

TRIARC COMPANIES INC  
Form S-4/A  
August 04, 2008

As filed with the Securities and Exchange Commission on August 1, 2008

Registration No. 333-151336

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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Amendment No. 2 to  
FORM S-4  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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TRIARC COMPANIES, INC.  
(Exact Name of Registrant as Specified in its Charter)

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Delaware (State or Other Jurisdiction of Incorporation or Organization)	5812 (Primary Standard Industrial Classification Code Number)	38-0471180 (I.R.S. Employer Identification Number)
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1155 Perimeter Center West  
Atlanta, Georgia 30338  
(678) 514-4100  
(Address, including zip code, and telephone number, including area code,  
of registrant's principal executive offices)

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Nils H. Okeson  
Senior Vice President, General Counsel and Secretary  
Triarc Companies, Inc.  
1155 Perimeter Center West  
Atlanta, Georgia 30338  
(678) 514-4100  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: At the effective time of the merger referred to herein.

If the securities being registered on this form are to be offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

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.

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.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

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**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 that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This document shall not constitute an offer to sell or the solicitation of any offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.**

PRELIMINARY SUBJECT TO COMPLETION DATED AUGUST 1, 2008

**MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT**

As we previously announced, the boards of directors of Triarc Companies, Inc. and Wendy's International, Inc. have each approved a definitive merger agreement for an all-stock transaction in which Wendy's shareholders will receive a fixed ratio of 4.25 shares of Triarc Class A common stock for each Wendy's common share they own. When the merger is completed, Triarc will change its name to Wendy's/Arby's Group, Inc., which we refer to as Wendy's/Arby's. In connection with the merger, existing shares of Triarc Class B common stock, Series 1 will be converted into shares of Wendy's/Arby's common stock on a one-for-one basis. Existing shares of Triarc Class A common stock will remain outstanding as shares of Wendy's/Arby's common stock. Wendy's/Arby's common stock is expected to be quoted on the New York Stock Exchange, which we refer to as the NYSE, under the symbol WEN.

In the merger, approximately 377 million shares of Wendy's/Arby's common stock will be issued to Wendy's shareholders. Based on the number of outstanding shares of Triarc Class A common stock and Triarc Class B common stock, and the number of outstanding Wendy's common shares as of , 2008, Wendy's shareholders are expected to hold approximately 80.6%, in the aggregate, of the outstanding Wendy's/Arby's common stock following the completion of the merger.

On April 23, 2008, the last full trading day before the merger agreement was signed, the closing sales price of Triarc Class A common stock, which trades on the NYSE under the symbol TRY, was \$6.30 per share, the closing sales price of Triarc Class B common stock, which trades on the NYSE under the symbol TRY.B, was \$6.50 per share, and the closing sales price of Wendy's common shares, which trade on the NYSE under the symbol WEN, was \$25.32 per share.

**For a discussion of the risks relating to the merger, see Risk Factors beginning on page 28.**

An annual meeting of Triarc's stockholders and a special meeting of Wendy's shareholders are being held to approve the transactions and related matters contemplated by the merger agreement. Triarc's stockholders also will elect directors and act on other matters normally considered at Triarc's annual meeting. Information about these meetings and the merger is contained in this joint proxy statement/prospectus. We encourage you to read this entire joint proxy statement/prospectus carefully, as well as the annexes and information incorporated by reference.

The Triarc board of directors unanimously recommends that the Triarc stockholders vote *for* the proposals to amend Triarc's certificate of incorporation and to approve the issuance of Wendy's/Arby's common stock, all of which are necessary to effect the merger. The Wendy's board of directors unanimously (with four abstentions due to actual or perceived conflicts of interest) recommends that the Wendy's shareholders vote *for* the proposal to adopt the merger agreement.

Roland C. Smith	Kerri B. Anderson
Chief Executive Officer	Chief Executive Officer and President
Triarc Companies, Inc.	Wendy's International, Inc.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the merger described in this joint proxy statement/prospectus or the securities to be issued pursuant to the merger or determined that this joint proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.**

This joint proxy statement/prospectus is dated , 2008 and, together with the accompanying proxy card and annual report for Triarc, is first being mailed to Triarc stockholders and Wendy s shareholders on or about , 2008.

