

STEAK & SHAKE CO  
Form S-4/A  
March 05, 2010

**As filed with the Securities and Exchange Commission  
on March 5, 2010**

**Registration No. 333-163192**

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

**AMENDMENT NO. 4  
TO  
FORM S-4**

**REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933**

**THE STEAK N SHAKE COMPANY**

(Exact Name of Registrant as Specified in Its Charter)

Indiana  
(State or Other Jurisdiction of  
Incorporation or Organization)

5812  
(Primary Standard Industrial  
Classification Code Number)

37-0684070  
(I.R.S. Employer  
Identification No.)

**The Steak n Shake Company  
175 East Houston Street, Suite 1300  
San Antonio, Texas 78205  
(317) 633-4100**

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(Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Registrant's Principal Executive Offices)

**Duane E. Geiger**  
**Interim Chief Financial Officer**  
**The Steak n Shake Company**  
**36 South Pennsylvania Street, Suite 500**  
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(Name, Address Including Zip Code, and Telephone Number,  
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**Approximate date of commencement of proposed sale of the securities to the public:** As soon as practicable after  
this Registration Statement becomes effective.

If the securities being registered on this Form are being 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.

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

Duane E. Geiger Interim Chief Financial Officer The Steak n Shake Company 36 South Pennsylvania Street, Suite 500

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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   
If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)   
Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

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

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The information contained herein is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This document is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED March 5, 2010**

**PROPOSED MERGER PROXY  
STATEMENT/PROSPECTUS**

Dear Western Sizzlin Stockholder:

The Steak n Shake Company ( "Steak n Shake" ) proposes to purchase Western Sizzlin Corporation ( "Western Sizzlin" ). This purchase would be accomplished pursuant to an Agreement and Plan of Merger, dated as of October 22, 2009, which we refer to herein as the merger agreement. The parties to the merger agreement are Steak n Shake, Western Sizzlin, and Grill Acquisition Corporation, a wholly-owned subsidiary of Steak n Shake ( "Merger Sub" ). The merger agreement provides that Merger Sub will be merged with and into Western Sizzlin, with Western Sizzlin continuing as the surviving entity and all outstanding shares of Western Sizzlin being converted into the right to receive the purchase price for their shares that is described below. If the merger is completed, Western Sizzlin will cease to be a publicly traded company and will become a wholly-owned subsidiary of Steak n Shake.

Pursuant to the merger agreement, on October 22, 2009, Western Sizzlin declared a special dividend payable to Western Sizzlin's stockholders in the form of 1,322,806 shares of Steak n Shake common stock that were beneficially owned by an investment subsidiary of Western Sizzlin. Each stockholder of Western Sizzlin of record as of November 2, 2009 was entitled to receive this dividend, which was distributed on November 6, 2009. The dividend was paid at the rate of approximately 0.465 shares of Steak n Shake common stock for each share of Western Sizzlin common stock outstanding as of November 2, 2009 (fractional share interests were settled by a cash payment). All references to numbers of shares of Steak n Shake common stock in this paragraph are not retroactively adjusted to give effect to the 1-for-20 reverse split effected by Steak n Shake on December 18, 2009.

Under the terms of the merger agreement, the merger consideration payable by Steak n Shake to Western Sizzlin stockholders will be in the form of a new issue of 14% redeemable subordinated debentures due 2015 to be issued by Steak n Shake, which we refer to herein as the debentures, in an aggregate principal amount of \$22,959,000. Subject to stockholder approval and satisfaction or waiver of the other conditions specified in the merger agreement, as described in the attached proxy statement/prospectus, at the effective time of the merger, each outstanding share of common stock of Western Sizzlin (other than shares held by Steak n Shake, Merger Sub or Western Sizzlin, or by Western Sizzlin's stockholders who perfect and do not withdraw their appraisal rights under Delaware law) will be converted into the right to receive a pro rata portion of the debentures (approximately \$8.07 principal amount of debentures per Western Sizzlin share, based upon the number of shares of Western Sizzlin common stock outstanding on February 17, 2010), with cash to be paid in lieu of fractional debenture interests.

