

TASTY BAKING CO
Form S-8
November 08, 2006

**As filed with the Securities and Exchange Commission on November 8, 2006
Registration No. 333-____**

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

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

TASTY BAKING COMPANY

Pennsylvania
(State or other jurisdiction of
incorporation or organization)

23-1145880
(I.R.S. Employer Identification Number)

**2801 Hunting Park Avenue
Philadelphia, Pennsylvania 19129
(215) 221-8500**

(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

TASTY BAKING COMPANY 2006 LONG TERM INCENTIVE PLAN

(Full title of the Plan)

**Charles P. Pizzi
President and Chief Executive Officer
Tasty Baking Company
2801 Hunting Park Avenue
Philadelphia, Pennsylvania 19129
(215) 221-8500**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

**Laurence Weilheimer, Esquire
General Counsel and Corporate Secretary
Tasty Baking Company**

**2801 Hunting Park Avenue
Philadelphia, Pennsylvania 19129**

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per Share (2)	Proposed maximum aggregate offering price (3)	Amount of registration fee
Common Stock, \$.50 par value per share	350,000 shares	\$9.11	\$3,188,500	\$341.17

(1) Such additional, indeterminable number of shares that may be issuable by reason of the anti-dilution provisions of the Tasty Baking Company 2006 Long Term Incentive Plan (the "Plan") are hereby registered.

(2) Pursuant to Rule 457(h)(1) and (c) under the Securities Act of 1933, the average of the high and low prices per share of the Common Stock reported on the NASDAQ Global Market on November 3, 2006 has been used to determine the registration fee.

(3) Estimated solely for the purpose of determining the registration fee.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. PLAN INFORMATION*

Item 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION*

*Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "Securities Act") and the "Note" to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

As used in this Registration Statement, unless the context otherwise requires, the term the "Company" means Tasty Baking Company and its subsidiaries.

Item 3. Incorporation of Documents by Reference.

The following documents, previously filed by the Company with the U.S. Securities and Exchange Commission (the "**Commission**") pursuant to the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), are hereby incorporated by reference in this Registration Statement, except as superseded or modified herein:

(a) the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005;

(b) all other reports filed by the Company pursuant to Section 13(a) or 15(d) of the 1934 Act since the end of the fiscal year covered by the annual report referred to in (a) above; and

(c) the description of the Company's common stock, par value \$.50 per share ("**Common Stock**"), and description of the Company's Common Stock Purchase rights ("**Rights**"), contained in the Company's Registration Statement on Form 8-A filed with the Commission on October 18, 2005, including any amendments or reports filed for the purpose of updating such descriptions.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the 1934 Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be 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.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

The Pennsylvania Business Corporation Law generally provides that a company shall have power to indemnify its officers, directors and other parties acting on behalf of the company if such person acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the company, and, with respect to any criminal action or proceeding, the indemnified party had no reasonable cause to believe his or her conduct was unlawful. Sections 1(a) and 1(b) of Article VII of the Company's Bylaws provide for mandatory indemnification in such circumstances. Under Section 2 of Article VII, an independent determination of disinterested directors, legal counsel or shareholders of the Company will determine whether the person is entitled to indemnification under Sections 1(a) and 1(b). In addition, Section 4 of Article VII of the Bylaws provides for advancement of expenses in advance of the final disposition of any action, suit or proceeding upon receipt of an undertaking, by or on behalf of the person who may be entitled to indemnification under Sections 1(a), 1(b) and 3 of Article VII, to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company.

