

Texas Roadhouse, Inc.
Form S-1/A
June 24, 2005

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As filed with the Securities and Exchange Commission on June 24, 2005

Registration No. 333-125646

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 2

TO

FORM S-1

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

TEXAS ROADHOUSE, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

5812
(Primary Standard Industrial
Classification Code Number)

20-1083890
(I.R.S. Employer
Identification Number)

**6040 Dutchmans Lane, Suite 400
Louisville, Kentucky 40205
(502) 426-9984**
*(Address, including zip code, and telephone number,
including area code, of Registrant's principal executive offices)*

G.J. Hart
President and Chief Executive Officer
Texas Roadhouse, Inc.
6040 Dutchmans Lane, Suite 400
Louisville, Kentucky 40205
(502) 426-9984
*(Name, address, including zip code, and telephone number,
including area code, of agent for service)*

William G. Strench
James A. Giesel
Frost Brown Todd LLC
400 West Market Street, Suite 3200
Louisville, Kentucky 40202

Copies to:

Christopher C. Paci
John P. Berkery
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022-6069

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

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, check the following box. o

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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, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

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. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. o

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.

PART II**INFORMATION NOT REQUIRED IN PROSPECTUS****Item 13. Other Expenses of Issuance and Distribution**

The following table shows the costs and expenses, other than underwriting discounts and commissions, payable in connection with the sale and distribution of the securities being registered. The registrant will pay all of these amounts. All amounts except the SEC registration fee and NASD filing fee are estimated.

SEC Registration Fee	\$ 14,083
Accounting Fees and Expenses	50,000
Legal Fees and Expenses	85,000
Printing and Engraving Fees and Expenses	165,000
Transfer Agent and Registrar Fees and Expenses	5,000
NASD Filing Fee	12,465
Miscellaneous	18,452
	<hr/>
Total	\$ 350,000
	<hr/>

Item 14. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law permits a corporation to include in its charter documents, 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.

The Certificate of Incorporation and Bylaws of the registrant provide that the registrant shall indemnify our directors and officers, and may indemnify its employees and agents, to the fullest extent permitted by Delaware law.

Section 102(b)(7) of the Delaware General Corporation Law permits corporations to eliminate or limit the personal liability of their directors by adding to the certificate of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director for (a) any breach of any director's duty of loyalty to the corporation or its stockholders, (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) payment of dividends or repurchases or redemptions of stock other than from lawfully available funds, or (d) any transaction from which the director derived an improper personal benefit.

Article VI of the registrant's Certificate of Incorporation provides that:

"[n]o director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that the foregoing shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; (c) under Section 174 of the General Corporation Law of the State of Delaware; or (d) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law of the State of Delaware shall be amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware as so amended. Any repeal or modification of this Article VI by the stockholders of the Corporation shall not adversely affect any right or protection

of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omission occurring prior to, such repeal or modification."

In addition, the registrant intends to enter into indemnification agreements with each of its directors and executive officers. These indemnification agreements will provide for the indemnification of directors and executive officers of the registrant to the fullest extent permitted by Delaware law, whether or not expressly provided for in our Bylaws, and set forth the process by which claims for indemnification are considered.

Reference is also made to Section 8 of the Underwriting Agreement contained in Exhibit 1.1 hereto, indemnifying officers and directors against certain liabilities.

Item 15. Recent Sales of Unregistered Securities

Except as set forth below, in the three years preceding the filing of this registration statement, the registrant has not issued any securities that were not registered under the Securities Act.

In May 2004, upon the incorporation of the registrant, the registrant issued 1,000 shares of Class A common stock to W. Kent Taylor in exchange for \$1,000.

In May 2004, the registrant issued 150,000 shares of Class A common stock and 2,217,000 shares of Class B common stock to Mr. Taylor in connection with the merger of WKT Restaurant Corp. into the registrant. The registrant cancelled Mr. Taylor's initial 1,000 shares of Class A common stock upon the consummation of this merger.

In September 2004, the registrant declared share dividends totalling 28,125 shares of Class A common stock and 415,688 shares of Class B common stock.

In October 2004, in connection with its corporate re-organization and initial public offering:

the registrant issued an aggregate of 24,268,737 shares of Class A common stock in exchange for all the outstanding equity interests of Texas Roadhouse Holdings LLC, Texas Roadhouse Management Corp., 31 majority-owned or controlled Texas Roadhouse restaurants and one franchise restaurant; and

all outstanding options issued by Texas Roadhouse Management Corp. converted into options to acquire shares of Class A common stock of the registrant.

The foregoing sales of securities were made in reliance upon the exemption from the registration provisions of the Securities Act provided for by Section 4(2) thereof for transactions not involving a public offering or with respect to the stock dividends, on the basis that no "sale" of securities occurred for purposes of the Act. All of the foregoing securities are deemed restricted securities for the purposes of the Securities Act.

Item 16. Exhibits and Financial Statement Schedules

(a)

Exhibits

The Exhibit Index filed herewith is incorporated herein by reference.

(b)

Financial Statement Schedules

None.

Item 17. Undertakings

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referenced in Item 14 of this registration statement or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities 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 Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Louisville, Kentucky on June 24, 2005.

TEXAS ROADHOUSE, INC.

By: /s/ G.J. HART

 G.J. Hart
 President, *Chief Executive Officer*

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

Signature	Title	Date
* _____ W. Kent Taylor	Chairman of the Company and Board	June 24, 2005
/s/ G.J. HART _____ G.J. Hart	President, Chief Executive Officer, Director (Principal Executive Officer)	June 24, 2005
* _____ Scott M. Colosi	Chief Financial Officer (Principal Financial Officer)	June 24, 2005
* _____ Tonya Robinson	Controller (Principal Accounting Officer)	June 24, 2005
* _____ Martin T. Hart	Director	June 24, 2005
* _____ Gregory N. Moore	Director	June 24, 2005
* _____ James F. Parker	Director	June 24, 2005
* _____ James R. Ramsey	Director	June 24, 2005
* _____ James R. Zarley	Director	June 24, 2005

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* G. J. Hart, by signing his name hereto, does hereby sign this document on behalf of each of the above-named officers and/or directors of the Registrant pursuant to powers of attorney duly executed by such persons.

