

BIGLARI HOLDINGS INC.
Form S-3/A
April 17, 2013

As filed with the Securities and Exchange Commission on April 15, 2013
Registration No. 333-186452

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

Amendment No. 2
to
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BIGLARI HOLDINGS INC.
(Exact Name of Registrant as Specified in Its Charter)

INDIANA
(State or Other Jurisdiction of
Incorporation or Organization)

37-0684070
(I.R.S. Employer Identification Number)

17802 IH 10 WEST, SUITE 400
SAN ANTONIO, TEXAS 78257
(Address, Including Zip Code, and Telephone Number, Including Area Code,
of Registrant's Principal Executive Offices)

SARDAR BIGLARI
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
BIGLARI HOLDINGS INC.
17802 IH 10 WEST, SUITE 400
SAN ANTONIO, TEXAS 78257
(210) 344-3400
(Name, Address, Including Zip Code, and Telephone Number,
Including Area Code, of Agent For Service)

Copy to:
STEVE WOLOSKY, ESQ.
OLSHAN FROME WOLOSKY LLP
PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022
(212) 451-2300

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Approximate date of commencement of proposed sale to the public: as soon as practicable after the effectiveness of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, 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 earlier registration statement for the same offering.

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.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462 (e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company) 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 WHICH 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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The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, dated April 15, 2013

PROSPECTUS

BIGLARI HOLDINGS INC.

[] SHARES OF COMMON STOCK
 [] SUBSCRIPTION RIGHTS

We are offering at no cost to you, as a holder of our common stock, transferable rights to purchase our common stock. If you own common stock on April __, 2013, the record date, you will be entitled to receive one right per share that you own. Every [] rights will entitle you to subscribe for one common share. The subscription price will be \$[] per whole share. This price represents approximately a []% discount from the selling price of our common stock as of April __, 2013, which was \$[] per share. Shareholders on the record date who fully exercise those distributed rights will also be entitled to purchase additional shares of common stock not purchased by other rights holders through their basic subscription privileges. The rights will be evidenced by Subscription Certificates and will expire at 5:00 p.m. New York City time on [], 2013, unless extended. We reserve the right to terminate the rights offering at any time for any reason prior to the expiration date.

We expect the rights will be quoted on the New York Stock Exchange (“NYSE”) under the symbol “[]”. Our common stock is quoted on the NYSE under the symbol “BH.”

Our principal executive offices are located at 17802 IH 10 West, Suite 400, San Antonio, Texas 78257. Our telephone number is (210) 344-3400.

AN INVESTMENT IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. CONSIDER CAREFULLY THE RISK FACTORS BEGINNING ON PAGE 3 OF THIS PROSPECTUS.

	Price Per Share	Proceeds to Biglari Holdings Inc.
Offering Price to Shareholders	\$[]	\$[] (1)

(1) Assumes all rights are subscribed. Before deduction of estimated expenses of \$[], including accounting fees, printing expenses and other miscellaneous expenses.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is April __, 2013.

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PROSPECTUS SUMMARY

This summary highlights important features of this offering and the information included or incorporated by reference in this prospectus. This summary does not contain all of the information that you should consider before investing in our common stock. You should read the entire prospectus carefully, especially the risks of investing in our common stock discussed under “Risk Factors.”

Unless the context otherwise requires, all references to “Biglari Holdings,” “the Company,” “we,” “us,” or “our” in this prospectus refer collectively to Biglari Holdings Inc., an Indiana corporation, and its subsidiaries.

Basic Subscription Privilege We will distribute to the holders of record of our common stock at the close of business on April __, 2013, at no charge, one transferable subscription right for each share of common stock owned. Every [] rights will entitle the holder to subscribe for one share of common stock.

Oversubscription Privilege Shareholders on the record date who fully exercise the rights distributed to them will also be entitled to subscribe for and purchase additional shares of common stock not purchased by other rights holders through their basic subscription privileges. The maximum number of shares you may purchase under the oversubscription privilege is equal to the number of shares you purchased under the basic subscription privilege.

You will be entitled to exercise your oversubscription privilege only if you are a shareholder on the record date and exercise your basic subscription privilege in full. The number of shares of common stock remaining after the exercise of all basic subscription privileges may not be sufficient to satisfy all requests for common stock pursuant to oversubscription privileges. In this event, you will be allocated additional common stock pro rata, based on the number of shares of common stock you purchased through the basic subscription privilege in proportion to the total number of common stock that you and other oversubscribing shareholders purchased through the basic subscription privilege.

Subscription Price \$[] in cash per share.