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The Pennsylvania Business Corporation Law also permits a corporation to include in its bylaws, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by the current law; provided; however, indemnification shall not be permitted in any case where the act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. Section 3 of Article VII of the Company's Bylaws generally provides for mandatory indemnification of officers and directors acting on behalf of the Company, except that indemnification shall not be permitted under the Bylaws in any case where the act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. Indemnification under Section 3 will be provided without the independent determination required by Section 2 as described above (e.g., independent determination that director or officer acted in good faith and in a manner reasonably believed to be in the best interest of the Company). The Company also has entered into an Indemnification Agreement with certain of the directors of the Company. The Indemnification Agreements provide substantially the same scope of indemnification as provided under Section 3 of Article VII of the By-Laws, except that under the Indemnification Agreements there is a minimal amount (\$1,000) for which the Company will not be responsible to provide indemnification, and the Company will not be required to provide indemnification in respect of any violation of the provisions of Section 16(b) of the 1934 Act. The Indemnification Agreements are direct contractual obligations of the Company in favor of the directors. Therefore, in the event that the By-Laws are subsequently changed to reduce the scope of indemnification, directors with Indemnification Agreements will not be affected by such changes. In addition, as with indemnification under Section 3 of Article VII of the By-Laws, no independent determination of entitlement to indemnification will be required under the terms of the Indemnification Agreements.

In addition, the Company maintains directors and officers liability insurance under which its directors and officers are insured against certain liabilities that may be incurred by them in their capacities as such.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

(a) Exhibits:

23.1 Consent of PricewaterhouseCoopers LLP.

24.1 Power of Attorney (included in signature page on page II-4 herein).

99.1 Tasty Baking Company 2006 Long Term Incentive Plan (incorporated by reference to Appendix A to the Company's Definitive Proxy Statement on Schedule 14A filed with the Commission on April 7, 2006).

Item 9. Undertakings.

(a) 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 ("**1933 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 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;

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Provided, however, That paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and 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 registrant pursuant to section 13 or section 15(d) of the 1934 Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the 1933 Act, 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.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the 1934 Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the 1934 Act) 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.

(c) Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the 1933 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant 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 registrant 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 1933 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Tasty Baking 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 Philadelphia, Commonwealth of Pennsylvania, on November 8, 2006.

TASTY BAKING COMPANY

By: /s/ Charles P. Pizzi
Charles P. Pizzi, President
and Chief Executive Officer

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.

Each person whose signature appears below constitutes and appoints Charles P. Pizzi and David S. Marberger, jointly and severally, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities to sign any amendments to this Registration Statement on Form S-8, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Name	Title	Date
/s/ James E. Ksansnak James E. Ksansnak	Chairman of the Board and Director	October 26, 2006
/s/ Charles P. Pizzi Charles P. Pizzi	President, Chief Executive Officer and Director (Principal Executive Officer)	October 26, 2006
/s/ David S. Marberger David S. Marberger	Executive Vice President, Chief Financial Officer and Chief Accounting Officer (Principal Financial Officer and Principal Accounting Officer)	October 26, 2006
/s/ Fred C. Aldridge, Jr. Fred C. Aldridge, Jr.	Director	October 26, 2006
/s/ Mark G. Conish Mark G. Conish	Director	October 26, 2006

/s/ James C. Hellauer	Director	October 26, 2006
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James C. Hellauer

/s/ Ronald J. Kozich	Director	October 26, 2006
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Ronald J. Kozich

s/ James E. Nevels	Director	October 26, 2006
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James E. Nevels

/s/ Judith M. von Seldeneck	Director	October 26, 2006
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Judith M. von
Seldeneck

/s/ David J. West	Director	October 26, 2006
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David J. West

Some Important Charter Provisions

Our Certificate of Incorporation provides for the division of our board of directors into three classes of directors, each class as nearly as equal as possible, with each serving staggered, three-year terms. Any amendment to our Certificate of Incorporation must be approved by at least two-thirds of our board of directors at a duly constituted meeting called for that purpose and also by stockholders by the affirmative vote of at least a majority of the shares entitled to vote thereon at a duly called annual or special meeting; provided, however, that approval by the affirmative vote of at least two-thirds of the shares entitled to vote is required to amend the provisions regarding amendment of our Certificate of Incorporation, directors, bylaws, approval for acquisitions of control and offers to acquire control, criteria for evaluating offers, the calling of special meetings of stockholders, greenmail, and stockholder action by written consent. In addition, the provisions regarding business combinations may be amended only by the affirmative vote of at least 80% of the shares entitled to vote on the matter. Our bylaws may be amended by the affirmative vote of at least two-thirds of the board of directors or by stockholders by the affirmative vote of at least two-thirds of the total votes eligible to be voted, at a duly constituted meeting called for that purpose.