By: /s/ G. J. HART

G. J. Hart
Attorney-in-Fact

II-5

EXHIBIT INDEX

Exhibit No.	Description
1.1	Form of Underwriting Agreement
2.1*	Master Transaction Agreement, dated as of May 7, 2004, among Registrant and others (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
3.1*	Form of Amended and Restated Certificate of Incorporation of Registrant (incorporated by reference to Exhibit 3.2 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
3.2*	Bylaws of the Registrant (incorporated by reference to Exhibit 3.3 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
4.1*	Registration Rights Agreement, dated as of May 7, 2004, among Registrant and others (incorporated by reference to Exhibit 4.3 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
5.1	Opinion of Frost Brown Todd LLC as to the legality of the securities being registered
10.1*	Credit Agreement dated as of October 8, 2004, among Texas Roadhouse, Inc., each lender from time to time party thereto, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, and National City Bank of Kentucky, as Syndication Agent (incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 28, 2004) (File No. 000-50972))
10.2*	Employment Agreement between Registrant and G.J. Hart (incorporated by reference to Exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 28, 2004) (File No. 000-50972))
10.3*	Employment Agreement between Registrant and Scott M. Colosi (incorporated by reference to Exhibit 10.3 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 28, 2004) (File No. 000-50972))
10.4*	Employment Agreement between Registrant and Steven L. Ortiz (incorporated by reference to Exhibit 10.4 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 28, 2004) (File No. 000-50972))
10.5*	Employment Agreement between Registrant and W. Kent Taylor (incorporated by reference to Exhibit 10.5 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 28, 2004) (File No. 000-50972))
10.6*	Employment Agreement between Registrant and Sheila C. Brown (incorporated by reference to Exhibit 10.6 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 28, 2004) (File No. 000-50972))
10.7*	Texas Roadhouse, Inc. 2004 Equity Incentive Plan (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-8 of Registrant (File No. 333-121241))
10.8*	Amended and Restated Office Lease Agreement (One Paragon Centre), dated as of August 15, 2003, by and between Paragon Centre Associates, LLC and Texas Roadhouse Holdings LLC, as amended (incorporated by reference to Exhibit 10.1 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
10.9*	Amended and Restated Office Lease Agreement (Two Paragon Centre), dated as of August 15, 2003, by and between Paragon Centre Associates, LLC and Texas Roadhouse Holdings LLC, as amended (incorporated by reference to Exhibit 10.2 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))

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- 10.10* Form of Director and Executive Officer Indemnification Agreement (incorporated by reference to Exhibit 10.9 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
- 10.11* Form of Limited Partnership Agreement and Operating Agreement for company-managed Texas Roadhouse restaurants, including schedule of the owners of such restaurants and the interests held by directors, executive officers and 5% stockholders who are parties to such an agreement (incorporated by reference to Exhibit 10.10 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
- 10.12* Lease Agreement dated as of April 1, 1997, by and between Texas Roadhouse of Elizabethtown, LLC and Texas Roadhouse Holdings LLC (incorporated by reference to Exhibit 10.12 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
- 10.13* Lease Agreement dated as of November 1999, by and between TEAS II, LLC and Texas Roadhouse Holdings LLC (incorporated by reference to Exhibit 10.13 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
- 10.14* Form of Franchise Agreement and Preliminary Agreement for a Texas Roadhouse Restaurant Franchise, including schedule of directors, executive officers and 5% stockholders which have entered into either agreement (incorporated by reference to Exhibit 10.14 to the Registration Statement on Form S-1 of Registrant (File No. 333-115259))
- 10.15* Updated schedule as of March 29, 2005 of the owners of company-managed Texas Roadhouse restaurants and the interests held by directors, executive officers and 5% stockholders who are parties to Limited Partnership Agreements and Operating Agreements
- 10.16* Updated schedule as of March 29, 2005 of the directors, executive officers and 5% stockholders which have entered into Franchise Agreements or Preliminary Agreements for a Texas Roadhouse Franchise
- 10.17* Second Amendment to Lease and Third Amendment to Lease (Two Paragon Centre), dated September 21, 2004 and February 18, 2005 respectively, between Paragon Centre Holdings, LLC and Texas Roadhouse Holdings LLC (incorporated by reference to the Exhibit 10.17 of the Registrant's Annual Report on Form 10-K dated March 25, 2005 (File No. 000-50972))
- 10.18* First Amendment to Employment Agreement between Registrant and Sheila C. Brown dated March 3, 2005 (incorporated by reference to the Exhibit 10.18 of the Registrant's Annual Report on Form 10-K dated March 25, 2005 (File No. 000-50972))
- 10.19* Information concerning the potential bonuses to be paid to each of the named executive officers under the Registrant's bonus incentive program for fiscal 2005 (incorporated by reference to the Registrant's Current Report on Form 8-K dated February 25, 2005 (File No. 000-50972))
- 21.1* List of Subsidiaries as of March 29, 2005
- 23.1* Consent of KMPG LLP, Independent Registered Public Accounting Firm
- 23.2 Consent of Frost Brown Todd LLC (included in Exhibit 5.1)
- 24.1* Power of Attorney (included on signature page)

*

Filed previously.

To be filed by amendment.

QuickLinks

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

SIGNATURES

EXHIBIT INDEX