Common Stock Outstanding after Rights Offering Assuming all rights are exercised, including those from the oversubscription privilege, an aggregate of approximately [] shares will be sold. Since fractional shares will not be issued, this amount may be increased, if necessary, to accommodate rights holders that may purchase an additional share in lieu of receiving a fractional share.

Transferability of Rights

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The rights are transferable, excluding oversubscription privileges, until the opening of trading on the expiration date. The rights are expected to be authorized for trading on the NYSE. Trading of the rights will be conducted on a regular-way basis from April __, 2013 through the opening of trading on the expiration date. Any commissions in connection with the sale of rights will be paid by the selling rights holder. We cannot assure you a market for the rights will develop, or of the prices at which rights may be sold if a market does develop.

Record Date April __, 2013.

Expiration Time [], 2013, at 5:00 p.m., New York City time, unless extended.

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Procedure for Exercising Rights	<p>If you want to exercise rights you must properly complete and sign the Subscription Certificate evidencing the rights. You must forward the Subscription Certificate, with full payment, to the subscription agent at or prior to the expiration time.</p> <p>YOU MAY NOT REVOKE AN EXERCISE OF RIGHTS UNLESS WE MAKE A SIGNIFICANT AMENDMENT TO THE TERMS OF THE OFFERING AFTER YOU HAVE EXERCISED.</p>
Issuance of Common Stock	<p>We will deliver to you certificates representing common stock purchased upon exercise of the basic subscription and oversubscription privileges as soon as practicable after the expiration date. We anticipate this date to be approximately seven to 10 business days after the expiration date.</p>
Use of Proceeds	<p>The net cash proceeds from the sale of the common stock offered hereby, after payment of fees and expenses, are anticipated to be approximately \$[]. The net proceeds will be used for general corporate purposes as well as for making acquisitions or investments. We have not identified any acquisitions or investments for which we intend to use the offering proceeds.</p>
Risk Factors	<p>There are substantial risks in connection with this offering that should be considered by you. See “Risk Factors.”</p>
Amendment, Extension or Termination of Rights Offering	<p>We reserve the right, in our discretion, to: (a) amend or modify the terms of this rights offering; (b) extend the expiration time to a later date; and (c) terminate the rights offering at any time for any reason.</p>
Intentions of the Company’s Directors	<p>Our Board of Directors advised us they intend to exercise the basic subscription privilege under rights received. They also might exercise their oversubscription privilege with respect to additional shares that become available for purchase. The expressed intention of the directors does not constitute a binding obligation on their part.</p>
Our Business	<p>We are a diversified holding company engaged in a number of diverse business activities. Our most important operating subsidiaries are involved in the franchising and operating of restaurants. We are led by Sardar Biglari, Chairman and Chief Executive Officer of Biglari Holdings, Biglari Capital Corp. (“Biglari Capital”), Steak n Shake Operations, Inc. (“Steak n Shake”), and Western Sizzlin Corporation (“Western”). Our long-term objective is to maximize per-share intrinsic value of the Company. Our strategy is to reinvest cash generated</p>

from our operating subsidiaries into any investments with the objective of achieving high risk-adjusted returns. All major operating, investment, and capital allocation decisions are made for the Company and its subsidiaries by Sardar Biglari, Chairman and Chief Executive Officer.

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RISK FACTORS

AN INVESTMENT IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. THE FOLLOWING RISK FACTORS SHOULD BE CONSIDERED CAREFULLY IN ADDITION TO THE OTHER INFORMATION IN THIS PROSPECTUS, INCLUDING THE INFORMATION UNDER “SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS,” BEFORE MAKING AN INVESTMENT IN OUR COMMON STOCK.

Risks Related to this Offering

The subscription price is not an indication of the value of our common stock. You may not be able to sell common stock purchased upon the exercise of your subscription rights at a price equal to or greater than the subscription price.

The subscription price per share of our common stock does not necessarily bear any relationship to any established criteria for valuation such as book value per share, cash flows, or earnings. As a result, you should not consider the subscription price as an indication of the current value of our common stock. We cannot assure you that you will be able to sell common stock purchased in this offering at a price equal to or greater than the subscription price.

This offering may cause the price of our common stock to decrease immediately, and this decrease may continue.

The subscription price per share represents a discount of approximately []% from \$[], the average of the closing sales prices of our common stock over the 31-trading day period ended [], 2013 and a discount of approximately []% from \$[], the closing price of our common stock on April __, 2013. This discount, along with the number of shares of common stock we propose to issue and ultimately will issue if this offering is completed, may result in an immediate decrease in the market value of our common stock. This decrease may continue after the completion of this offering.

