

HERSHEY CO
Form S-3ASR
May 18, 2012
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As filed with the Securities and Exchange Commission on May 18, 2012

Registration No. 333-

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

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

THE HERSHEY COMPANY

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of

23-0691590
(I.R.S. Employer

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Incorporation or Organization)

100 Crystal A Drive

Identification Number)

Hershey, Pennsylvania 17033

(717) 534-6799

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

Burton H. Snyder, Esq.

The Hershey Company

100 Crystal A Drive

Hershey, Pennsylvania 17033

(717) 534-6799

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

With a copy to:

Risë B. Norman, Esq.

Simpson Thacher & Bartlett LLP

425 Lexington Avenue

New York, New York 10017

(212) 455-2000

Approximate date of commencement of proposed sale to public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act), other than securities offered only in connection with dividend or interest reinvestment plans, please check the following box.

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If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please 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(c) 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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. x

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ..

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 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 (Do not check if a smaller reporting company) Smaller Reporting Company ..

CALCULATION OF REGISTRATION FEE

	Title of Each Class of Securities to be Registered	Amount to be Registered/ Proposed Maximum Offering Price Per Unit/Proposed Maximum Aggregate Offering Price (1)(2)	Amount of Registration Fee \$(1)(2)
Debt Securities			

- (1) Not applicable pursuant to Instruction II.E. to Form S-3.
- (2) An indeterminate aggregate initial offering price or number of debt securities is being registered as may from time to time be issued at indeterminate prices. In accordance with Rules 456(b) and 457(r), the Registrant is deferring payment of the registration fee, which will be paid on a pay-as-you-go basis.

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PROSPECTUS

Debt Securities

We may offer and sell our debt securities (the **Debt Securities**) from time to time in amounts, at prices and on other terms to be determined at the time of offering. The Debt Securities may be issued in one or more series with the same or various maturities. The terms of the Debt Securities in respect of which this Prospectus is being delivered (the **Offered Securities**), including, where applicable, the specific designation, aggregate principal amount offered, currency or currencies in which the principal (and premium, if any) and interest are payable, denominations, maturity, interest rate (which may be fixed or variable) or method of calculating and time of payment of interest, if any, terms for redemption at our option or the option of the holder, terms for sinking fund payments, terms for any other mandatory redemption, the public offering price, the stock exchanges, if any, on which the Offered Securities may be listed and any other terms in connection with the offering and sale of the Offered Securities, will be set forth in a prospectus supplement (the **Prospectus Supplement**) to the extent those terms are not described in this Prospectus or are different from the terms described in this Prospectus. In addition, we may supplement, update or change any of the information contained in this Prospectus by incorporating information by reference in this Prospectus. You should read this Prospectus, any accompanying Prospectus Supplement and any incorporated documents carefully before you invest. Offered Securities of a series may be issuable in registered form or in the form of one or more global securities (each a **Global Security**).

We may sell the Offered Securities, on a continuous or delayed basis, through (i) underwriting syndicates represented by managing underwriters or by underwriters without a syndicate; (ii) through agents or dealers designated from time to time; or (iii) directly to purchasers. The names of any underwriters or agents involved in the sale of the Offered Securities in respect of which this Prospectus is being delivered and any applicable commissions or discounts will be set forth in the Prospectus Supplement or in the applicable pricing agreement. The net proceeds to us from such sale will also be set forth in the accompanying Prospectus Supplement or in the applicable pricing agreement. See **Plan of Distribution** for possible indemnification arrangements for any such underwriters and agents.

You should consider carefully the risk factors included in our periodic reports filed with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, before you invest in any of our Debt Securities.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED THAT THIS PROSPECTUS IS ACCURATE OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is May 18, 2012.

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No person has been authorized to give any information or to make any representations other than those contained or incorporated by reference in this Prospectus, any accompanying Prospectus Supplement or any free writing prospectus prepared by or on behalf of us, which we refer to as a free writing prospectus, and, if given or made, such information or representations must not be relied upon as having been authorized. This Prospectus does not constitute an offer to sell or the solicitation of an offer to buy any of the Debt Securities or an offer to buy or the solicitation of an offer to sell the Debt Securities in any circumstances in which such offer or solicitation would be unlawful. The delivery of this Prospectus shall not, under any circumstances, create any implication that the information contained herein is correct as of any time subsequent to the date of such information.