The debentures will be unsecured debt obligations of Steak n Shake that are subordinated in right of payment (subject to certain limitations) to all of its other present and future senior debts and obligations. The debentures will bear

interest at 14% per annum from the date of issuance (which will be the same date as the effective date of the merger), payable semiannually in cash, with principal and any accrued but unpaid interest to be paid in cash at maturity on the date that is the fifth anniversary of the date of issuance. Steak n Shake may, at its option, redeem the debentures, in whole or in part, without premium or penalty, on or after the date that is the first anniversary of the date of issuance thereof at a redemption price equal to 100% of the principal amount of the debentures to be redeemed, plus any accrued and unpaid interest to the date of redemption. The indenture governing the debentures contains covenants that restrict Steak n Shake's ability to declare or pay dividends on its common stock or incur additional indebtedness under certain circumstances. Steak n Shake applied on January 21, 2010 to list the debentures on the New York Stock Exchange upon issuance; however, because the debentures will be issued without underwriting in a direct issue limited to stockholders of Western Sizzlin in a principal amount limited to \$22,959,000, no assurance can be made that any active trading market will develop for the debentures.

The market price of Western Sizzlin common stock will fluctuate before the stockholder meeting. You should obtain current stock price quotations for Western Sizzlin's common stock. Western Sizzlin's common stock is quoted on the NASDAQ Capital Market under the symbol WEST. On , 2010, the last trading day before the distribution of the attached proxy statement/prospectus, the closing price of Western Sizzlin's common stock was \$ per share.

We cannot complete the merger unless Western Sizzlin's stockholders adopt the merger agreement and approve the merger, which we refer to herein as the merger proposal. Western Sizzlin will hold a special meeting of its stockholders to vote on the merger proposal at the Plaza Club, located at 100 West Houston Street, Ste. 2100, San Antonio, Texas 78205, on March 22, 2010, at 1:30 p.m., local time. Your vote is important. Regardless of whether you plan to attend the special meeting, please take the time to vote your shares in accordance with the instructions contained in the attached proxy statement/prospectus. Failing to vote will have the same effect as voting AGAINST the merger proposal. You will also have an opportunity to vote to approve the postponement

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or adjournment of the special meeting, if necessary or appropriate in the judgment of the Chairman, to solicit additional proxies in favor of the approval of the merger proposal, referred to herein as the adjournment proposal.

Steak n Shake and Western Sizzlin are affiliated with each other by certain common directors, certain common executive officers, and certain common shareholders. In addition, at the time of approval of the merger agreement, Western Sizzlin beneficially owned more than five percent of the outstanding common stock of Steak n Shake. In recognition of this affiliation and these close relationships, the merger agreement was negotiated between special committees of the boards of directors of Steak n Shake and of Western Sizzlin, each of which was comprised entirely of directors who had no relationships with the other party. For a discussion of the special factors that apply to the merger in light of the close relationships of the parties to the merger and their affiliates and associates, and the conflicts of interest that may be deemed to result from those relationships, see **Special Factors** beginning on page 16 of the attached proxy statement/prospectus.

**The special committee of Western Sizzlin's board of directors, and, acting in part upon the recommendation of Western Sizzlin's special committee, the Western Sizzlin board of directors, have recommended that Western Sizzlin stockholders vote FOR the merger proposal and FOR the adjournment proposal.**

The attached proxy statement/prospectus describes the special meeting, the merger proposal, the adjournment proposal, the debentures to be issued in the merger, and other related matters. **Please carefully read this entire proxy statement/prospectus, including Risk Factors beginning on page 72 and Special Factors beginning on page 16, for a discussion of the risks relating to the merger proposal and the debentures and the special factors arising from the affiliation of Steak n Shake with Western Sizzlin.** You also can obtain information about Western Sizzlin and Steak n Shake from documents that each of us has filed with the Securities and Exchange Commission.

The date of the attached proxy statement/prospectus is , 2010, and it is first being mailed to Western Sizzlin stockholders on or about , 2010.

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR THE MERGER OR PASSED UPON THE FAIRNESS OF THE MERGER OR UPON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE IN THE ATTACHED PROXY STATEMENT/PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

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**WESTERN SIZZLIN CORPORATION**  
**401 Albemarle Ave SE**  
**Roanoke, Virginia 24013**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

To the Stockholders of Western Sizzlin Corporation:

Notice is hereby given that a Special Meeting of Stockholders of Western Sizzlin Corporation, a Delaware corporation ( Western Sizzlin ), will be held on March 22, 2010 at 1:30 p.m., local time, at the Plaza Club, located at 100 West Houston Street, Ste. 2100, San Antonio, Texas 78205.

Only holders of shares of Western Sizzlin s common stock, par value \$0.01 per share, of record at the close of business on February 17, 2010, may vote at this meeting or at any adjournments or postponements thereof that may take place.