Our Certificate of Incorporation requires that if any individual, firm, corporation or other entity seeks to acquire the sole or shared power to vote or to direct the voting of, or to dispose of or to direct the disposition of, 10% or more of our outstanding shares of capital stock entitled to vote generally in the election of directors, such acquisition must be approved by at least two-thirds of the total number of outstanding shares of capital stock entitled to vote generally in the election of directors. In addition, prior to such acquisition, such individual, firm, corporation or other entity must obtain all required federal regulatory approvals for such acquisition.

Our Certificate of Incorporation also provides that no individual, firm, corporation or other entity may, alone or based on shared power, make any offer to buy or acquire, any solicitation of an offer to sell, any tender offer for, or any request or invitation for tender of, 10% or more of our outstanding shares of capital stock generally entitled to vote for directors without either:

(1) receiving the approval of at least two-thirds of our directors then in office; or

(2) obtaining approval from the appropriate federal regulatory authorities pursuant to applicable laws and regulations.

Our Certificate of Incorporation requires that business combinations between Webster Financial or any majority-owned subsidiary of Webster Financial and a 10% or more stockholder or its affiliates or associates, referred to collectively in this section as the interested stockholder, be approved either by:

(1) at least 80% of the total number of outstanding shares of capital stock entitled to vote generally in the election of directors;

(2) at least two-thirds of our continuing directors, which means those directors unaffiliated with the interested stockholder and serving before the interested stockholder became an interested stockholder; or

(3) meet specified price and procedure requirements that provide for consideration per share generally equal to or greater than that paid by the interested stockholder when it acquired its block of stock.

The types of business combinations with an interested stockholder covered by this provision include:

any merger, consolidation or share exchange

any sale, lease, exchange, mortgage, pledge or other transfer of assets other than in the usual and regular course of business;

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any issuance or transfer of equity securities having an aggregate market value in excess of 5% of the aggregate market value of our outstanding shares;

the adoption of any plan or proposal of liquidation proposed by or on behalf of an interested stockholder; or

any reclassification of securities, recapitalization of Webster Financial or any merger or consolidation of Webster Financial with any of its subsidiaries or any other transaction which has the effect of increasing the proportionate ownership of the interested stockholder.

These provisions may have the effect of deterring hostile takeovers or delaying changes in control or management of Webster Financial.

Our Certificate of Incorporation excludes our employee stock purchase plans and other employee benefit plans from the definition of interested stockholder.

Since the terms of our Certificate of Incorporation and bylaws may differ from the general information we are providing, you should only rely on the actual provisions of our Certificate of Incorporation and bylaws. If you would like to read our Certificate of Incorporation and bylaws, you may request a copy from us by following the directions under the heading [Where You Can Find More Information](#).

NYSE Listing

Our common stock is listed on the New York Stock Exchange under the symbol [WBS](#).

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is BNY Mellon Shareowner Services.

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PLAN OF DISTRIBUTION

The selling securityholders and their successors, including their transferees, may sell the securities directly to purchasers or through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, concessions or commissions from the selling securityholders or the purchasers of the securities. These discounts, concessions or commissions as to any particular underwriter, broker-dealer or agent may be in excess of those customary in the types of transactions involved.

The securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions:

on any national securities exchange or quotation service on which the preferred stock or the common stock may be listed or quoted at the time of sale, including, as of the date of this prospectus, the New York Stock Exchange in the case of the common stock;

in the over-the-counter market;

in transactions otherwise than on these exchanges or services or in the over-the-counter market; or

through the writing of options, whether the options are listed on an options exchange or otherwise.

In addition, any securities that qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than pursuant to this prospectus supplement.

In connection with the sale of the securities or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the common stock issuable upon exercise of the warrant in the course of hedging the positions they assume. The selling securityholders may also sell short the common stock issuable upon exercise of the Warrant and deliver common stock to close out short positions, or loan or pledge the Series B Preferred Stock or the common stock issuable upon exercise of the Warrant to broker-dealers that in turn may sell these securities.

The aggregate proceeds to the selling securityholders from the sale of the securities will be the purchase price of the securities less discounts and commissions, if any.