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Safe Harbor Statement

We are subject to changing economic, competitive, regulatory and technological risks and uncertainties because of the nature of our operations. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, we note the following factors that, among others, could cause future results to differ materially from the forward-looking statements, expectations and assumptions that we have discussed directly or implied in this Prospectus. Many of the forward-looking statements contained in this Prospectus may be identified by the use of words such as intend, believe, expect, anticipate, should, planned, projected, estimated, and potential, among others.

The factors that could cause our actual results to differ materially from the results projected in our forward-looking statements include, but are not limited to the following:

Issues or concerns related to the quality and safety of our products, ingredients or packaging could cause a product recall and/or result in harm to our reputation, negatively impacting our operating results;

Increases in raw material and energy costs along with the availability of adequate supplies of raw materials could affect future financial results;

Price increases may not be sufficient to offset cost increases and maintain profitability or may result in sales volume declines associated with pricing elasticity;

Market demand for new and existing products could decline;

Increased marketplace competition could hurt our business;

Disruption to our supply chain could impair our ability to produce or deliver our finished products, resulting in a negative impact on our operating results;

Our financial results may be adversely impacted by the failure to successfully execute or integrate acquisitions, divestitures and joint ventures;

Changes in governmental laws and regulations could increase our costs and liabilities or impact demand for our products;

Political, economic, and/or financial market conditions could negatively impact our financial results;

International operations could fluctuate unexpectedly and adversely impact our business;

Disruptions, failures or security breaches of our information technology infrastructure could have a negative impact on our operations;

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Future developments related to the investigation by government regulators of alleged pricing practices by members of the confectionery industry could impact our reputation, the regulatory environment under which we operate, and our operating results;

Pension costs or funding requirements could increase at a higher than anticipated rate;

Annual savings from initiatives to transform our supply chain and advance our value-enhancing strategy may be less than we expect;

Implementation of Project Next Century, our global supply chain transformation program, may not occur within the anticipated timeframe and/or may exceed our cost estimates. In addition, annual savings from this initiative may be less than we expect; and

Such other matters as discussed in our Annual Report on Form 10-K for 2011.

Our forward-looking statements speak only as of the date of this Prospectus or as of the date they are made, and we undertake no obligation to update our forward-looking statements.

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Where You Can Find More Information

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act), and, in accordance therewith, file reports, proxy statements and other information with the Securities and Exchange Commission (the SEC). Such reports, proxy statements and other information can be read and copied at the SEC s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. Except as otherwise indicated in the Prospectus Supplement, copies of such materials may also be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005. In addition, the SEC maintains a website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of such site is <http://www.sec.gov>. Our filings with the SEC are also available to the public on our website at <http://www.thehersheycompany.com>. Information contained on our website is not part of this Prospectus or any Prospectus Supplement.

We have filed with the SEC a registration statement on Form S-3 (the Registration Statement) under the Securities Act of 1933, as amended (the Securities Act) with respect to the Offered Securities. This Prospectus does not contain all of the information set forth in the Registration Statement, certain parts of which have been omitted in accordance with the rules and regulations of the SEC. Reference is made to the Registration Statement and to the exhibits relating thereto for further information with respect to us and the Offered Securities.

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Documents Incorporated by Reference

We incorporate by reference in this Prospectus the following documents that we have filed with the SEC (File No. 001-00183):

- (a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed on February 17, 2012, as amended by Amendment No. 1 on Form 10-K/A to our Annual Report on Form 10-K for the year ended December 31, 2011, filed on March 19, 2012;
- (b) Our Quarterly Report on Form 10-Q for the quarter ended April 1, 2012, filed on May 9, 2012;
- (c) Our Definitive Proxy Statement on Schedule 14A, filed on March 20, 2012; and
- (d) Our Current Reports on Form 8-K, filed on February 24, 2012 and May 3, 2012.

We will not, however, incorporate by reference in this Prospectus any documents or portions thereof that are not deemed filed with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of our Current Reports on Form 8-K or Form 8-K/A after the date of this Prospectus unless, and except to the extent, specified in such Current Reports.

