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MORTONS RESTAURANT GROUP INC  
Form DEFR14A  
July 17, 2002

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Amendment No. )

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MORTON'S RESTAURANT GROUP, INC.

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(Name of Registrant as Specified In Its Charter)

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### BACKGROUND OF THE MERGER; FAIRNESS--UPDATE

Since the date of our proxy materials on June 18, 2002, various events have occurred that led Morton's Special Committee and Board of Directors to their recommendation that stockholders vote FOR the merger with Morton's Holdings, LLC and Morton's Acquisition Company, affiliates of Castle Harlan Partners III, L.P., at \$17.00 per share in cash.

Because of their affiliation with Castle Harlan Partners III, L.P., directors John K. Castle and David B. Pittaway did not participate in or vote at any of the Board of Directors meetings discussed below. Because Morton's Holdings intends to offer to senior employees, including directors Allen J. Bernstein and Thomas J. Baldwin, the opportunity to subscribe for equity interests in Morton's Holdings, Messrs. Bernstein and Baldwin also did not participate in or vote at any of the Board meetings discussed below.

On June 18, 2002, High River Limited Partnership, an affiliate of Carl Icahn, delivered to the Special Committee a signed merger agreement substantially similar to the merger agreement with Morton's Holdings and Morton's Acquisition, as in effect at that time, but with a price per share of \$15.00. Morton's immediately issued a press release announcing its receipt of the High River proposal. As required under the merger agreement with Morton's Holdings and Morton's Acquisition, the Company promptly notified Morton's Holdings and Morton's Acquisition of the High River proposal.

The Special Committee met by telephone on June 19, 2002 to consider the High River proposal. The Special Committee's financial advisor, Greenhill & Co., LLC, and legal advisor, Richards, Layton & Finger, P.A., also attended this meeting. After receiving advice from Greenhill and Richards Layton, the Special Committee determined that the High River proposal was superior to the merger agreement with Morton's Holdings and Morton's Acquisition, and recommended that, in order to comply with the Board's fiduciary duties under applicable law, Morton's, acting through the Special Committee and its advisors, participate in discussions with High River in an effort to get the best possible deal for Morton's stockholders, including by attempting to raise the cash consideration and to eliminate or reduce closing conditions. The Board of Directors met by telephone later the same day to consider the High River proposal and the Special Committee's recommendations. Greenhill and Richards Layton also attended this meeting, as did Schulte Roth & Zabel LLP, counsel to Morton's. The Board determined to act in accordance with the Special Committee's recommendations, and the Special Committee subsequently contacted High River to negotiate its proposal.

On June 21, 2002, after concluding discussions with High River, the Special Committee met by telephone to determine how to proceed in light of these discussions. Greenhill and Richards Layton also attended this meeting. Richards Layton reported that High River was not willing to increase its offer price above \$15.00 per share but it had agreed that its proposed merger would be conditioned on the receipt of only material liquor license authorizations and governmental and third party consents rather than all such authorizations and consents. After receiving advice from Greenhill and Richards Layton, the Special

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Committee determined that the revised High River proposal was superior to the merger agreement with Morton's Holdings and Morton's Acquisition in effect at that time and recommended that, in order to comply with the Board's fiduciary duties under applicable law, Morton's terminate the merger agreement with Morton's Holdings and Morton's Acquisition and enter into the revised High River proposal. The Board of Directors met by telephone later the same day. Greenhill, Richards Layton and Schulte Roth also attended this meeting. The Board determined to act in accordance with the Special Committee's recommendations, and promptly notified Morton's Holdings and Morton's Acquisition of its determination.

The Board noted that, as required under customary provisions contained in the merger agreement with Morton's Holdings and Morton's Acquisition, Morton's could not terminate that merger agreement until five business days after notice is provided to Morton's Holdings and Morton's Acquisition, and that Morton's must cooperate fully with Morton's Holdings and Morton's Acquisition

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during these five business days with the intent of the parties agreeing on modifications to that merger agreement. The Board determined that if, at the end of the five business day period, the revised High River proposal continued to be superior to the merger agreement with Morton's Holdings and Morton's Acquisition, then Morton's would terminate that merger agreement and enter into the revised High River proposal. Morton's issued a press release the same day setting forth the Board's determinations.