At the meeting, stockholders will be asked:

To consider and vote upon a proposal to adopt the Agreement and Plan of Merger, dated as of October 22, 2009 (as it may be amended from time to time, the merger agreement ), among The Steak n Shake Company ( Steak n Shake ), Grill Acquisition Corporation, a wholly-owned subsidiary of Steak n Shake ( Merger Sub ), and Western Sizzlin, a copy of which is attached as Annex A to the proxy statement/prospectus attached to this notice, and approve the merger of Merger Sub with and into Western Sizzlin (the merger ), as a result of which Western Sizzlin will be the surviving corporation in the merger and will be a wholly owned subsidiary of Steak n Shake; pursuant to the merger agreement, each share of Western Sizzlin s common stock (other than shares held by Steak n Shake, Merger Sub or Western Sizzlin, or by Western Sizzlin stockholders who perfect and do not withdraw their appraisal rights under Delaware law) will be cancelled and converted into the right to receive a pro rata portion of a new issue of 14% redeemable subordinated debentures due 2015 to be issued by Steak n Shake (the debentures ) in the aggregate principal amount of \$22,959,000 (approximately \$8.07 principal amount of debentures per Western Sizzlin share, based upon the number of shares of Western Sizzlin common stock outstanding on February 17, 2010), with cash to be paid in lieu of fractional debenture interests; and

To approve the adjournment or postponement of the meeting, if necessary or appropriate in the judgment of the Chairman, to solicit additional proxies if there are an insufficient number of votes at the meeting to approve the proposal described above.

The attached proxy statement/prospectus provides you with detailed information about the special meeting, the merger agreement and the merger. You are urged to read the entire document carefully. You may also obtain more information about Western Sizzlin from documents it has filed with the Securities and Exchange Commission.

A special committee of Western Sizzlin s board of directors comprised entirely of three of Western Sizzlin s directors who have no relationship to Steak n Shake (the Western Sizzlin special committee ) was established to evaluate the proposed merger with Steak n Shake, negotiate the price and terms of the merger, and explore alternatives to the merger. After reviewing and considering the terms and conditions of the merger agreement, on October 22, 2009, the Western Sizzlin special committee and, acting in part upon the recommendation of the Western Sizzlin special committee, the Western Sizzlin board of directors unanimously resolved that the terms of the merger agreement and the merger are fair to, advisable and in the best interest of Western Sizzlin and its stockholders and recommended that Western Sizzlin s stockholders adopt the merger agreement and approve the merger. In arriving at their



recommendation of the merger agreement and the merger, the Western Sizzlin special committee and the Western Sizzlin board of directors carefully considered a number of factors which are described in the attached proxy statement/prospectus.

**Each of the Western Sizzlin special committee and the Western Sizzlin board of directors have recommended that Western Sizzlin stockholders vote FOR the proposal to adopt the merger agreement and approve the merger and FOR the proposal to adjourn or postpone the meeting, if necessary or appropriate in the judgment of the Chairman, to permit further solicitation of proxies for the adoption of the merger agreement and the approval of the merger.**

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When you consider the recommendation of the Western Sizzlin special committee and the Western Sizzlin board of directors to adopt the merger agreement and approve the merger, you should be aware that certain of Western Sizzlin's directors and executive officers may have interests in the merger that are different from, or in addition to, your interests as stockholders generally and that may present actual or apparent conflicts of interests. Three directors of Western Sizzlin, Sardar Biglari, Philip L. Cooley and Jonathan Dash, along with John K. H. Linnartz, the managing member of Mustang Capital Management, LLC, in which Western Sizzlin owns a 51% interest, exercise voting control over an aggregate of 1,243,319 shares of Western Sizzlin's common stock, or approximately 43.8% of its currently outstanding common stock, based upon filings made by such persons with the Securities and Exchange Commission to date, and, at the time the merger agreement was executed, were members of a group, within the meaning of Section 13(d)(3) of the Exchange Act, along with Western Sizzlin, that beneficially owned an aggregate of 2,753,155 shares of Steak n Shake's common stock, or approximately 9.6% of its then outstanding common stock (including the 1,322,806 shares owned by an investment subsidiary of Western Sizzlin that were subsequently distributed to Western Sizzlin's stockholders on November 6, 2009). Additionally, Mr. Biglari, Western Sizzlin's Chairman and Chief Executive Officer, is also the Chairman and Chief Executive Officer of Steak n Shake and Mr. Cooley, Vice Chairman of Western Sizzlin's board of directors, is also a director and Vice Chairman of the board of directors of Steak n Shake. These and other conflicting interests are described under the section of the attached proxy statement/prospectus entitled "Special Factors - Interests of Steak n Shake and Western Sizzlin Directors and Executive Officers in the Merger."