All documents we file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Prospectus shall be deemed to be incorporated by reference in this Prospectus so long as the Registration Statement of which this Prospectus is a part remains effective. Such documents shall be deemed to be a part of this Prospectus from the date of their filing. We may file one or more Current Reports on Form 8-K specifically in connection with the Offered Securities to which the accompanying Prospectus Supplement relates in order to incorporate by reference in this Prospectus information concerning The Hershey Company, the terms and conditions of those Offered Securities or the offering of those Offered Securities to you. When we use the term Prospectus in this Prospectus and any Prospectus Supplement, we are referring to this Prospectus as updated and supplemented by all information incorporated by reference herein from any Annual Report on Form 10-K, Quarterly Report on Form 10-Q or Current Report on Form 8-K and any other documents incorporated by reference in this Prospectus as described above.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein or in any Prospectus Supplement modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

We will provide, without charge, a copy of any or all of the documents mentioned above to each person receiving this Prospectus who requests them in writing or by telephone. Requests for such copies should be addressed to The Hershey Company, Attn: Investor Relations Department, 100 Crystal A Drive, Hershey, Pennsylvania 17033-0810, Telephone: (717) 534-6799.

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The Hershey Company

The Hershey Company was incorporated under the laws of the State of Delaware on October 24, 1927 as a successor to a business founded in 1894 by Milton S. Hershey.

We are the largest producer of quality chocolate in North America and a global leader in chocolate and sugar confectionery. Our principal product groups include chocolate and sugar confectionery products; pantry items, such as baking ingredients, toppings and beverages; and gum and mint refreshment products.

We operate as a single reportable segment in manufacturing, marketing, selling and distributing our products under more than 80 brand names. Our three operating segments comprise geographic regions including the United States, the Americas, and Asia, Europe, the Middle East and Africa. We market our products in approximately 70 countries worldwide.

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The following table sets forth our ratio of earnings to fixed charges for the periods indicated.

	Three Months Ended,		Year ended December 31,				
	April 1, 2012	April 3, 2011	2011	2010	2009	2008	2007
Ratio of earnings to fixed charges ^(a)	11.47 ^(b)	9.70 ^(c)	9.53 ^(d)	8.38 ^(e)	7.43 ^(f)	5.18 ^(g)	3.56 ^(h)

NOTES:

- (a) For purposes of computing these ratios, (i) earnings consist of income from continuing operations before income taxes, plus fixed charges adjusted for capitalized interest and (ii) fixed charges consist of interest expense and the portion of rents representative of the interest factor which is one-third of rental expense for operating leases; the amortization of debt expense; and capitalized interest.
- (b) Includes total business realignment and impairment charges of \$23.6 million before tax.
- (c) Includes total business realignment and impairment charges of \$9.7 million before tax.
- (d) Includes total business realignment and impairment charges of \$49.2 million and a gain on sale of trademark licensing rights of \$17.0 million before tax.
- (e) Includes total business realignment and impairment charges of \$98.6 million before tax.
- (f) Includes total business realignment and impairment charges of \$99.1 million before tax.
- (g) Includes total business realignment and impairment charges of \$180.7 million before tax.
- (h) Includes total business realignment and impairment charges of \$412.6 million before tax.

The foregoing information will be updated by the information relating to our Ratio of Earnings to Fixed Charges contained in our periodic reports filed with the SEC, which will be incorporated by reference in this Prospectus at the time they are filed with the SEC. See [Where You Can Find More Information](#) regarding how you may obtain access to or copies of those filings.

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Risk Factors

An investment in our securities involves risks. You should carefully consider each of the risks described in the section entitled "Risk Factors" in our annual report on Form 10-K for the fiscal year ended December 31, 2011, filed with the SEC on February 17, 2012, as such factors may be updated from time to time in our periodic filings with the SEC, which are accessible on the SEC's website at www.sec.gov, and all of the other information included or incorporated by reference in this prospectus before deciding to invest in any of our Debt Securities.

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Use of Proceeds

Except as may be otherwise set forth in a Prospectus Supplement accompanying this Prospectus, the net proceeds from the sale of the Debt Securities will be added to our general funds to meet capital additions and working capital requirements, to repay debt, to fund any pension liability requirements, to fund the repurchase of shares of our common stock and/or to fund acquisitions which we may make from time to time. Pending our use, we may invest such proceeds temporarily in cash equivalents and/or short-term marketable securities.

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Description of Debt Securities

The Debt Securities offered hereby will be issuable in one or more series under an indenture dated as of May 14, 2009 (the Indenture) between us and U.S. Bank National Association, as trustee (the Trustee). The following statements are subject to the detailed provisions of the Indenture, which is incorporated by reference as an exhibit to the Registration Statement of which this Prospectus forms a part. Wherever references are made to particular provisions of the Indenture or terms defined therein are referred to, such provisions or definitions are incorporated by reference as a part of the statements made and such statements are qualified in their entirety by such references.