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**TRIARC COMPANIES, INC.**

1155 Perimeter Center West

Atlanta, Georgia 30338

*www.triarc.com*

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

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***Time:***

***Place:***

***Purpose:***

To adopt the amendment to Triarc's certificate of incorporation to increase the number of authorized shares of Triarc Class A common stock to 1,500,000,000, in connection with the merger (shares of Triarc Class A common stock are referred to as Wendy's/Arby's common stock following completion of the merger);

To adopt the amendment to Triarc's certificate of incorporation to convert each issued and outstanding share of Triarc Class B common stock into one share of Wendy's/Arby's common stock and to provide that there shall only be one class of authorized common stock of Wendy's/Arby's, in connection with the merger;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to change the name of Triarc to Wendy's/Arby's Group, Inc. ;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to prohibit the issuance of preferred stock of Wendy's/Arby's to affiliates of Wendy's/Arby's unless offered ratably to the holders of Wendy's/Arby's common stock, subject to an exception in the event that Wendy's/Arby's is in financial distress and the issuance is approved by the audit committee of Wendy's/Arby's board of directors;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to amend the definition of Interested Stockholder, which is used in the certificate of incorporation in connection with requiring increased stockholder approval thresholds for transactions with affiliates, to remove the exception for DWG Acquisition Group L.P., a dissolved partnership formerly controlled by Nelson Peltz and Peter W. May, Triarc's non-executive Chairman and Vice Chairman, respectively, and its affiliates;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to provide that Wendy's/Arby's board of directors shall not have the power or authority to amend, alter or repeal Section 3 of Article I of the Wendy's/Arby's bylaws, as amended, which will provide that the headquarters of the Wendy's brand will be in the greater Columbus, Ohio area for a ten-year period following the completion of the merger;

To adopt the amendment to Triarc's certificate of incorporation, in connection with the merger, to provide that the purpose of Wendy's/Arby's is to engage in the restaurant business and complementary, incidental or ancillary businesses;

(A copy of Triarc's current certificate of incorporation and a copy of the form of amendment to Triarc's certificate of incorporation described above are attached as Annexes D and E, respectively, to this joint proxy statement/prospectus. For more details about the proposed amendment, see The Amendment to Triarc's Certificate of Incorporation. )

To approve the issuance of Wendy s/Arby s common stock, pursuant to the Agreement and Plan of Merger, dated as of April 23, 2008, among Triarc, Green Merger Sub, Inc., a wholly-owned subsidiary of Triarc, and Wendy s, a copy of which is attached as Annex A to this joint proxy statement/prospectus, in connection with the merger;

To approve any motion to adjourn the Triarc annual meeting to another time or place, if necessary, to solicit additional proxies if there are insufficient votes at the time of the Triarc annual meeting to approve the proposals related to the merger;

To elect eleven directors to hold office as specified in the accompanying joint proxy statement/ prospectus;

To approve an amendment to Triarc s Amended and Restated 2002 Equity Participation Plan to increase the number of shares reserved for issuance under the plan by an additional 7,400,000 shares of Triarc Class B common stock, prohibit the repricing of outstanding awards without prior stockholder approval and eliminate the ability of Triarc to grant reload option awards or stock options or SARs with exercise prices below fair market value on the date of grant;

To ratify the appointment of Deloitte & Touche LLP as the independent registered public accounting firm for 2008; and

To conduct any other business that properly comes before the meeting and any adjournment or postponement of the meeting.

Each of the first eight proposals listed above relating to the merger is conditioned upon approval of each of the other seven and the approval of each such proposal is required for completion of the merger. None of the seven proposals relating to the adoption of the amendment to Triarc s certificate of incorporation or the proposal to issue Wendy s/Arby s common stock in the merger will be implemented unless all eight proposals related to the merger are approved by the Triarc stockholders and the merger is completed.

This joint proxy statement/prospectus, including the annexes, contains further information with respect to the business to be transacted at the Triarc annual meeting.

***Record Date:***

Triarc stockholders of record at the close of business on , 2008 may vote at the Triarc annual meeting.

