

CHEESECAKE FACTORY INCORPORATED

Form 10-Q/A

May 26, 2004

---

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

---

FORM 10-Q/A

(Amendment No. 1)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 30, 2004

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number 0-20574

**THE CHEESECAKE FACTORY INCORPORATED**

*(Exact Name of Registrant as Specified in its Charter)*

**Delaware**

*(State or other jurisdiction  
of incorporation or organization)*

**51-0340466**

*(IRS Employer  
Identification No.)*

**26950 Agoura Road  
Calabasas Hills, California**

*(Address of principal executive offices)*

**91301**

*(Zip Code)*

Registrant's telephone number, including area code: **(818) 871-3000**

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 whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☒ No ☐

As of April 20, 2004, 51,808,791 shares of the registrant's Common Stock, \$.01 par value, were outstanding.

---

---

---

## THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES

## INDEX

## PART II. OTHER INFORMATION

Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities

Item 6. Exhibits and Reports on Form 8-K

Signatures

1

## EXPLANATORY NOTE

This Amendment to the report on Form 10-Q for The Cheesecake Factory Incorporated for the fiscal quarter ended March 30, 2004 is being filed solely to include in Part II. Other Information Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities, as set forth below. Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, this Amendment also includes new Rule 13(a)-14(a)/15d-14(a) certifications as Exhibits 31.1 and 31.2, and new certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 as Exhibits 32.1 and 32.2. This Amendment continues to speak as of the date of the original Form 10-Q, and we have not updated the disclosure to reflect any events that occurred at a later date.

## PART II. OTHER INFORMATION

## Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities

The following provides information regarding the Company's purchase, during the first quarter 2004, of equity securities that are registered by us pursuant to Section 12 of the Exchange Act:

| Period                               | Total<br>Number of<br>Shares<br>Purchased | Average<br>Price Paid<br>per Share | Total Number of<br>Shares Purchased as<br>Part of Publicly<br>Announced Plans or<br>Program | Maximum Number of<br>Shares that May Yet<br>Be Purchased Under<br>the Plans or<br>Programs (1) |
|--------------------------------------|-------------------------------------------|------------------------------------|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| December 31, 2003 – January 31, 2004 |                                           |                                    |                                                                                             | 610,200                                                                                        |
| February 1 – 29, 2004                |                                           |                                    |                                                                                             | 610,200                                                                                        |
| March 1 – 30, 2004                   | 10,000                                    | \$47.59                            | 10,000                                                                                      | 600,200                                                                                        |
| Total                                | 10,000                                    | \$47.59                            | 10,000                                                                                      |                                                                                                |

- (1) In February 1998, our Board of Directors authorized the repurchase of up to 1,687,500 shares of our common stock. The repurchase program does not have an expiration date.

## Item 6 Exhibits and Reports on Form 8-K

(a) Exhibits.

Exhibit 10.1 Amended and Restated Annual Performance Incentive Plan (1)

## Edgar Filing: CHEESECAKE FACTORY INCORPORATED - Form 10-Q/A

Exhibit 10.2 Agreement of Purchase and Sale and Joint Escrow Instructions (1)

Exhibit 31.1 Rule 13a-14(a) Certification of Principal Executive Officer

Exhibit 31.2 Rule 13a-14(a) Certification of Principal Financial Officer

Exhibit 32.1 Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Exhibit 32.2 Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

---

(1) Previously filed as part of the Company's quarterly report on Form 10-Q for the quarter ended March 30, 2004.

2

---

(b) Reports on Form 8-K.

The Company filed the following reports on Form 8-K during the first quarter:

On January 7, 2004, the Company filed a current report on Form 8-K announcing its presentation at the SG Cowen Consumer Conference.

On January 7, 2004, the Company filed a current report on Form 8-K announcing executive officer promotions.

On January 27, 2004, the Company filed a current report on Form 8-K announcing the date and time of the fourth quarter and fiscal 2003 earnings conference call.

On January 28, 2004, the Company filed a current report on Form 8-K announcing the opening of The Cheesecake Factory restaurant in Birmingham, Alabama.

On February 4, 2004, the Company filed a current report on Form 8-K announcing the financial results of fiscal fourth quarter ended December 30, 2003.

On February 11, 2004, the Company filed a current report on Form 8-K announcing that it had entered into a \$35 million credit facility with Bank of the West to replace an existing facility with that institution.

On February 17, 2004, the Company filed a current report on Form 8-K announcing the opening of The Cheesecake Factory restaurant in Cincinnati, Ohio and its presentation at the Bear Stearns Conference.

On March 17, 2004, the Company filed a current report on Form 8-K announcing an update to Company management.

On March 19, 2004, the Company filed a current report on Form 8-K announcing its presentation at the Banc of America Securities Conference.

On March 30, 2004, the Company filed a current report on Form 8-K announcing the Board of Directors approval of an amended and restated Code of Ethics for Executive Officers, Senior Financial Officers and Directors.

The Company filed the following reports on Form 8-K subsequent to the close of the first quarter:

## Edgar Filing: CHEESECAKE FACTORY INCORPORATED - Form 10-Q/A

On April 14, 2004, the Company filed a current report on Form 8-K announcing the date and time of the first quarter earnings conference call.

On April 20, 2004, the Company filed a current report on Form 8-K announcing the financial results of fiscal first quarter ended March 30, 2004.

3

---

### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

#### THE CHEESECAKE FACTORY INCORPORATED

Date: May 26, 2004

By: /s/ DAVID OVERTON

David Overton  
*Chairman of the Board, President and  
Chief Executive Officer  
(Principal Executive Officer)*

By: /s/ MICHAEL J. DIXON

Michael J. Dixon  
*Senior Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)*

4

---

### INDEX TO EXHIBITS

| <u>Exhibit Number</u> | <u>Exhibit Title</u>                                                                                                   |
|-----------------------|------------------------------------------------------------------------------------------------------------------------|
| 31.1                  | Rule 13a-14(a) Certification of Principal Executive Officer                                                            |
| 31.2                  | Rule 13a-14(a) Certification of Principal Financial Officer                                                            |
| 32.1                  | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 32.2                  | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

5

---