General

The Indenture does not limit the amount of Debt Securities which may be issued thereunder. Except as described in Covenants below and as otherwise provided in the Prospectus Supplement relating to a particular series of Debt Securities and/or documents incorporated by reference, the Indenture does not limit the amount of other debt, secured or unsecured, which we may issue. We may issue the Debt Securities in one or more series, as we may authorize from time to time (Section 2.5).

Reference is made to the Prospectus Supplement relating to the Offered Securities and/or documents incorporated by reference for the following terms, where applicable, of the Offered Securities: (1) the designation, the aggregate principal amount and the authorized denominations of the Offered Securities; (2) the percentage of their principal amount at which the Offered Securities will be issued; (3) the currency or currencies (including composite currencies) in which the principal of and interest, if any, on the Offered Securities will be payable; (4) the date or dates on which the Offered Securities will mature; (5) the rate or rates at which the Offered Securities will bear interest, if any, or the method by which such rate or rates will be determined and the date or dates from which such interest will accrue; (6) the dates on which and places at which interest, if any, will be payable and the record dates for payment of such interest; (7) the terms of any mandatory or optional repayment or redemption (including any sinking fund); and (8) any other terms of the Offered Securities (Section 2.5). The Indenture provides that Debt Securities of a single series may be issued at various times, with different maturity dates and may bear interest at different rates (Section 2.5).

The Offered Securities will be our unsecured, unsubordinated indebtedness and will rank on parity with all of our other unsecured, unsubordinated indebtedness.

Debt Securities of a series may be issued in fully registered form or in the form of one or more Global Securities and, with regard to each series of Debt Securities in respect of which this Prospectus is being delivered or made available, in the denominations set forth in the Prospectus Supplement relating to such series and/or documents incorporated by reference. With regard to each series of Debt Securities, we will maintain in the Borough of Manhattan, The City of New York and in such other place or places, if any, specified in the Prospectus Supplement relating to such series and/or documents incorporated by reference, an office or agency where the Debt Securities of such series may be transferred or exchanged and may be presented for payment of principal, premium, if any, and interest; provided that if such securities are not Global Securities, at our option, payment of interest may be made by check mailed to the address of the person entitled thereto as it appears in the register for the Debt Securities (Section 3.2). No service charge will be made for any transfer or exchange of the Debt Securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith (Section 2.10).

Some of the Debt Securities may be issued as discounted Debt Securities (bearing no interest or interest at a rate which at the time of issuance is below market rates) to be sold at a substantial discount below their stated principal amount. Such discounted Debt Securities will be treated as having been issued with original issue discount for United States federal income tax purposes pursuant to Section 1273 of the Internal Revenue Code of 1986, as amended, if the discount is in excess of a minimum threshold amount. Federal income tax consequences and other special considerations applicable to any Debt Securities with original issue discount will be described in the Prospectus Supplement relating thereto and/or documents incorporated by reference.

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Definitions

Attributable Debt is defined, in brief, to mean, as to any lease under which any person is at the time liable, at any date as of which the amount thereof is to be determined, the total net amount of rent required to be paid by such person under such lease during the remaining term thereof (including in respect of contingent rents, amounts based on the amount thereof, if any, being paid on the date of determination and excluding amounts on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges), discounted from the respective due dates thereof at the weighted average of the rates of interest (and Yields to Maturity, in the case of Original Issue Discount Securities) borne by the Debt Securities then Outstanding, compounded annually (Section 1.1).

Consolidated Net Tangible Assets is defined to mean the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom (a) all current liabilities (excluding any portion thereof constituting Funded Debt by reason of being renewable or extendible) and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all as set forth on our and our Domestic Subsidiaries' most recent consolidated balance sheet, prepared in accordance with U.S. generally accepted accounting principles (Section 1.1).

Debt is defined to mean any notes, bonds, debentures or other similar evidences of indebtedness for money borrowed and does not include Attributable Debt (Section 1.1).

Domestic Subsidiary is defined to mean a subsidiary of ours except a subsidiary (a) which neither transacts any substantial portion of its business nor regularly maintains any substantial portion of its fixed assets within the States of the United States, or (b) the principal purpose of which is to engage in financing our operations or the operations of our subsidiaries, or both, outside the States of the United States (Section 1.1).

Funded Debt is defined to mean all indebtedness for money borrowed having a maturity of more than 12 months from the date as of which the amount thereof is to be determined or having a maturity of less than 12 months but by its terms being renewable or extendible beyond 12 months from such date at the option of the borrower (Section 1.1).

Government Obligations is defined to mean either (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof (Section 13.1).

