

HESS CORP
Form 8-K
October 29, 2008

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

FORM 8-K

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

Date of Report (Date of Earliest Event Reported): October 29, 2008

HESS CORPORATION
(Exact Name of Registrant as Specified in Its Charter)

DELAWARE No. 1-1204 No. 13-4921002
(State or Other (Commission (IRS Employer
Jurisdiction of
Incorporation) File Number) Identification No.)
1185 Avenue of the Americas
New York, New York 10036
(Address of Principal Executive Offices) (Zip Code)

Registrant's Telephone Number, Including Area Code: **(212) 997-8500**

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 2.02. Results of Operations and Financial Condition.

On October 29, 2008, Hess Corporation issued a news release reporting its results for the third quarter of 2008. A copy of this news release is attached hereto as Exhibit 99(1) and is hereby incorporated by reference.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits

99(1) News release dated October 29, 2008 reporting results for the third quarter of 2008.

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SIGNATURE

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

Date: October 29, 2008

HESS CORPORATION

By: /s/ John P. Rielly

Name: John P. Rielly

Title: Senior Vice President and
Chief Financial Officer

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EXHIBIT INDEX

Exhibit No. Description

99(1) News release dated October 29, 2008 reporting results for the third quarter of 2008.

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Amending or Repealing Article VI of the Articles of Incorporation

Articles of Incorporation sections affected: Sections 3.3 and 6.4

Our Articles of Incorporation currently provide that the affirmative vote of at least 66 2/3% of the votes entitled to be cast by each voting group entitled to vote is required to amend, adopt any provision inconsistent with or repeal any provision of Article VI of the Company's Articles of Incorporation. This proposed amendment would eliminate this supermajority voting requirement, thereby reducing the relevant voting requirement to amend or repeal Article VI of the Company's Articles of Incorporation from 66 2/3% to a majority of the votes entitled to be cast by each voting group entitled to vote.

Background of Proposal 2b

The current supermajority provision in Article VI was originally adopted to preserve the classified structure of the Board and is, in the Board's view, no longer necessary if the classified Board is eliminated. After consideration of the foregoing, the Board has approved, and recommends to the shareholders that they adopt, the proposed amendment.

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Effect of Proposal 2b

Article VI of our Articles of Incorporation contains provisions that outline the election and term of Board members, the removal of directors and the filling of newly created directorships and vacancies. The Articles of Incorporation currently provide that Article VI may only be amended or repealed by the affirmative vote of holders of shares representing at least 66 2/3rds% of the votes entitled to be cast by each voting group entitled to vote on such action. If our shareholders approve Proposal 2a, the Board is also proposing to amend Article VI to delete the provision requiring this supermajority vote to amend or repeal it, so that Article VI, like other provisions in the Company's Articles of Incorporation, can be amended by the majority of votes entitled to be cast by each voting group entitled to vote. In addition, if Proposal 2a and this Proposal are approved, a reference in Section 3.3 of the Articles of Incorporation to this supermajority provision in Article VI will also be deleted as it will no longer be relevant.

This proposed amendment requires an amendment to Section 3.3 and the deletion of Section 6.4 of the Company's Articles of Incorporation. The text of the proposed amendment to the Articles of Incorporation, marked to show the proposed changes, is attached as Exhibit B to this proxy statement. If the shareholders approve Proposal 2a and the proposed amendment, the Company will file Articles of Amendment of Articles of Incorporation with the State Corporation Commission of the Commonwealth of Virginia shortly after the Annual Meeting and the amendment will become effective upon the State Corporation Commission issuing a certificate of amendment.

Recommendation

The Board of Directors unanimously recommends you vote "FOR" approval of the amendment to the Articles of Incorporation to eliminate the supermajority voting requirement for amending or repealing Article VI of our Articles.