You may suffer dilution of your percentage of ownership of our common stock.

If you do not exercise your subscription rights and shares of common stock are purchased by other shareholders in this offering, your proportionate voting and ownership interest will be reduced. The percentage that your original shares of common stock represents of our expanded equity after exercise of the subscription rights will also be diluted. For example, if you own 10,000 shares of common stock before this offering, or approximately 0.7% of our outstanding common stock, and you exercise none of your subscription rights while all other subscription rights are exercised by other shareholders, your percentage ownership would be reduced to approximately [____]%. The magnitude of the reduction of your percentage ownership will depend upon the number of shares of common stock you hold and the extent to which you and others exercise subscription rights.

Once you exercise your subscription rights, you may not revoke the exercise even if there is a decline in the price of our common stock or if we decide to extend the expiration date of the subscription period.

The public trading market price of our common stock may decline after you elect to exercise your subscription rights. If that occurs, you will have committed to buy our common stock at a price above the prevailing market price. You will have an immediate unrealized loss. We may also, in our sole discretion, extend the expiration date of the subscription period. During any potential extension of time, the value of our common stock may decline below the subscription price. This may result in a loss on your investment upon the exercise of rights to acquire our common stock. If the expiration date is extended after you send in your subscription forms and payment, you still may not revoke or change your exercise of rights. We cannot assure you that following the exercise of subscription rights you will be able to sell your common stock at a price equal to or greater than the subscription price.

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You will not receive interest on subscription funds returned to you.

If we cancel this offering or if we are not able to fulfill your full oversubscription, we will not have any obligation with respect to the subscription rights except to return to you, without interest, any subscription payments and/or oversubscription payments you made that were not used to purchase common stock.

You need to act promptly and follow subscription instructions, otherwise your subscription may be rejected.

Shareholders who desire to purchase common stock in this offering must act promptly to ensure that all required forms and payments are actually received by the subscription agent prior to 5:00 p.m., New York City time, on the expiration date. If you fail to complete and sign the required subscription forms, send an incorrect payment amount, or otherwise fail to follow the subscription procedures that apply to your desired transaction, the subscription agent may reject your subscription or accept it to the extent of the payment received. Neither we nor our subscription agent undertakes to contact you concerning, or attempt to correct, an incomplete or incorrect subscription form or payment. We have the sole discretion to determine whether a subscription exercise properly follows the subscription procedures.

You may not receive all of the common stock for which you oversubscribe.

If an insufficient number of shares of common stock is available to fully satisfy all oversubscription privilege requests, the available common stock will be distributed proportionately among the eligible rights holders who exercised their oversubscription privilege based on the number of shares of common stock each such rights holder subscribed for under the basic subscription privilege.

You may not want to exercise your rights as the proceeds of this offering may be used to make acquisitions or investments that you may not have the opportunity to approve.

We expect that the net proceeds from this offering will be used for general corporate purposes as well as for making acquisitions or investments. We have not identified any acquisitions or investments for which we intend to use the offering proceeds. If you exercise your rights, you may not have an opportunity to evaluate the specific merits or risks of any potential future acquisitions or investments. As a result, you may be entirely dependent on our broad discretion and judgment in the selection of potential future acquisitions and investments.

Neither we, nor the subscription agent, will have any obligation to you if this offering is canceled, other than to refund your subscription payments, without interest.

Neither we, nor the subscription agent, will have any obligation to you if this offering is canceled, other than to refund your subscription payments, without interest.

If you sell your subscription rights, you may not be able to calculate your gain for tax purposes at the time of your sale.

A holder that sells subscription rights will recognize capital gain or loss depending on the amount realized upon the sale and the holder's tax basis (if any) in the subscription rights. If either (i) the fair market value of the subscription rights on the date such subscription rights are distributed is equal to at least 15% of the fair market value on such date of the common stock with respect to which the subscription rights are received, or (ii) the holder irrevocably elects to allocate part of the tax basis of such common stock to the subscription rights, then the holder's tax basis in the common stock will be allocated between the common stock and the subscription rights in proportion to their respective fair market values on the date the subscription rights are distributed. We intend to notify the holders whether the fair

market value of the subscription rights will equal or exceed 15% of the fair market value of the common stock to which the subscription rights relate as well as the fair market value of those subscription rights. However, such notification will be made by written communication that will be included with the share certificates that are mailed to those holders who exercise their subscription rights. It will not be available at the time of the sale of a holder's subscription rights. A selling holder's holding period in the subscription rights will include the holding period of the common stock in respect of which the rights were received. The holding period will not be affected by the allocation of tax basis described above.