Mortgage is defined to mean any pledge, mortgage, lien, encumbrance or security interest (Section 1.1).

Original Issue Discount Security is defined to mean any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to the Indenture (Section 1.1).

Principal Domestic Operating Property is defined, in brief, to mean any land or any facility (together with the land on which it is erected and fixtures comprising a part thereof) located in the United States used primarily for manufacturing, processing or production, owned or leased by us or any of our subsidiaries and having a gross book value in excess of 2% of Consolidated Net Tangible Assets other than any such land, facility or portion thereof which in the opinion of our Board of Directors, is not of material importance to the total business conducted by us and our subsidiaries as an entity (Section 1.1).

subsidiary of our company, is defined to mean a corporation a majority of the outstanding voting stock of which is owned, directly or indirectly, by us or by one or more of our subsidiaries (Section 1.1).

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Other capitalized terms used in this Description of Debt Securities have the meanings given them in the Indenture, unless otherwise indicated or unless the context otherwise requires.

Covenants

Limitation on Liens

If we or any Domestic Subsidiary shall incur, issue, assume or guarantee any Debt secured by a Mortgage on any Principal Domestic Operating Property or on any shares of stock or Debt, held by us or any Domestic Subsidiary, of any Domestic Subsidiary, we will secure, or cause such Domestic Subsidiary to secure, the Debt Securities equally and ratably with (or prior to) such Debt, unless after giving effect thereto the aggregate amount of all such Debt so secured together with all Attributable Debt in respect of sale and leaseback transactions involving Principal Domestic Operating Properties would not exceed 15% of our and our Domestic Subsidiaries' Consolidated Net Tangible Assets. This restriction will not apply to, and there shall be excluded in computing secured Debt for the purpose of such restriction, Debt secured by (a) Mortgages on property of, or on any shares of stock or Debt of, any corporation existing at the time such corporation becomes a Domestic Subsidiary, (b) Mortgages in our favor or in favor of any Domestic Subsidiary, (c) Mortgages in favor of U.S. governmental bodies to secure progress, advance or other payments pursuant to any contract or provision of any statute, (d) Mortgages on property, shares of stock or Debt existing at the time of acquisition thereof (including acquisition through merger or consolidation), purchase money Mortgages and construction cost Mortgages, and (e) any extension, renewal or refunding of any Mortgage referred to in the foregoing clauses (a) through (d), inclusive (Section 3.4). The Indenture will not restrict our or our subsidiaries' ability to incur unsecured debt.

Merger and Consolidation

The Indenture provides that no consolidation or merger of our company with or into any other corporation and no sale or conveyance of its property as an entirety, or substantially as an entirety, may be made to another corporation if, as a result thereof, any Principal Domestic Operating Property or any shares of stock or Debt, held by us or any Domestic Subsidiary, of a Domestic Subsidiary would become subject to a Mortgage, unless either (i) the Debt Securities shall be equally and ratably secured with (or prior to) the Debt secured by such Mortgage or (ii) such Mortgage could be created pursuant to Section 3.4 (See Limitation on Liens above) without equally and ratably securing the Debt Securities (Section 9.3). In addition, as a result of the consolidation, merger or conveyance, either we shall be the continuing corporation or the successor corporation shall be a corporation organized and existing under the laws of the United States or a state thereof and the successor corporation shall expressly assume the due and punctual payment of principal of (and premium, if any) and interest on all Debt Securities and our obligations under the Indenture in a supplemental indenture satisfactory to the Trustee (Section 9.1).

Limitations on Sales and Leasebacks

Neither we nor any Domestic Subsidiary may enter into any sale and leaseback transaction involving any Principal Domestic Operating Property, completion of construction and commencement of full operation of which has occurred more than 120 days prior thereto, unless (a) we or such Domestic Subsidiary could mortgage such property pursuant to Section 3.4 (see Limitation on Liens above) in an amount equal to the Attributable Debt with respect to the sale and leaseback transaction without equally and ratably securing the Debt Securities or (b) we, within 120 days after completion of the sale and leaseback transaction, apply to the retirement of our Funded Debt an amount (subject to credits for certain voluntary retirements of Funded Debt) not less than the greater of (i) the net proceeds of the sale of the Principal Domestic Operating Property so leased or (ii) the fair market value of the Principal Domestic Operating Property so leased. This restriction will not apply to any sale and leaseback transaction (a) between us and a Domestic Subsidiary or between Domestic Subsidiaries or (b) involving the taking back of a lease for a period of not more than three years (Section 3.5).

