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APPLEBEES INTERNATIONAL INC
Form S-8
May 16, 2005

As filed with the Securities and Exchange Commission on May 16, 2005

Registration No. 333-_____

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

FORM S-8
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

APPLEBEE'S INTERNATIONAL, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

43-1461763
(I.R.S. Employer
Identification No.)

4551 West 107th Street
Overland Park, Kansas 66207
(Address, including zip code, of Principal Executive Offices)

APPLEBEE'S INTERNATIONAL, INC. EMPLOYEE STOCK PURCHASE PLAN
APPLEBEE'S INTERNATIONAL, INC. AMENDED AND RESTATED 1995 EQUITY INCENTIVE PLAN
(Full titles of the plans)

Lloyd L. Hill
Chief Executive Officer
Applebee's International, Inc.
4551 West 107th Street
Overland Park, Kansas 66207
(913) 967-4000
(Name, address and telephone number of agent for service)

Copy to:
James M. Ash, Esq.
Blackwell Sanders Peper Martin LLP
Plaza Colonnade
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
(816) 983-8000

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed aggregate offering price
Common Stock, par value \$.01 per share	4,500,000	\$ 25.38	\$ 114,2

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Part I INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

As permitted by the rules of the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended, this Registration Statement omits the information specified in Part I of Form S-8.

Part II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed with the Commission by the Company are incorporated in this Registration Statement on Form S-8 by reference:

1. The Company's Annual Report on Form 10-K for the fiscal year ended December 26, 2004;
2. The Company's Quarterly Report on Form 10-Q for the quarter ended March 27, 2005;
3. All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, since December 26, 2004, except for information furnished under Current Reports on Form 8-K, which is not deemed filed and not incorporated herein by reference; and
4. The description of common stock contained in the Company's Registration Statement on Form 8-A effective September 27, 1989, and any further amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment which indicates that all securities offered hereunder have been sold or which deregisters all of the securities offered then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Rebecca R. Tilden, Vice President and General Counsel of the Company, will issue an opinion as to the legality of the securities registered hereunder. Ms. Tilden owns 1,278 shares of Common Stock and holds unvested options to purchase 39,749 shares of Common Stock.

Item 6. Indemnification of Directors and Officers

The Company has entered into indemnification agreements with certain officers and directors of the Company. Under these agreements, the Company agrees to hold harmless and indemnify each indemnitee generally to the full extent permitted by the Delaware General Corporation Law (the "DGCL") and against any and all liabilities, expenses, judgments, settlements, fines,

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damages, penalties and costs incurred in connection with any threatened, pending, actual or completed inquiry, interview, investigation, action, suit, arbitration or other proceeding, whether civil, criminal, administrative or any other type to which the indemnitee is made a party by reason of the fact that the indemnitee has been, is at the time or becomes a director or officer of the Company or any other entity at the request of the Company. The indemnity does not cover liability arising out of fraudulent acts, deliberate dishonesty or knowing misconduct.

Article IX of the Bylaws of the Company provides for the indemnification of officers and directors of the Company generally to the extent permitted by Section 145 of the DGCL, including liability arising under the securities laws. Article IX permits the Company to indemnify certain persons, including officers and directors, who are (or are threatened to be made) parties to any threatened, pending or completed legal action (whether civil, criminal, administrative, investigative or appellate) for reason of their being officers or directors. The indemnity may include expenses, attorneys' fees, judgments, fines and reasonably incurred costs of settlement, provided the officer and director acted in good faith and in a manner he reasonably believed to be in or not opposed to the Company's best interests and, in the case of criminal proceedings, had no reasonable cause to believe that his conduct was unlawful. The Company may indemnify officers and directors in derivative actions (in which suit is brought by a shareholder on behalf of the Company) under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is judged liable to the Company in the performance of his duties to the Company. If an officer or director is successful on the merits or otherwise in defense of any action referred to above, the Company must indemnify him against the expenses and attorneys' fees he actually and reasonably incurred.

The Company has obtained liability insurance coverage for its officers and directors with respect to actions arising out of the performance of such officer's or director's duty in his capacity as such.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

- 4.1 Certificate of the Voting Powers, Designations, Preferences and Relative Participating, Optional and Other Special Rights and Qualifications of Series A Participating Cumulative Preferred Stock of Applebee's International, Inc. (incorporated by reference to Exhibit 4.2 of the Registrant's Annual Report on Form 10-K for the fiscal year ended December 25, 1994).
- 5 Opinion of Rebecca R. Tilden, counsel to the Company.
- 23.1 Consent of Rebecca R. Tilden (included in Exhibit 5).
- 23.2 Consent of Deloitte & Touche LLP.
- 24 Power of Attorney (included in signature page of Registration Statement).

Item 9. Undertakings

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The undersigned Company 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;

(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 the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however, that paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is,

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therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Overland Park, State of Kansas, on May 16, 2005.

APPLEBEE'S INTERNATIONAL, INC.

By: /s/ Lloyd L. Hill

Lloyd L. Hill
Chairman and Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned officers and directors of Applebee's International, Inc., hereby severally constitute Lloyd L. Hill and Rebecca R. Tilden and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, or their duly appointed substitute, as the same may be designated in writing from time to time, to sign for us and in our names in the capacities indicated below, any and all amendments to this Registration Statement on Form S-8, and generally to do all such things in our names and in our capacities as directors to enable Applebee's International, Inc. to comply with the provisions of the Securities Act of 1933, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said Registration Statement and any and all amendments thereto.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated:

Signature	Title
/s/ Lloyd L. Hill	Director, Chairman of the Board and Chief

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Lloyd L. Hill

Executive Officer
(Principal Executive Officer)

/s/ Steven K. Lumpkin

Steven K. Lumpkin

Director, Executive Vice President, Chief
Financial Officer and Treasurer
(Principal Financial Officer)

/s/ Beverly O. Elving

Beverly O. Elving

Vice President and Controller
(Principal Accounting Officer)

/s/ Erline Belton

Erline Belton

Director

/s/ Douglas R. Conant

Douglas R. Conant

Director

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/s/ D. Patrick Curran

D. Patrick Curran

Director

/s/ Eric L. Hansen

Eric L. Hansen

Director

/s/ Jack P. Helms

Jack P. Helms

Director

/s/ Burton M. Sack

Burton M. Sack

Director

/s/ Michael A. Volkema

Michael A. Volkema

Director

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