

DOMINOS PIZZA INC
Form S-8
January 10, 2005

As filed with the Securities and Exchange Commission on January 10, 2005

REGISTRATION NO. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Domino s Pizza, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

38-2511577
(I.R.S. Employer Identification No.)

30 Frank Lloyd Wright Drive, Ann Arbor, Michigan 48106

(Address of Principal Executive Offices)

Domino s Pizza, Inc. 2004 Equity Incentive Plan

TISM, Inc. Fourth Amended and Restated Stock Option Plan

(Full Titles of the Plans)

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David A. Brandon

Chairman and Chief Executive Officer

30 Frank Lloyd Wright Drive

Ann Arbor, Michigan 48106

(734) 930-3030

(Name, Address and Telephone Number of Agent for Service)

Copies of all communications, including communications sent to agent for service, should be sent to:

Jane D. Goldstein, Esq. Ropes & Gray LLP	Elisa D. Garcia C., Esq. Domino's Pizza, Inc.
One International Place	Executive Vice President & General Counsel
Boston, Massachusetts 02110	30 Frank Lloyd Wright Drive
Telephone: (617) 951-7000	Ann Arbor, Michigan 48106
Telecopy: (617) 951-7050	Telephone: (734) 930-3030
	Telecopy: (734) 747-6210

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
TISM, Inc. Fourth Amended and Restated Stock Option Plan	Common Stock, par value \$.01 per share 5,520,540	\$4.19(1)	\$23,119,626(2)	\$2,721
Domino's Pizza, Inc. 2004 Equity Incentive Plan	Common Stock, par value \$.01 per share 5,600,000 11,120,540	\$16.41(3) \$10.35	\$91,923,444(4) \$115,043,070	\$10,820 \$13,541

- (1) The offering price for shares subject to options on the date hereof is the actual exercise price of such options. Of the 5,520,540 shares to be registered under the TISM, Inc. Fourth Amended and Restated Stock Option Plan, 2,836,374 are subject to options at an exercise price of \$0.75 per share, 724,439 are subject to options at an exercise price of \$5.25 per share, 1,791,667 are subject to options at an exercise price of \$8.66 per share, 52,660 are subject to options at an exercise price of \$9.75 per share and 115,400 are subject to options at an exercise price of \$10.05 per share.

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- (2) The maximum aggregate offering price for the TISM, Inc. Fourth Amended and Restated Stock Option Plan consists of \$2,127,280.50 payable in respect of 2,836,374 shares subject to options at an exercise price of \$0.75 per share, \$3,803,304.75 payable in respect of 724,439 shares subject to options at an exercise price of \$5.25 per share, \$15,515,836.22 payable in respect of 1,791,667 shares subject to options at an exercise price of \$8.66 per share, \$513,435.00 payable in respect of 52,660 shares subject to options at an exercise price of \$9.75 per share and \$1,159,770.00 payable in respect of 115,400 shares subject to options at an exercise price of \$10.05 per share.
 - (3) The offering price for shares subject to options on the date hereof is the actual exercise price of such options. Of the 5,600,000 shares to be registered under the Domino's Pizza, Inc. 2004 Equity Incentive Plan, 1,702,754 are subject to options at an exercise price of \$14.00 per share. The offering price for the remaining 3,897,246 shares not subject to options on the date hereof of \$17.47 per share has been estimated solely for the purpose of determining the registration fee pursuant to Rule 457(h) of the Securities Act of 1933 on the basis of the average high and low prices of Domino's Pizza, Inc. Common Stock, par value \$.01 per share, reported on the New York Stock Exchange on January 4, 2005.
 - (4) The maximum aggregate offering price for the Domino's Pizza, Inc. 2004 Equity Incentive Plan consists of \$23,838,556.00 payable in respect of 1,702,754 shares subject to options at an exercise price of \$14.00 per share and \$68,084,887.62 payable in respect of 3,897,246 shares not subject to options on the date hereof.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

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 and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Securities and Exchange Commission (the Commission) are incorporated herein by reference except to the extent any statement or information therein is modified, superseded or replaced by a

statement or information contained in this document or in any other subsequently filed document incorporated herein by reference:

(a) The Registrant's prospectus dated July 12, 2004, as filed with the Commission pursuant to Rule 424(b) under the Securities Act of 1933 on July 14, 2004.

(b) The Registrant's Quarterly Report on Form 10-Q for the quarter ended June 13, 2004, as filed with the Commission on July 27, 2004; the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 5, 2004, as filed with the Commission on October 19, 2004; the Registrant's Current Report on Form 8-K, as filed with the Commission on August 24, 2004; the Registrant's Current Report on Form 8-K, as filed with the Commission on October 5, 2004; the Registrant's Current Report on Form 8-K, as filed with the Commission on December 3, 2004; and the Registrant's Current Report on Form 8-K, as filed with the Commission on December 15, 2004.