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Unless otherwise indicated in a Prospectus Supplement and/or documents incorporated by reference, certain of the covenants described above would not necessarily afford holders of the Debt Securities protection in the event of a highly leveraged transaction involving us, such as a leveraged buyout. In this regard, however, it should be noted that voting control of our company is held by Hershey Trust Company, as Trustee for the benefit of Milton Hershey School (the Milton Hershey School Trust or the Trust), which as of March 5, 2012 had the right to cast 7.7% of all of the votes entitled to be cast on matters requiring the vote of our common stock voting separately and 80.4% of all of the votes entitled to be cast on matters requiring the vote of our common stock and Class B common stock voting together. The Milton Hershey School Trust currently has three representatives who are members of the Board of Directors of the Company, one of whom is the Chairman of the Board. These representatives, from time to time in performing their responsibilities on the Company's Board, may exercise influence with regard to the ongoing business decisions of our Board of Directors or management. The Trust has indicated that, in its role as controlling stockholder of the Company, it intends to retain its controlling interest in The Hershey Company, and that the Company Board, not the Trust Board, is solely responsible and accountable for the Company's management and performance. The Milton Hershey School Trust maintains voting control of our Company and must approve the issuance of shares of common stock or any other action that would result in the Milton Hershey School Trust not continuing to have voting control of our company.

Events of Default, Waiver and Notice

Except as may otherwise be provided in the Prospectus Supplement and/or documents incorporated by reference, as to any series of Debt Securities, an Event of Default is defined in the Indenture as (a) default in the payment of any installment of interest, if any, on the Debt Securities of such series when due and the continuance of such default for a period of 30 days; (b) default in payment of the principal of (and premium, if any, on) any of the Debt Securities of such series when due, whether at maturity, upon redemption, by declaration or otherwise; (c) default in the payment of a sinking fund installment, if any, on the Debt Securities of such series when due; (d) default by us in the performance of any other covenant or agreement contained in the Indenture, other than a covenant expressly included in the Indenture solely for the benefit of series of Debt Securities other than such series, and the continuance of such default for a period of 90 days after appropriate notice; (e) certain events of bankruptcy, insolvency and reorganization of our company; and (f) any other Event of Default established with respect to Debt Securities of that series (Sections 2.5 and 5.1).

An Event of Default with respect to a particular series of Debt Securities issued under the Indenture does not necessarily constitute an Event of Default with respect to any other series of Debt Securities issued thereunder.

The Indenture provides that the Trustee shall, within 90 days after the occurrence of a default with respect to Debt Securities of any series, give all the holders of Debt Securities of such series then outstanding notice of all uncured defaults known to it (the term default to mean the events specified above, not including grace periods); provided that, except in the case of a default in the payment of principal of (and premium, if any) or interest, if any, on any Debt Security of any series, or in the payment of any sinking fund installment with respect to Debt Securities of any series, the Trustee shall be protected in withholding such notice if it in good faith determines that the withholding of such notice is in the interest of all the holders of Debt Securities of such series then outstanding (Section 5.11).

The Indenture provides that if an Event of Default with respect to any series of Debt Securities shall have occurred and be continuing, either the Trustee or the holders of at least 25% in principal amount (calculated as provided in the Indenture) of the Debt Securities of such series then outstanding may declare the principal (or, in the case of Original Issue Discount Securities, the portion thereof as may be specified in the Prospectus Supplement relating to such series and/or documents incorporated by reference) of all of the Debt Securities of such series and the interest accrued thereon, if any, to be due and payable immediately (Section 5.1).

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Upon certain conditions such declarations of acceleration with respect to Debt Securities of any series may be annulled and past defaults (except for defaults in the payment of principal (or premium, if any) or interest, if any, on such Debt Securities not theretofore cured or in respect of a covenant or provision of the Indenture which cannot be amended or modified without the consent of the holder of each outstanding Debt Security of that series affected) may be waived with respect to such series by the holders of not less than a majority in principal amount (calculated as provided in the Indenture) of the Debt Securities of such series then outstanding (Section 5.10).

The Indenture requires that we file with the Trustee annually a written statement as to the presence or absence of certain defaults under the terms thereof and as to performance and fulfillment of certain covenants or agreements therein (Section 3.6).

The Indenture provides that the holders of not less than a majority in principal amount (calculated as provided in the Indenture) of the Debt Securities of any series then outstanding shall have the right to direct the time, method and place of conducting any proceeding or remedy available to the Trustee, or exercising any trust or power conferred on the Trustee by the Indenture with respect to defaults or Events of Default with respect to Debt Securities of such series (Section 5.9).