**Your vote is important. Whether or not you plan to attend the annual meeting, please promptly complete and return your proxy card in the enclosed envelope, or authorize the individuals named on your proxy card to vote your shares by calling the toll-free telephone number or by using the Internet as described in the instructions included with your proxy card.**

By order of the board of directors,

Atlanta, Georgia Nils H. Okeson  
, 2008 *Senior Vice President, General Counsel and Secretary*  
Triarc Companies, Inc.  
1155 Perimeter Center West  
Atlanta, Georgia 30338

**WENDY S INTERNATIONAL, INC.**  
**4288 West Dublin-Granville Road**  
**Dublin, Ohio 43017-0256**  
*www.wendys-invest.com*

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**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**

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**Time:**

**Place:** Wendy s Corporate Headquarters, One Dave Thomas Boulevard (4288 West Dublin-Granville Road),  
Dublin, Ohio 43017

A map showing the location of the meeting is printed on Annex L to this joint proxy statement/prospectus.

***Purpose:***

To adopt the Agreement and Plan of Merger, dated as of April 23, 2008, among Triarc, Green Merger Sub, Inc., a wholly-owned subsidiary of Triarc, and Wendy s, a copy of which is attached as Annex A to this joint proxy statement/prospectus;  
and

To approve any motion to adjourn the Wendy s special meeting to another time or place, if necessary, to solicit additional proxies if there are insufficient votes at the time of the Wendy s special meeting to adopt the merger agreement.

***Record Date:***

Wendy s shareholders of record at the close of business on , 2008 may vote at the Wendy s special meeting.

Wendy's shareholders have the right to dissent from the merger and assert dissenters' rights under Ohio law. In order to assert dissenters' rights, Wendy's shareholders must comply with the requirements of Ohio law as described under "The Merger Dissenters' Rights" beginning on page 81.

**Your vote is important. Whether or not you plan to attend the special meeting, please promptly complete and return your proxy card in the enclosed envelope, or authorize the individuals named on your proxy card to vote your shares by calling the toll-free telephone number or by using the Internet as described in the instructions included with your proxy card.**

By order of the board of directors,

Dublin, Ohio    Leon M. McCorkle, Jr.  
, 2008         *Executive Vice President,*  
                  *General Counsel and Secretary*  
                  Wendy's International, Inc.  
                  4288 West Dublin-Granville Road  
                  Dublin, Ohio 43017-0256

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**THIS JOINT PROXY STATEMENT/PROSPECTUS INCORPORATES  
ADDITIONAL INFORMATION**

This joint proxy statement/prospectus incorporates important business and financial information about Triarc and Wendy's from other documents filed with the Securities and Exchange Commission, which we refer to as the SEC, that are not included in or delivered with this joint proxy statement/prospectus. For a listing of the documents incorporated by reference into this joint proxy statement/prospectus, see *Where You Can Find More Information* beginning on page 227.

**In this joint proxy statement/prospectus, Triarc, Triarc Class A common stock and Triarc Class B common stock refer to Triarc Companies, Inc. and its Class A common stock and Class B common stock, Series 1, respectively, prior to the completion of the merger. Upon the consummation of the merger and thereafter, Triarc is referred to as Wendy's/Arby's and Triarc Class A common stock is referred to as Wendy's/Arby's common stock.**

You may obtain documents incorporated by reference into this joint proxy statement/prospectus, without charge, by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

<b>TRIARC COMPANIES, INC.</b>	<b>WENDY'S INTERNATIONAL, INC.</b>
1155 Perimeter Center West	4288 West Dublin-Granville Road
Atlanta, Georgia 30338	Dublin, Ohio 43017-0256
(678) 514-4100	(614) 764-3100
Attention: Investor Relations	Attention: Investor Relations Department

You may also obtain documents incorporated by reference into this joint proxy statement/prospectus by requesting them in writing or by telephone from Innisfree M&A Incorporated, Triarc's proxy solicitor, or Georgeson Inc., Wendy's proxy solicitor, at the following addresses and telephone numbers:

<b>Innisfree M&amp;A Incorporated</b>	<b>Georgeson Inc.</b>
<b>501 Madison Avenue, 20th Floor</b>	<b>199 Water Street, 26th Floor</b>
<b>New York, NY 10022</b>	<b>New York, NY 10038</b>
<b>Stockholders Call Toll-Free: (888) 750-5834</b>	<b>Shareholders Call Toll-Free: (866) 346-1016</b>
<b>Banks and Brokers Call Collect: (212) 750-5833</b>	<b>Banks and Brokers Call Collect: (212) 440-9800</b>

**To receive timely delivery of the documents before your annual or special meeting, you must request them no later than , 2008.**

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Annex I Ohio Revised Code Section 1701.85

Annex J copy of Triarc Voting Agreement

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Annex L Map to the Wendy s Special Meeting

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**QUESTIONS AND ANSWERS ABOUT THE MEETINGS**

**Q: Why am I receiving this document?**

A: We are delivering this document to you as both a joint proxy statement of Triarc and Wendy's and a prospectus of Triarc. It is a joint proxy statement because each of our boards of directors is soliciting proxies from its stockholders/shareholders. It is a prospectus because Triarc will issue shares of Wendy's/Arby's common stock in exchange for Wendy's common shares in the merger and convert shares of its Triarc Class B common stock into shares of Wendy's/Arby's common stock in connection with the merger.