PROPOSAL 3 RATIFICATION OF SELECTION OF INDEPENDENT AUDITORS

The Audit Committee of the Board of Directors has selected Ernst & Young LLP to serve as the Company's independent auditors for the fiscal year ending April 28, 2013 and is submitting this matter to the shareholders for their ratification. Ernst & Young has served as the Company's independent auditors since May 3, 2002. One or more representatives of Ernst & Young will be present at the Annual Meeting of Shareholders to make a statement if they desire to do so and to be available to respond to appropriate questions that may be asked by shareholders.

In the event the proposal to ratify the selection of Ernst & Young is defeated, the adverse vote will be considered as a direction to the Board of Directors to select other independent auditors for the next fiscal year ending April 27, 2014. However, because of the expense and difficulty in changing independent auditors after the beginning of a year, the Board of Directors intends to allow the appointment for fiscal 2013 to stand unless the Board of Directors finds other reasons for making a change.

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Audit and Other Fees

The following table shows the fees for audit and other services provided by Ernst & Young for fiscal 2012 and fiscal 2011.

	Fiscal 2012 Fees	Fiscal 2011 Fees
Audit Fees	\$ 3,897,797	\$ 3,675,000
Audit-Related Fees	511,840	2,500
Tax Fees:		
Tax Compliance Fees	584,001	630,874
Tax Planning Fees	2,199,059	829,321
All Other Fees	0	576,323

Audit Fees. This category includes fees associated with the audit of the Company's annual financial statements, audit of internal control over financial reporting, review of the Company's quarterly financial statements included in its Forms 10-Q, statutory audits of certain foreign subsidiaries, and assistance with and review of SEC filings, including consents and comment letters.

Audit-Related Fees. This category consists of audit-related services not otherwise reported in the preceding paragraph (on-line research tool and for fiscal 2012, due diligence related services).

Tax Compliance Fees. This category consists of fees for tax return preparation services.

Tax Planning Fees. This category consists of tax planning services.

All Other Fees. For fiscal 2011, this category consists of insurance recovery services for an insurance claim related to the fire at our Patrick Cudahy processing facility. There were no other fees billed by Ernst & Young for any other services. None of the services provided by Ernst & Young consisted of financial information systems design or implementation services.

Pre-Approval Policy and Procedures

The services performed by Ernst & Young in fiscal 2012 were pre-approved in a manner consistent with the Audit Committee's pre-approval policy and procedures. The policy requires that all services to be performed by the independent auditors be pre-approved either on a case-by-case basis by the Audit Committee or its delegate or on a categorical basis based on the Audit Committee's prior approval of a specific category of service and the expected cost thereof. Any request for services involving less than \$100,000 may be approved by the Chair of the Audit Committee if it is not practicable to obtain the approval of the full committee, provided that any such approval is presented to the full Audit Committee at its next scheduled meeting.

Recommendation

Our Board of Directors recommends that you vote "FOR" the ratification of the selection of Ernst & Young LLP to serve as the Company's independent auditors for the fiscal year ending April 28, 2013.

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PROPOSAL 4 ADVISORY VOTE TO APPROVE NAMED EXECUTIVE OFFICER COMPENSATION (SAY-ON-PAY)

Section 14A of the Exchange Act and related SEC rules require that we provide our shareholders with the opportunity to vote to approve, on a non-binding, advisory basis, the compensation of our NEOs as disclosed in this proxy statement in accordance with SEC rules. The Board recommended and the shareholders approved at the 2011 Annual Meeting that such an advisory vote would be conducted on an annual basis.

As described in detail in the Compensation Discussion and Analysis in this proxy statement, beginning on page 28, the primary goal of our executive compensation program is the same as our goal for operating the Company -- to maximize short-term and long-term corporate performance and thereby create value for our shareholders. To achieve this goal, we have designed an executive compensation program based on the following principles:

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Paying for performance – A significant portion of each executive’s potential compensation is subject to corporate, segment and/or business unit performance measures.

-

Alignment with the interests of shareholders – Equity awards and promoting stock ownership align our executives’ financial interests with those of our shareholders.