The Indenture provides that the Trustee shall be under no obligation, subject to the duty of the Trustee during default to act with the required standard of care, to exercise any of the rights or powers vested in it by the Indenture at the direction of the holders of Debt Securities unless such holders shall have offered to the Trustee reasonable security or indemnity against expenses and liabilities (Section 6.2).

Defeasance

The Indenture provides that we may terminate our obligations under Sections 3.4, 3.5 and 9.3 of the Indenture (being the restrictions described under Covenants Limitation on Liens and Covenants Limitations on Sales and Leasebacks and the first sentence under Covenants Merger and Consolidation above) with respect to the Debt Securities of any series, on the terms and subject to the conditions contained in the Indenture, by depositing in trust with the Trustee money or Government Obligations sufficient to pay the principal of (and premium, if any) and interest on the Debt Securities of such series and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates therefor. Such deposit and termination is conditioned upon, among other things, our delivery of an opinion of counsel that the holders of the Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and termination and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case had such deposit and termination not occurred. Such termination will not relieve us of our obligation to pay when due the principal of or interest on the Debt Securities of such series if the Debt Securities of such series are not paid from the money or Government Obligations held by the Trustee for the payment thereof (Section 13.1).

Modification of the Indenture

The Indenture contains provisions permitting us and the Trustee, with the consent of the holders of not less than a majority in principal amount (calculated as provided in the Indenture) of the outstanding Debt Securities of each series affected by such modification, to modify the Indenture or any supplemental indenture or the rights of the holders of the Debt Securities of any series; provided that no such modification shall, without the consent of the holders of each Debt Security affected thereby, extend the maturity of any Debt Security, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce the portion of the principal amount of an Original Issue Discount Security due and payable upon acceleration of the maturity thereof or the portion of the principal amount thereof provable in bankruptcy, or reduce any amount payable upon redemption of any Debt Security, or reduce the overdue rate thereof, or impair any right of repayment at the option of the holder of any Debt Security or change the currency of payment of principal or interest on any Debt Security or reduce the percentage in principal amount of Outstanding Debt Securities of any

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series the consent of the holders of which is required for modification or amendment of the Indenture or for waiver of compliance with certain provisions of the Indenture or for waiver of certain defaults (Section 8.2).

The holders of not less than a majority in principal amount of the Outstanding Debt Securities of any series may on behalf of the holders of all Debt Securities of such series waive, insofar as that series is concerned, our compliance with certain restrictive provisions (Limitation on Liens and Limitations on Sales and Leasebacks) of the Indenture (Section 3.9).

The Indenture also permits us and the Trustee to amend the Indenture in certain circumstances without the consent of the holders of any Debt Securities to evidence the merger of our company or the replacement of the Trustee and for certain other purposes (Section 8.1).

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Plan of Distribution

We may sell Debt Securities to or through underwriters or dealers and also may sell Debt Securities directly to one or more other purchasers or through agents. The Prospectus Supplement and/or documents incorporated by reference will set forth the names of any underwriters or agents involved in the sale of the Offered Securities and any applicable commission or discounts.

The distribution of Debt Securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices.

Each series of Debt Securities will be a new issue with no established trading market. We may elect to list any series of Debt Securities on an exchange, but we will not be obligated to do so. It is possible that one or more underwriters may make a market in a series of Debt Securities, but will not be obligated to do so and may discontinue any market making at any time without notice. Therefore, we can give no assurance as to the liquidity of the trading market for Debt Securities.

If Debt Securities are sold by means of an underwritten offering, we anticipate such sale will be pursuant to the form of Underwriting Agreement (the Form Underwriting Agreement) and the form of Pricing Agreement (Form Pricing Agreement), filed as Exhibit 1.1 and 1.2, respectively to the Registration Statement of which this Prospectus forms a part. Under the Form Pricing Agreement, each underwriter agrees, severally and not jointly, to purchase its allocated amount of Debt Securities. The Form Underwriting Agreement provides that the obligations of the underwriters to purchase Debt Securities are subject to approval of certain legal matters by counsel and to certain other conditions. The underwriters are committed to take and pay for all Debt Securities to be offered, if any are taken. In the event of a default by any underwriter, the Form Underwriting Agreement provides that, in certain circumstances, the purchase commitments of the non-defaulting underwriters may be increased or the Form Underwriting Agreement may be terminated.