(c) The description of the Common Stock, \$.01 par value per share, contained in Item 1 of the Registrant's registration statement on Form 8-A, filed with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 on July 13, 2004.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, are incorporated herein by reference from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein, or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

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 Registrant is incorporated under the laws of the State of Delaware. Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to include in

its 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, however, that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, which relates to unlawful payment of dividends and unlawful stock purchases and redemptions, or (iv) for any transaction from which the director derived an improper personal benefit.

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify any persons who were, are or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful.

Section 145 of the Delaware General Corporation Law further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him and incurred by him in any such capacity, arising out of his status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145 of the Delaware General Corporation Law.

The Registrant's certificate of incorporation provides that its directors shall not be liable to it or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that the exculpation from liabilities is not permitted under the Delaware General Corporation Law as in effect at the time such liability is determined. In addition, the Registrant's certificate of incorporation provides that it shall indemnify its directors to the full extent permitted by the laws of the State of Delaware.

The Registrant's directors and officers are covered by insurance policies maintained by the Registrant against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act of 1933, as amended. In addition, the Registrant has entered into indemnification agreements with each of its directors and executive officers that provide for indemnification and expense advancement to the fullest extent permitted under the Delaware General Corporation Law.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

- 4.1 Form of Second Restated Certificate of Incorporation of Domino's Pizza, Inc. (incorporated by reference to Exhibit 3.1 to the Domino's Pizza, Inc. registration statement on Form S-1 (Registration No. 333-114442) filed with the Commission on April 13, 2004 (the S-1 Registration Statement)).
- 4.2 Form of Amended and Restated By-laws of Domino's Pizza, Inc. (incorporated by reference to Exhibit 3.2 to the S-1 Registration Statement).
- 4.3 Form of certificate representing shares of Common Stock, \$.01 par value per share (incorporated by reference to Exhibit 3.3 to the S-1 Registration Statement).
- 4.4 Execution copy of Indenture dated June 25, 2003 by and among Domino's, Inc., Domino's Franchise Holding Co., Domino's Pizza LLC, Domino's Pizza PMC, Inc., Domino's Pizza International, Inc., Domino's Pizza International Payroll Services, Inc., Domino's Pizza Government Services Division, Inc. and Domino's Pizza NS Co. and BNY Midwest Trust Company, as trustee (Incorporated by reference to Exhibit 4.4 to the Domino's, Inc. registration statement on Form S-4 filed with the Commission on December 5, 2003 (Registration No. 333-107774)).
- 4.5 TISM, Inc. Fourth Amended and Restated Stock Option Plan (incorporated by reference to Exhibit 10.6 to the Domino's, Inc. Current Report on Form 8-K filed with the Commission on June 26, 2003 (Reg. No. 333-74797)).
- 4.6 Domino's Pizza, Inc. 2004 Equity Incentive Plan (incorporated by reference to Exhibit 10.30 to the S-1 Registration Statement).
- 5.1 Opinion of Ropes & Gray LLP.
- 23.1 Consent of PricewaterhouseCoopers LLP.
- 23.2 Consent of Ropes & Gray LLP (included in the opinion filed as Exhibit 5.1).
- 24.1 Power of attorney pursuant to which amendments to this registration statement may be filed (included on the signature page of this registration statement).

Item 9. Undertakings.

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;

(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 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.

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

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

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 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 Securities Act of 1933 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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the Registrant 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 Township of Ann Arbor, State of Michigan, on the 10th day of January, 2005.

DOMINO S PIZZA, INC.

By: /s/ HARRY J. SILVERMAN
Name: **Harry J. Silverman**
Title: **Executive Vice President**

Power of attorney

KNOW ALL PERSONS BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints David A. Brandon and Harry J. Silverman, and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this registration statement, and to file the same, with all exhibits thereto and all documents in connection therewith, making such changes in this registration statement as such person or persons so acting deems appropriate, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

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Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> <i>/s/</i> DAVID A. BRANDON <hr/> David A. Brandon	Chairman of the Board, Chief Executive Officer (Principal Executive Officer) and Director	January 10, 2005
<hr/> <i>/s/</i> HARRY J. SILVERMAN <hr/> Harry J. Silverman	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	January 10, 2005
<hr/> <i>/s/</i> ANDREW B. BALSON <hr/> Andrew B. Balson	Director	January 10, 2005
<hr/> <i>/s/</i> DENNIS F. HIGHTOWER <hr/> Dennis F. Hightower	Director	January 10, 2005
<hr/> <i>/s/</i> MARK E. NUNNELLY <hr/> Mark E. Nunnely	Director	January 10, 2005
<hr/> <i>/s/</i> ROBERT M. ROSENBERG <hr/> Robert M. Rosenberg	Director	January 10, 2005