Western Sizzlin's stockholders will have the right to demand appraisal of their shares of Western Sizzlin common stock and obtain payment in cash for the fair value of such shares, but only if they submit a written demand for an appraisal before the vote is taken on the merger agreement and comply with the applicable provisions of Delaware law. A copy of the Delaware statutory provisions relating to appraisal rights is attached as Annex D to the attached proxy statement/prospectus and a summary of those provisions can be found in the section of the attached proxy statement/prospectus entitled "Appraisal Rights."

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## **YOUR VOTE IS IMPORTANT**

We cannot complete the merger unless Western Sizzlin's stockholders adopt the merger agreement and approve the merger. Regardless of the number of shares you own, your vote is very important. The affirmative vote of the holders of at least a majority of all of the outstanding shares of Western Sizzlin common stock entitled to vote is required to adopt the merger agreement and approve the merger. If you fail to vote on the merger agreement and the merger, the effect will be the same as a vote **AGAINST** the adoption of the merger agreement and the approval of the merger.

**WE HOPE YOU WILL BE ABLE TO ATTEND THE MEETING, BUT WHETHER OR NOT YOU PLAN TO ATTEND, PLEASE SUBMIT YOUR PROXY AS PROMPTLY AS POSSIBLE BY MARKING, SIGNING AND RETURNING THE ENCLOSED PROXY CARD IN THE POSTAGE PAID ENVELOPE PROVIDED.**

Voting by proxy will not prevent you from voting your shares in person in the manner described in the attached proxy statement/prospectus if you subsequently choose to attend the special meeting. You may revoke your proxy at any time before the meeting. If your shares are held in the name of a bank, broker or other fiduciary, please follow the instructions on the voting instruction card furnished to you by the record holder. If you hold your shares in street name through a bank, broker or custodian, you must obtain a legal proxy from such custodian in order to vote in person at the meeting. You should not send in your certificates representing shares of Western Sizzlin's common stock until you receive written instructions to do so.

The Western Sizzlin board of directors has chosen the close of business on February 17, 2010 as the record date that will determine the stockholders who are entitled to receive notice of, and to vote at, the Western Sizzlin special meeting or at any adjournment or postponement of the meeting. A list of the names of Western Sizzlin stockholders of record will be available at the meeting and for 10 days prior to the meeting for any purpose germane to the meeting during regular business hours at the offices of Western Sizzlin; 401 Albemarle Ave SE, Roanoke, Virginia 24013.

BY ORDER OF THE BOARD OF DIRECTORS,

Sardar Biglari  
Chairman and Chief Executive Officer

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Western Sizzlin's Stockholders to be Held on March 22, 2010: We are furnishing proxy materials on the Internet in addition to mailing paper copies of the materials to each stockholder of record. This Notice of Special Meeting and the attached Proxy Statement/Prospectus are available for viewing, printing and downloading at: [www.western-sizzlin.com/investors/specialmeeting2010.html](http://www.western-sizzlin.com/investors/specialmeeting2010.html).

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## **ADDITIONAL INFORMATION**

The attached proxy statement/prospectus incorporates important business and financial information about Steak n Shake from other documents that are not included in or delivered with the proxy statement/prospectus. If you are a Western Sizzlin stockholder of record as of the record date, you will not receive copies of the documents incorporated by reference herein, unless you request such documents from Western Sizzlin and Steak n Shake, as described below. This information is available to you without charge upon your request. You can obtain the documents incorporated by reference into the proxy statement/prospectus by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

The Steak n Shake Company  
175 East Houston Street, Suite 1300  
San Antonio, Texas 78205  
Attention: Duane Geiger  
Telephone: (317) 633-4100

Western Sizzlin Corporation  
401 Albemarle Ave SE  
Roanoke, Virginia 24013  
Attention: Robyn B. Mabe  
Telephone: (540) 345-3195

In addition, if you have questions about the merger or the proxy statement/prospectus, would like additional copies of the proxy statement/prospectus or the documents incorporated by reference into the proxy statement/prospectus or need to obtain proxy cards or other information related to the proxy solicitation, you may contact Morrow & Co., LLC, Western Sizzlin's proxy solicitor, at the address and telephone number listed below. You will not be charged for any of these documents that you request.

**Morrow & Co., LLC**  
470 West Avenue 3<sup>rd</sup> Floor  
Stamford, CT 06902

Banks and Brokerage Firms, please call (203) 658-9400

Stockholders, please call (800) 607-0088

**In order to receive timely delivery of the documents in advance of the special meeting of Western Sizzlin stockholders, you must request the information no later than March 15, 2010.**

For more information, see **Other Matters** **Where You Can Find More Information** beginning on page 167.

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