In connection with the sale of Debt Securities, underwriters may receive compensation from us or from purchasers of Debt Securities for whom they may act as agents in the form of discounts, concessions or commissions. Underwriters may sell Debt Securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of Debt Securities may be deemed to be underwriters, and any discounts or commissions received by them from us and any profit on the resale of Debt Securities by them may be deemed to be underwriting discounts and commissions under the Securities Act. Any such underwriter or agent will be identified, and any such compensation received from us will be described in the Prospectus Supplement and/or documents incorporated by reference.

Agents, underwriters and dealers may engage in transactions with, or perform services for, us and our subsidiaries in the ordinary course of business.

Under agreements which we may enter into, we may be required to indemnify the underwriters and agents who participate in the distribution of Debt Securities against certain liabilities, including liabilities under the Securities Act, or contribute to payments that they may be required to make in respect of any such liabilities. The Form Underwriting Agreement provides for such an indemnity in favor of the underwriters.

If so indicated in the Prospectus Supplement and/or documents incorporated by reference, we will authorize underwriters or other persons acting as our agents to solicit offers by certain institutions to purchase Debt Securities from us pursuant to contracts providing for payment and delivery on a future date. Institutions with which such contracts may be made include commercial savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others, but in all cases we must approve such institutions. The obligations of any purchaser under any such contract will be subject to the condition that the purchase of the Offered Securities shall not at the time of delivery be prohibited under the laws of the jurisdiction to which such purchaser is subject. The underwriters and such other agents will not have any responsibility in respect of the validity or performance of such contracts.

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Legal Matters

The validity of, and certain other legal matters with respect to, the Offered Securities will be passed upon for us by Simpson Thacher & Bartlett LLP, New York, New York. Certain legal matters in connection with this offering will be passed upon for the underwriters by Cleary Gottlieb Steen & Hamilton LLP, New York, New York.

Experts

The consolidated financial statements and schedule of The Hershey Company and subsidiaries as of December 31, 2011 and 2010, and for each of the years in the three-year period ended December 31, 2011, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2011 have been incorporated by reference herein and in the Registration Statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

Table of Contents**PART II****INFORMATION NOT REQUIRED IN THE PROSPECTUS****ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.**

The following table lists the expenses expected to be incurred in connection with the preparation and filing of the registration statement, including amendments thereto, and the printing and distribution of the prospectus contained therein, all of which will be paid by the registrant.

Securities and Exchange Commission registration fee	\$	(1)
Printing and duplicating expenses ⁽²⁾		(2)
Rating agency fees ⁽²⁾		(2)
Trustee fees and expenses ⁽²⁾		(2)
Accounting fees and expenses ⁽²⁾		(2)
Legal fees and expenses ⁽²⁾		(2)
Total	\$	(2)

- (1) Deferred in accordance with Rules 456(b) and 457(r). SEC registration fees are determined based upon the aggregate initial offering price of the securities being offered from time to time. As of the date of this registration statement, the Section 6(b) fee rate applicable to the registration of securities is \$114.60 per million.
- (2) These fees are calculated based on the securities offered and the number of issuances and, accordingly, cannot be estimated at this time.

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law (the "DGCL") grants each corporation organized thereunder the power to indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of being or having been in any such capacity, if such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the person's conduct was unlawful.

Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which the director derived an improper personal benefit.

The Sixth Article of the registrant's Restated Certificate of Incorporation provides that to the fullest extent permitted by the DGCL, no director of the registrant shall be personally liable to the registrant or its stockholders for monetary damages for breach of fiduciary duty as a director and that the registrant may indemnify directors and officers of the registrant.

Article VI of the By-Laws of the registrant provides that the registrant shall indemnify, in the manner and to the fullest extent permitted by the DGCL, any person who is, was or is threatened to be made a defending party to any proceeding (including any pending or threatened civil or criminal action, suit, arbitration, alternate dispute

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resolution mechanism, investigation or administrative hearing) by reason of the fact that such person is or was a director, officer or employee of the registrant or is or was serving, at the request of the registrant, in such capacity for another enterprise. The registrant will pay in advance of final disposition all expenses incurred by a director or officer in defending a proceeding which is subject to indemnification. The registrant has the burden of proving that a director or officer was not entitled to indemnification.

The registrant's directors and officers are insured against losses arising from any claim against them as such for wrongful acts or omissions, subject to certain limitations.

ITEM 16. EXHIBITS.

See Index to Exhibits.

ITEM 17. UNDERTAKINGS.

The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the Securities Act);
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of th