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In the absence of a dual class structure of our common stock, we anticipate conducting additional rights offerings in the future.

We have postponed a special meeting to implement a dual class structure of our common stock and thus gain increased flexibility in structuring acquisitions and financing transactions. In the absence of a dual class structure, we intend to conduct a rights offering as an alternative means of financing future acquisitions or investments to augment our growth. If we are unable to effectuate a dual class structure to facilitate potential future acquisitions, we would expect to conduct additional rights offerings for this purpose. However, we have no current intentions to do so. While we cannot predict the terms of any future rights offerings, we would expect that any future rights offerings would present risks similar to those stated above.

Risks Relating to Our Business

We are dependent on our Chairman and CEO.

Our success depends on the services of Sardar Biglari, Chairman and Chief Executive Officer. All major operating, investment, and capital allocation decisions are made for the Company and its subsidiaries by Sardar Biglari, Chairman and Chief Executive Officer. Moreover, certain counterparties have requested and obtained a provision in their agreements with the right to terminate in the event Mr. Biglari ceases to be our Chairman and Chief Executive Officer. If for any reason the services of Mr. Biglari were to become unavailable, there could be a material adverse effect on our business.

Competition.

Each of our operating businesses faces intense competitive pressure within the markets in which they operate. Competition may arise domestically as well as internationally. While we manage our businesses with the objective of achieving long-term sustainable growth by developing and strengthening competitive advantages, many factors, including market changes, may erode or prevent the strengthening of competitive advantages. Accordingly, future operating results will depend to some degree on whether our operating units are successful in protecting or enhancing their competitive advantages. If our operating businesses are unsuccessful in these efforts, our periodic operating results may decline from current levels in the future.

The restaurant business is one of the most competitive industries in the United States. As there are virtually no barriers to entry into the restaurant business, competitors may include national, regional and local establishments. There may be established competitors with financial and other resources that are greater than the capabilities of the Company's restaurant operations segment, which includes Steak n Shake and Western ("Restaurant Operations"). Restaurant businesses compete on the basis of price, menu, food quality, location, personnel and customer service. The restaurant business is often affected by changes in consumer tastes and by national, regional, and local economic conditions. The performance of individual restaurants may be impacted by factors such as traffic patterns, demographic trends, severe weather conditions, and competing restaurants. Additional factors that may adversely affect the restaurant industry include, but are not limited to, food and wage inflation, safety, and food-borne illness.

Unfavorable economic societal and political conditions could hurt our operating businesses.

Our operating businesses are subject to normal economic cycles affecting the economy in general or the industries in which we operate. To the extent that the recovery from the economic recession continues to be slow or the economy worsens for a prolonged period of time, one or more of our significant operations could be materially harmed. In addition, we depend on having access to borrowed funds through the capital markets at reasonable rates. To the extent that access to the credit is restricted or the cost of funding increases, our business could be adversely affected.

Historically, we have not derived any of our revenues or earnings from international markets. As a result of our intended international expansion, we may become subject to increased risks from unstable political conditions and civil unrest. Further, terrorism activities deriving from unstable conditions or acts intended to compromise the integrity or security of our computer networks and information systems could produce losses to our international operations, as well as our operations based in the United States. Our business operations could be adversely affected directly through the loss of human resources or destruction of production facilities and information systems.

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The restaurant industry has been affected by economic factors, including the deterioration of national, regional and local economic conditions, declines in employment levels, and shifts in consumer spending patterns. The disruptions experienced in the overall economy and volatility in the financial markets have reduced, and may continue to reduce, consumer confidence in the economy, negatively affecting consumer restaurant spending, which could be harmful to our financial position and results of operations. As a result, decreased cash flow generated from our business may adversely affect our financial position and our ability to fund our operations. In addition, macroeconomic disruptions could adversely impact the availability of financing for our franchisees' expansions and operations.

Our cash flows and financial position could be negatively impacted if we are unable to comply with the restrictions and covenants in Steak n Shake's debt agreements.

The Company's subsidiaries currently maintain debt instruments, including Steak n Shake's credit agreement, dated as of September 25, 2012, with the lenders party thereto (the "Credit Facility"). Covenants in the debt agreements impose operating and financial restrictions, including requiring operating subsidiaries to maintain certain financial ratios and thereby restricting, among other things, their ability to incur additional indebtedness and make distributions to the Company. Their failure to comply with these covenants and restrictions could constitute an event of default that, if not cured or waived, could result, among other things, in the acceleration of their indebtedness, which could negatively impact our operations and business and may also significantly affect our ability to obtain additional or alternative financing. In such event, our cash flows may not be sufficient to fully repay this indebtedness and we cannot assure you that we would be able to refinance or restructure this debt. In addition, the restrictions contained in these debt instruments could adversely affect our ability to finance our operations, acquisitions or investments.