**Q: What do I need to do now?**

A: After carefully reading and considering the information contained in this joint proxy statement/prospectus, please vote your shares as soon as possible to ensure that your shares will be represented at your company's annual or special meeting, as the case may be. You may vote your shares prior to the meeting, even if you plan to attend your company's meeting in person. Please follow the instructions set forth on the proxy card or on the voting instruction form provided

by the record holder if your shares are held in the name of your broker or other nominee.

**Q: How do I vote?**

A: You may vote before your annual or special meeting, as the case may be, in one of the following ways:

use the toll-free number shown on your proxy card;

visit the website shown on your proxy card to vote via the Internet; or

complete, sign, date and return the enclosed proxy card in the enclosed postage-paid envelope.

You may also vote your shares in person at your meeting.

**Q: What voting requirements must be met in order for the matters relating to the merger to be approved?**

A: For the matters to be approved by Triarc stockholders:

the affirmative vote of a majority of the total voting power of the outstanding shares of Triarc Class A common stock (for purposes of the class vote, holders of Triarc Class A common stock have one full vote for each share of that stock), voting together as a separate class, and the affirmative vote of a majority of the total voting power of the outstanding shares of Triarc Class A common stock and Triarc Class B common stock entitled to vote (for purposes of this vote, holders of Triarc Class B common stock have 1/10 vote for each share of that stock and holders of Triarc Class A common stock have one full vote for each share of that stock), voting together as a single class, are required to

adopt the amendment to Triarc s certificate of incorporation to increase the number of authorized shares of Triarc Class A common stock;

the affirmative vote of a majority of the total voting power of the outstanding shares of Triarc Class B common stock (for purposes of the class vote, holders of Triarc Class B common stock have one full vote for each share of that stock), voting together as a separate class, and the affirmative vote of a majority of the total voting power of the outstanding shares of Triarc Class A common stock and Triarc Class B common stock entitled to vote (for purposes of this vote, holders of Triarc Class B common stock have 1/10 vote for each share

of that stock and holders of Triarc Class A common stock have one full vote for each share of that stock), voting together as a single class, are required to adopt the amendment to Triarc s certificate of incorporation to convert each issued and outstanding share of Triarc Class B common stock into one share of Wendy s/Arby s common stock and provide that there shall only be one class of authorized common stock of Wendy s/Arby s;

the affirmative  
vote of a  
majority of the  
total voting  
power of the  
outstanding  
shares of Triarc  
Class A  
common stock  
and Triarc  
Class B  
common stock  
(for purposes  
of this vote,  
holders of  
Triarc Class B  
common stock  
have 1/10 vote  
for each share  
of that stock  
and holders of  
Triarc Class A  
common stock  
have one full  
vote for each  
share of that  
stock), voting  
together as a  
single class, is  
required to  
adopt each of  
the following  
amendments to  
Triarc's  
certificate of  
incorporation  
(a) to change  
the name of  
Triarc to  
Wendy's/Arby's  
Group, Inc., (b)  
to prohibit the  
issuance of  
preferred stock  
of  
Wendy's/Arby's  
to affiliates of  
Wendy's/Arby's  
unless offered  
pro rata to the

holders of  
Wendy s/Arby s  
common stock,  
subject to an  
exception in  
the event that  
Wendy s/Arby s  
is in financial  
distress and the  
issuance is  
approved by  
the audit  
committee of  
Wendy s/Arby s  
board of  
directors, (c) to  
amend the  
definition of  
Interested  
Stockholder,  
which is used  
in the  
certificate of  
incorporation  
in connection  
with requiring  
increased  
stockholder  
approval  
thresholds for  
transactions  
with affiliates,  
to remove the  
exception for  
DWG Acquis