On June 28, 2002, within the five business day period, Morton's Holdings and Morton's Acquisition delivered to the Special Committee a signed amendment to their merger agreement that raised the merger consideration to \$15.00 per share, removed the closing condition that would have required Morton's to obtain prior to closing all authorizations necessary to maintain liquor licenses following consummation of the merger, and modified the condition requiring governmental and third party consents to the merger so that only material consents would be required. Morton's Holdings and Morton's Acquisition also submitted a signed equity commitment letter reflecting the increased merger consideration. The Special Committee met by telephone later the same day to consider the impact of the revised offer. Greenhill and Richards Layton also attended this meeting. The Special Committee noted that, pursuant to the terms of the merger agreement with Morton's Holdings and Morton's Acquisition, unless the Special Committee and the Board determined that the revised High River proposal continued to be superior, the Company was required to accept the merger agreement with Morton's Holdings and Morton's Acquisition. After receiving advice from Greenhill and Richards Layton, the Special Committee determined that the revised High River proposal was no longer superior to the merger agreement with Morton's Holdings and Morton's Acquisition, as they had agreed to amend it, and, accordingly, that the Board was required to approve and adopt the amendments proposed by Morton's Holdings and Morton's Acquisition. The Board of Directors then met by telephone later the same day. Greenhill, Richards Layton and Schulte Roth also attended this meeting. The Board determined to act in accordance with the Special Committee's recommendations, and Morton's promptly entered into the amendment to the merger agreement with Morton's Holdings and Morton's Acquisition. Morton's then issued a press release disclosing these events.

On July 9, 2002, High River delivered to the Special Committee a signed merger agreement substantially similar to the merger agreement with Morton's Holdings and Morton's Acquisition, as amended, but with a price per share of \$16.00. Morton's promptly notified Morton's Holdings and Morton's Acquisition of the revised High River proposal, and Morton's Holdings and Morton's Acquisition soon thereafter delivered to the Special Committee a signed amendment to their merger agreement that raised the merger consideration to \$16.00 per share. Morton's Holdings and Morton's Acquisition also submitted a signed equity

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commitment letter reflecting the increased merger consideration. The Special Committee then met by telephone to consider the two revised offers. Greenhill and Richards Layton also attended this meeting. After receiving advice from Greenhill and Richards Layton, the Special Committee determined that, in view of the matching offer from Morton's Holdings and Morton's Acquisition, the High River proposal was not superior to the merger agreement with Morton's Holdings and Morton's Acquisition, as they had agreed to amend it, and, accordingly, that the Board was required to approve and adopt the amendment proposed by Morton's Holdings and Morton's Acquisition. The Board of Directors then met by telephone later the same day. Greenhill, Richards Layton and Schulte Roth also attended this meeting. The Board determined to act in accordance with the Special Committee's recommendations, and Morton's promptly entered into the amendment to the merger agreement with Morton's Holdings and Morton's Acquisition. The next morning Morton's issued a press release disclosing these events.

Late in the evening on July 9, 2002, Morton's received a conditional proposal from High River that included a signed merger agreement substantially similar to the merger agreement with Morton's Holdings and Morton's Acquisition, as amended, but with a price per share of \$17.00. Unlike previous offers by High River, however, this proposal was conditioned on Morton's, by the close of business on