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Attracting and retaining top talent – The compensation of our executives must be competitive so that we may attract and retain talented and experienced executives.

For a detailed description of our executive compensation policies and programs and how they are designed to motivate superior performance, we urge shareholders to read the Compensation Discussion and Analysis in this proxy statement, beginning on page 28, the compensation tables and the related narrative discussion in the proxy statement.

In accordance with Section 14A of the Exchange Act, we are asking shareholders to approve the following advisory resolution at the 2012 Annual Meeting of Shareholders:

RESOLVED, that the compensation paid to the Company’s named executive officers, as disclosed in this Proxy Statement, including the Compensation Discussion and Analysis, compensation tables and narrative discussion, is hereby APPROVED.

This vote is not intended to address any specific item of compensation, but rather the overall compensation that is paid to our named executive officers resulting from our compensation objectives, policies and practices as described in this proxy statement. Because your vote is advisory, it will not be binding upon the Board of Directors. However, the Board of Directors and the Compensation Committee value the opinions expressed by our shareholders and will review the voting results in connection with their ongoing evaluation of our executive compensation program.

Recommendation

Our Board of Directors recommends that you vote “FOR” the above advisory resolution approving the compensation paid to our named executive officers, as disclosed in this proxy statement.

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QUESTIONS AND ANSWERS REGARDING SHAREHOLDER COMMUNICATIONS, SHAREHOLDER PROPOSALS AND COMPANY DOCUMENTS

1. How does a person communicate with Smithfield's directors?

Interested parties, including shareholders, may communicate by mail with all or selected members of the Board of Directors. Correspondence should be addressed to the Board of Directors or any individual director(s) or group or committee of directors either by name or title (for example, "Lead Director," "Chair of the Nominating and Governance Committee" or "All Non-Management Directors"). All correspondence should be sent c/o Michael H. Cole, Secretary, Smithfield Foods, Inc., 200 Commerce Street, Smithfield, Virginia 23430.

2. How do I submit a proposal for inclusion in the 2013 Proxy Statement?

Proposals of shareholders intended to be presented at our 2013 Annual Meeting must be received by Michael H. Cole, our Secretary, for inclusion in our proxy statement and form of proxy relating to that meeting by April 11, 2013 at the address shown below in Question 3. Shareholders should refer to the SEC rules, which set standards for eligibility and specify the types of proposals that are not appropriate for inclusion in the proxy statement.

3. How do I nominate a director for election at an annual meeting?

Our Bylaws prescribe the procedures that a shareholder must follow to nominate directors for election at an annual meeting. The chairman of the meeting may refuse to acknowledge the nomination of any person as a director or any other proposal by a shareholder not made in compliance with these procedures. The following summary of these procedures is qualified by reference to our Bylaws, a copy of which may be obtained, without charge, upon written request to Michael H. Cole, Secretary, Smithfield Foods, Inc., 200 Commerce Street, Smithfield, Virginia, 23430.

A shareholder who desires to nominate a director for election at an annual meeting must give timely written notice of such intent to Michael H. Cole, our Secretary, by delivery or by mail at the address shown above. To be timely, a shareholder's notice for nominations to be made at the 2013 Annual Meeting must be received (i) on or after May 1, 2013 and before June 1, 2013 if the annual meeting is to be held during the months of August and September, 2013 or (ii) with respect to any other annual meeting or special meeting for which the Board of Directors gives notice that directors are to be elected, the close of business on the tenth day following the date of public disclosure of the date of that meeting. The notice must contain the information specified in the Bylaws regarding the shareholder giving the notice and each person whom the shareholder wishes to nominate for election as a director. The notice must be accompanied by the written consent of each proposed nominee to serve as one of our directors, if elected.

