares were selling for $17.62 in December 2005. That, in effect, gave Mr. Pressler a $5.79-a-share head start.

Greg Rossiter, a Gap spokesman, said the discounted option awards were intended to attract and retain top executives and the exchange was made to ensure that the promised pay package stayed the same. "We think the incentives were long term in nature, as opposed to a front-end sign-on bonus," he said.

Still, corporate governance advocates said the practice left the door open for abuse. "It is stealth wealth," said Lucian Bebchuk, a Harvard Law School professor and the co-author of "Pay Without Performance."

"The camouflage element is not the amount, as is the case with pensions," he explained. "Rather, it is the camouflaging of performance sensitivity, or the extent to which pay is decoupled from performance."

Not everyone agrees. Supporters argue that discounted options are simply a milder form of restricted stock — essentially an option with a 100 percent discount itself — which has often been criticized as an executive giveaway. And pay specialists say they can work better, too.

"The good thing about discounted stock options is that they hurt the executive when the price falls," said Kevin J. Murphy, a finance professor at the University of Southern California who studies executive compensation. "Options provide better incentives when they are in the money rather than out of the money."

Denny's introduced the discounted stock options after it overhauled its executive pay practices based upon the recommendations of Hewitt Associates, a human resources consulting firm hired by the board.

According to public filings, a 2004 Hewitt study of 18 restaurant and hospitality companies concluded that while executive salaries and bonuses at Denny's were "generally in line with the market, long-term incentives and target benefits" were not.

Soon after, Denny's rolled out an equity award program, consisting of both discounted stock options and restricted stock awards, as a fix. Mr. Marchioli, the chief executive, was granted $4.2 million worth of long-term cash and stock incentives so long as he stayed at the company for at least five years.

He was also granted a million discounted stock options in mid-November 2004, halfway through the company's fourth quarter, when Denny's shares were trading at $4.22. He would start receiving them over the next three years, provided Denny's met a performance goal of increasing 2004 fourth-quarter sales at restaurants open more than a year.

So long as Denny's stock price stayed the same, Mr. Marchioli was guaranteed to make at least $1.8 million over the next three years. If the stock rises above $4.22 by 2014, he could earn substantially more. Of course, if it falls, he would earn less. (It does not appear that Mr. Marchioli has exercised any of the options to date.)

Mr. Gilmore, Denny's controller, explained that the pay package was intended to "attract, motivate and retain leadership." The company used discounted options to make up for its inability to issue equity when its share price was lower amid a major revamping. This was "the vehicle that we determined worked the best," he said.

That may be so. But Hewitt did work not only for the directors on Denny's compensation committee. Denny's executives awarded it consulting contracts worth more than $400,000 over the last few years to help manage the company's main pension plan.