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July 10, 2002, exempting High River from Morton's stockholders rights agreement to permit High River to "negotiate, enter into agreements and arrangements, and otherwise join, with others, to acquire Morton's." The Special Committee met by telephone on July 10, 2002 to consider the revised High River proposal. Richards Layton and Greenhill also attended this meeting. The Special Committee noted that taking the action required by High River was prohibited by a provision in the merger agreement with Morton's Holdings and Morton's Acquisition and could subject the Company to substantial damages for breach of contract. Additionally, Morton's would be at risk of losing the transaction with Morton's Holdings and Morton's Acquisition and never reaching closing on a High River transaction. Richards Layton noted that it had raised these issues with High River, but that High River did not appear willing to remove the condition. The Board of Directors then met by telephone to consider the revised High River proposal. Greenhill, Richards Layton and Schulte Roth also attended this meeting. The Special Committee informed the Board of its discussions. At the Board's direction, Morton's sent a letter to Morton's Holdings and Morton's Acquisition requesting that they agree to amend their merger agreement to permit Morton's to amend its stockholders rights agreement in the manner required by High River. Morton's Holdings and Morton's Acquisition soon thereafter replied in writing that they saw no legitimate reason to amend their merger agreement, noting that the provision in their existing merger agreement is customary, that each of the proposed forms of merger agreement submitted by High River contained the same provision and that recent events indicated that the provision was not a deterrent to a potential bidder willing to make a bona fide superior proposal to all Morton's stockholders. Morton's Holdings and Morton's Acquisition also noted that High River could seek a co-bidder at any time if it submitted a superior proposal that became the winning bid, and that, although High River claimed to be prepared to purchase the Company itself, it was now requiring the ability to make a joint bid.

Later that day, after receiving the response from Morton's Holdings and Morton's Acquisition, the Special Committee's counsel sent a letter to High River requesting that it remove the new condition. The Special Committee advised High River that it was prepared to recommend High River's revised proposal as superior to the merger agreement with Morton's Holdings and Morton's Acquisition if High River removed the condition. The Special Committee and the Board met jointly by telephone later that evening. Greenhill, Richards Layton and Schulte Roth also attended this meeting. Richards Layton apprised the Special Committee

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and Board members of the response from Morton's Holdings and Morton's Acquisition, and indicated that it had not received a response from High River. The Special Committee and Board members agreed to meet again the next day in anticipation of High River's response.

In the early afternoon of July 11, 2002, the Special Committee again attempted to contact High River to discuss its conditional proposal, but High River was not willing to discuss it. Later the same afternoon, Mr. Icahn sent a letter to Greenhill expressing his dissatisfaction with the Special Committee, the Board of Directors and Castle Harlan. Mr. Icahn also stated that he is willing to "discuss" the matters raised in his July 9, 2002 letter and to go forward with the transaction only under unspecified "appropriate circumstances." After receiving the letter, the Special Committee again attempted to contact High River, whose only comment was "what we have to say for now is in the Greenhill letter." Later the same afternoon, the Special Committee met by telephone to consider High River's letter and the status of the bidding process. Richards Layton and Greenhill also attended this meeting. The Special Committee again discussed how taking the action required by High River was prohibited by a provision in the merger agreement with Morton's Holdings and Morton's Acquisition, could subject the Company to substantial damages for breach of contract, and, accordingly, could result in the Company losing the transaction with Morton's Holdings and Morton's Acquisition and never reaching closing on a High River transaction. Among other things, the Special Committee discussed various provisions of High River's proposed form of merger agreement that would allow High River to terminate the agreement as a direct result of its requiring Morton's to breach the merger agreement with Morton's Holdings and Morton's Acquisition. For example, the proposed High River agreement

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contained a closing condition requiring that there not be any lawsuit against Morton's that would reasonably be expected to have a material adverse effect on Morton's. If Morton's breached the merger agreement with Morton's Holdings and Morton's Acquisition, they could have sued Morton's for breach of contract, potentially subjecting Morton's to substantial damages and permitting High River to claim that Morton's failed to satisfy this closing condition under the proposed High River agreement. Additionally, the proposed High River agreement contained a representation and warranty by Morton's that Morton's has not breached any material contract in such a way that would reasonably be expected to have a material adverse effect on Morton's; it also contained a closing condition requiring that this and certain other representations and warranties be true. Taking the action required by High River could have constituted a breach of the merger agreement with Morton's Holdings and Morton's Acquisition and, as discussed in the previous example, the potential costs of a breach of contract lawsuit could permit High River to claim that Morton's violated this representation and warranty.