In effecting sales, broker-dealers or agents engaged by the selling securityholders may arrange for other broker-dealers to participate. Broker-dealers or agents may receive commissions, discounts or concessions from the selling securityholders in amounts to be negotiated immediately prior to the sale.

In offering the securities covered by this prospectus supplement, the selling securityholders and any broker-dealers who execute sales for the selling securityholders may be deemed to be underwriters within the meaning of Section 2(a)(11) of the Securities Act in connection with such sales. Any profits realized by the selling securityholders and the compensation of any broker-dealer may be deemed to be underwriting discounts and commissions. Selling securityholders who are underwriters within the meaning of Section 2(a)(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act and may be subject to certain statutory and regulatory liabilities, including liabilities imposed pursuant to Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Securities Exchange Act of 1934, as amended, or the Exchange Act.

In order to comply with the securities laws of certain states, if applicable, the securities must be sold in such jurisdictions only through registered or licensed brokers or dealers. In addition, in certain states the securities may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

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The anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of securities pursuant to this prospectus and to the activities of the selling securityholders. In addition, we will make copies of this prospectus supplement available to the selling securityholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act, which may include delivery through the facilities of the New York Stock Exchange pursuant to Rule 153 under the Securities Act.

At the time a particular offer of securities is made, if required, a prospectus supplement will set forth the number and type of securities being offered and the terms of the offering, including the name of any underwriter, dealer or agent, the purchase price paid by any underwriter, any discount, commission and other item constituting compensation, any discount, commission or concession allowed or reallocated or paid to any dealer, and the proposed selling price to the public.

We do not intend to apply for listing of the Series B Preferred Stock on any securities exchange or for inclusion of the Series B Preferred Stock in any automated quotation system unless requested by the initial selling securityholder. No assurance can be given as to the liquidity of the trading market, if any, for the Series B Preferred Stock.

We have agreed to indemnify the selling securityholders against certain liabilities, including certain liabilities under the Securities Act. We have also agreed, among other things, to bear substantially all expenses (other than underwriting discounts and selling commissions) in connection with the registration and sale of the securities covered by this prospectus supplement.

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SELLING SECURITYHOLDERS

On November 21, 2008, we issued the securities covered by this prospectus supplement to the United States Department of Treasury, which is the initial selling securityholder under this prospectus supplement, in a transaction exempt from the registration requirements of the Securities Act. The initial selling securityholder, or its successors, including transferees, may from time to time offer and sell, pursuant to this prospectus supplement any or all of the securities they own. The securities to be offered under this prospectus supplement for the account of the selling securityholders are:

400,000 shares of Series B Preferred Stock, representing beneficial ownership of 100% of the shares of Series B Preferred Stock outstanding on the date of this prospectus supplement;

a Warrant to purchase 3,282,276 shares of our common stock; and

3,282,276 shares of our common stock issuable upon exercise of the Warrant, which shares, if issued, would represent ownership of approximately 5.9% of our common stock outstanding as of November 21, 2008.

For purposes of this prospectus supplement, we have assumed that, after completion of the offering, none of the securities covered by this prospectus supplement will be held by the selling securityholders.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities. To our knowledge, the initial selling securityholder has sole voting and investment power with respect to the securities.

We do not know when or in what amounts the selling securityholders may offer the securities for sale. The selling securityholders might not sell any or all of the securities offered by this prospectus supplement. Because the selling securityholders may offer all or some of the securities pursuant to this offering, and because currently no sale of any of the securities is subject to any agreements, arrangements or understandings, we cannot estimate the number of the securities that will be held by the selling securityholders after completion of the offering.

Other than with respect to the acquisition of the securities, the initial selling securityholder has not had a material relationship with us.

Information about the selling securityholders may change over time and changed information will be set forth in supplements to the prospectus if and when necessary.

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LEGAL MATTERS

The validity of the Series B Preferred Stock, the Warrant and the common stock offered hereby will be passed upon for us by Hogan & Hartson LLP.

EXPERTS

The consolidated financial statements of Webster Financial as of December 31, 2007 and 2006, and for each of the years in the three-year period ended December 31, 2007, have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, an independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.