4. How do I bring other business before an annual meeting?

Our Bylaws prescribe the procedures that a shareholder must follow to bring other business before an annual meeting (other than matters that have been included in our proxy statement for such meeting). Please see Question 3 above for directions on how to obtain a copy of our Bylaws. The following summary of these procedures is qualified by reference to our Bylaws. A shareholder who desires to bring any other business before an annual meeting (other than business which the shareholder has sought to have included in our proxy statement for such meeting) must give timely

written notice of such intent to Michael H. Cole, our Secretary, at the address shown above in Question 3 and be a shareholder of record both at the time such notice is given and on the record date of the meeting. To be timely, a shareholder's notice of such business to be brought before the 2013 Annual Meeting must be received: (i) on or after May 1, 2013 and before June 1, 2013 if the annual meeting is to be held during the months of August and September, 2013; or (ii) with respect to any other annual meeting, the close of business on the tenth day following the date of public disclosure of the date of that annual meeting. The notice must contain the information specified in the Bylaws regarding the shareholder giving the notice and the business proposed to be brought before the meeting.

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With respect to shareholder proposals not included in our proxy statement for the 2013 Annual Meeting, the persons named in the Board's proxy for the 2013 Annual Meeting will be entitled to exercise the discretionary voting power conferred by such proxy under the circumstances specified in Rule 14a-4(c) under the Exchange Act.

5. Where can I see Smithfield's corporate documents and SEC filings?

Smithfield's website contains its Articles of Incorporation, Bylaws, Governance Guidelines, Committee Charters, and the Code of Business Conduct and Ethics at <http://investors.smithfieldfoods.com/documents.cfm>. Smithfield's website also contains its SEC filings and the Forms 3, 4, and 5 filed by Smithfield's directors and executive officers at <http://investors.smithfieldfoods.com/SEC.cfm>.

6. How can I obtain copies of the Governance Guidelines, the Committee Charters and the Code of Business Conduct and Ethics?

Smithfield will promptly deliver free of charge, upon request, a copy of the Governance Guidelines, the Committee Charters, and the Code of Business Conduct and Ethics to any shareholder requesting a copy. Requests should be made in writing to Michael H. Cole, Secretary, Smithfield Foods, Inc., 200 Commerce Street, Smithfield, Virginia 23430.

7. How can I obtain copies of Smithfield's Annual Report on Form 10-K?

Smithfield will promptly deliver free of charge, upon request, a copy of our Annual Report on Form 10-K for the fiscal year ended April 29, 2012, as filed with the Securities and Exchange Commission, to any shareholder requesting a copy. Requests should be made in writing to Michael H. Cole, Secretary, Smithfield Foods, Inc., 200 Commerce Street, Smithfield, Virginia 23430.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE 2012 ANNUAL MEETING OF SHAREHOLDERS TO BE HELD ON SEPTEMBER 19, 2012

The Company's Proxy Statement for the 2012 Annual Meeting of Shareholders and the Company's Annual Report to Shareholders and the Annual Report on Form 10-K for the fiscal year ended April 29, 2012 are available at <http://www.edocumentview.com/SFD>.

August 9, 2012

By Order of the Board of Directors,

Michael H. Cole

Secretary

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EXHIBIT A AMENDMENT TO SECTION 6.1 OF THE ARTICLES OF INCORPORATION

If shareholders approve Proposal 2a to amend the Company's Articles of Incorporation, the text indicated by underline will be added and the text indicated by strike-through will be deleted.

Text of Section 6.1 of the Articles of Incorporation:

~~6.1~~

~~Election and Term. Commencing with the 2000 annual meeting of shareholders, the Board of Directors shall be divided into three classes as nearly equal in number as possible. At the 2000 annual meeting of shareholders, directors of the first class (Class I) shall be elected to hold office for a term expiring at the 2001 annual meeting of shareholders; directors of the second class (Class II) shall be elected to hold office for a term expiring at the 2002 annual meeting of shareholders; and directors of the third class (Class III) shall be elected to hold office for a term expiring at the 2003 annual meeting of shareholders. At each annual meeting of shareholders after 2000, the successors to the class of directors whose terms shall then expire shall be identified as being of the same class as the directors they succeed and elected to hold office until the third succeeding annual meeting of shareholders. If the number of directors is changed, any newly created directorships or any decrease in directorships shall be so apportioned among the classes by the Board of Directors as to make all classes as nearly equal in number as possible.~~