After receiving advice from Greenhill and Richards Layton, the Special Committee was unable to conclude that the \$17 per share conditional High River proposal, when considered with potential costs and risks involved in complying with the condition, was superior to the binding \$16.00 per share merger agreement with Morton's Holdings and Morton's Acquisition.

The Board of Directors then met by telephone later the same day. Greenhill, Richards Layton and Schulte Roth also attended this meeting. The Special Committee informed the Board of its discussions and that it would be prepared to recommend the High River proposal if the condition was removed. At the direction of the Board, the Company issued a press release that evening disclosing the developments. Also that evening, the Company issued a press release disclosing a letter that Mr. Bernstein sent to Mr. Icahn responding to Mr. Icahn's earlier letter.

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On July 12, 2002, Morton's mailed a letter to its stockholders. The letter informed Morton's stockholders of the Board's determination that the offer from Morton's Holdings and Morton's Acquisition was the best offer to emerge from the sale process. The letter further expressed Morton's belief that the offer from Morton's Holdings and Morton's Acquisition was the best and only real offer and that the conditions that were contained in the then-current High River proposal made that proposal "neither superior nor real" and "completely illusory."

On the morning of July 15, 2002, High River delivered to the Special Committee a signed merger agreement substantially similar to the merger agreement that it had delivered on July 9, 2002. Although the High River proposal remained conditioned on Morton's amending the stockholders rights agreement as previously proposed, the revised High River proposal no longer required this to occur in a manner that would breach Morton's existing merger agreement with Morton's Holdings and Morton's Acquisition. Morton's promptly notified Morton's Holdings and Morton's Acquisition of the revised High River proposal. Later that afternoon, Morton's Holdings and Morton's Acquisition delivered to the Special Committee a signed amendment to their merger agreement that raised the merger consideration to \$17.00 per share. Morton's Holdings and Morton's Acquisition also submitted a signed equity commitment letter reflecting the increased merger consideration. The Special Committee met by telephone to consider the two revised offers. Greenhill and Richards Layton also attended this meeting. After receiving advice from Greenhill and Richards Layton, the Special Committee determined that, in view of the matching offer from Morton's Holdings and Morton's Acquisition, the High River proposal was not superior to the merger agreement with Morton's Holdings and Morton's Acquisition, as they had agreed to amend it, and, accordingly, that the Board was required to approve and adopt the amendment proposed by Morton's Holdings and Morton's Acquisition. The Board of Directors then met by telephone later the same day. Greenhill, Richards Layton and Schulte Roth also attended this meeting. The Board determined to act in accordance with the Special Committee's recommendations, and Morton's promptly entered into the amendment to the merger agreement with Morton's Holdings and Morton's Acquisition. Later that day Morton's issued a press release disclosing these events.

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The Board of Directors of the Company, and Morton's Holdings, Morton's Acquisition, Castle Harlan Partners III, L.P., John K. Castle and David B. Pittaway, continue to believe that the merger agreement with Morton's Holdings and Morton's Acquisition and the proposed merger are substantively and procedurally fair to, and in the best interests of, Morton's unaffiliated stockholders. In reaching this conclusion, such persons considered the factors set forth in the Company's proxy statement under the captions "Reasons for the Recommendations of the Special Committee and the Board of Directors--Fairness of the Merger to Stockholders" and "Position of Morton's Holdings, Morton's Acquisition, CHP, John K. Castle and David B. Pittaway as to the Fairness of the Merger", respectively, as well as the following:

- the \$17.00 per share cash merger consideration represents a substantial increase over the prior \$13.50 price, and represents a premium of approximately 49% over the closing market price of \$11.44 on March 25, 2002, the last full trading day before the parties entered into the original merger agreement, and a premium of approximately 158% over the closing market price of \$6.60 on February 14, 2002, the last full trading day before Morton's Holdings submitted its initial proposal to acquire Morton's; and
- Morton's Holdings and Morton's Acquisition are prepared and able to close sooner and, accordingly, with a higher degree of certainty, than High River because they have already received substantially all required regulatory and third party consents and approvals, while High River has

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not yet commenced seeking any such consents and approvals. Accordingly, stockholders are likely to receive their cash more quickly (although no assurance can be given to such effect).