6.1

Election and Term. Prior to the 2013 annual meeting of shareholders, the Board of Directors shall be divided into three classes as nearly equal in number as possible. Directors elected at the 2010 annual meeting of shareholders shall hold office until the 2013 annual meeting. Directors elected at the 2011 annual meeting of shareholders shall hold office until the 2014 annual meeting. Directors elected at the 2012 annual meeting of shareholders shall hold office until the 2015 annual meeting. Beginning with the 2013 annual meeting of shareholders, directors shall be elected to hold office for a term expiring at the next annual meeting of shareholders following their election.

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EXHIBIT B AMENDMENT TO SECTIONS 3.3 AND 6.4 OF THE ARTICLES OF INCORPORATION

If shareholders approve Proposal 2a and Proposal 2b to amend the Company's Articles of Incorporation, the text indicated by underline will be added and the text indicated by strike-through will be deleted. Please note that Proposal 2b is conditioned on the approval of Proposal 2a, so Section 6.1 as shown below contemplates that Proposal 2a was approved by our shareholders and contains the language as amended.

[Text of Section 3 of Article III of the Articles of Incorporation:](#)

3.3

Shareholder Approval. ~~Except as otherwise provided in Article VI, an~~ An amendment to the Articles of Incorporation of the Corporation shall be approved if a majority of the votes entitled to be cast by each voting group entitled to vote on such action are cast in favor of such action. Any merger or share exchange to which the Corporation is a party or any direct or indirect sale, lease, exchange or other disposition of all or substantially all of the Corporation's property, otherwise than in the usual and regular course of business, shall be approved if a majority of the votes entitled to be cast by each voting group entitled to vote on such action are cast in favor of such action; provided, however, that this sentence shall not affect the power of the Board of Directors to condition its submission of any plan of merger, share exchange or direct or indirect sale, lease, exchange or other disposition of all or substantially all of the Corporation's property, otherwise than in the usual and regular course of business, on any basis, including the requirement of a greater vote.

[Text of Article VI of the Articles of Incorporation:](#)

Article VI - Board of Directors

6.1

Election and Term. Prior to the 2013 annual meeting of shareholders, the Board of Directors shall be divided into three classes as nearly equal in number as possible. Directors elected at the 2010 annual meeting of shareholders shall hold office until the 2013 annual meeting. Directors elected at the 2011 annual meeting of shareholders shall hold office until the 2014 annual meeting. Directors elected at the 2012 annual meeting of shareholders shall hold office until the 2015 annual meeting. Beginning with the 2013 annual meeting of shareholders, directors shall be elected to hold office for a term expiring at the next annual meeting of shareholders following their election. **[SECTION 6.1 AS IT WOULD READ IF PROPOSAL 2a IS APPROVED.]**

6.2

Removal of Directors. Subject to the rights of the holders of any series of Preferred Shares then outstanding, a director may be removed only with cause by the affirmative vote of the holders of shares representing at least 66 2/3% of the votes entitled to be cast on such action.

6.3

Newly-Created Directorships; Vacancies. Subject to the rights of the holders of any series of Preferred Shares then outstanding, any vacancy occurring in the Board of Directors, including a vacancy resulting from an increase in the

number of directors or the removal of a director, may be filled only by the affirmative vote of a majority of the directors remaining in office even if the directors in office constitute less than a quorum of the Board of Directors.

6.4

~~Amendment or Repeal. The provisions of this Article shall not be amended or repealed, nor shall any provision of these Articles of Incorporation be adopted that is inconsistent with this Article, unless such action shall have been approved by the affirmative vote of the holders of shares representing at least 66 2/3% of the votes entitled to be cast by each voting group entitled to vote on such action.~~

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