Steak n Shake's ability to make payments on the Credit Facility and to fund operations depends on its ability to generate cash, which is subject to general economic, financial, competitive, regulatory and other factors that are beyond our control. Steak n Shake may not generate sufficient cash flow from operations to service this debt or to fund its other liquidity needs.

We may be required to recognize additional impairment charges on our long-lived assets and goodwill, which would adversely affect our results of operations and financial position.

Long-lived assets, including restaurant sites, leasehold improvements, other fixed assets, and amortized intangible assets are reviewed for impairment annually or more frequently if circumstances indicate impairment may have occurred. Expected cash flows associated with an asset over its estimated useful life are the key factor in determining the recoverability of the carrying value of the asset. The estimate of cash flows is based upon, among other things, certain assumptions about expected future operating performance. Management's estimates of undiscounted cash flows may differ from actual cash flows due to, among other things, changes in economic conditions, changes to our business model or changes in operating performance. If the sum of the estimated undiscounted cash flows over an asset's estimated useful life is less than the carrying value of the asset, we recognize an impairment loss, measured as the amount by which the carrying value exceeds the fair value of the asset.

We periodically evaluate our goodwill to determine whether all or a portion of their carrying values may no longer be recoverable, in which case a charge to income may be necessary. Estimated fair values developed based on our assumptions and judgments might be significantly different if other reasonable assumptions and estimates were to be used. If estimated fair values are less than the carrying values of goodwill in future impairment tests, or if significant impairment indicators are noted relative to other intangible assets subject to amortization, we may be required to record impairment losses against future income. Any future evaluations requiring an impairment of our goodwill and other intangible assets could materially affect our results of operations and shareholders' equity in the period in which the impairment occurs.

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Judgments made by management related to the expected useful lives of long-lived assets and our ability to realize undiscounted cash flows in excess of the carrying amounts of such assets are affected by factors such as the ongoing maintenance and improvements of the assets, changes in economic conditions and changes in operating performance. As the ongoing expected cash flows and carrying amounts of long-lived assets are assessed, these factors could cause us to realize a material impairment charge. If assets are determined to be impaired, the determination of an asset's fair value, which is generally measured by discounting estimated future cash flows, is also subject to significant judgment, including the determination of a discount rate that is commensurate with the risk inherent in the projected cash flows. If the assumptions underlying these judgments change in the future, we may be required to realize further impairment charges for these assets.

Fluctuations in commodity and energy prices and the availability of commodities, including beef, fried products, poultry, and dairy, could affect our restaurant business.

The cost, availability and quality of ingredients Restaurant Operations use to prepare their food is subject to a range of factors, many of which are beyond their control. A significant component of our restaurant business' costs is related to food commodities, including beef, fried products, poultry, and dairy products, which can be subject to significant price fluctuations due to seasonal shifts, climate conditions, industry demand, changes in international commodity markets, and other factors. If there is a substantial increase in prices for these food commodities, our results of operations may be negatively affected. In addition, our restaurants are dependent upon frequent deliveries of perishable food products that meet certain specifications. Shortages or interruptions in the supply of perishable food products caused by unanticipated demand, problems in production or distribution, disease or food-borne illnesses, inclement weather, or other conditions could adversely affect the availability, quality, and cost of ingredients, which would likely lower revenues, damage our reputation, or otherwise harm our business.

Our historical growth rate and performance may not be indicative of our future growth or financial results.

Our historical growth must be viewed in the context of the recent opportunities available to us as a result of our access to capital at a time when market conditions resulted in unprecedented asset acquisition opportunities. When evaluating our historical growth and prospects for future growth, it is also important to consider that while our business philosophy has remained relatively constant, our mix of business, distribution channels and areas of focus have changed and may continue to change. Our dynamic business model makes it difficult to assess our prospects for future growth.

The inability of Restaurant Operations' franchisees to operate profitable restaurants may negatively impact our financial performance.

Restaurant Operations operate franchise programs and collect royalties and marketing and service fees from their franchisees. Growth within the existing franchise base is dependent upon many of the same factors that apply to our Restaurant Operations' company-operated restaurants, and sometimes the challenges of opening profitable restaurants prove to be more difficult for the franchisees. For example, franchisees may not have access to the financial or management resources that they need to open or continue operating the restaurants contemplated by their franchise agreements. In addition, our Restaurant Operations' continued growth is also partially dependent upon our ability to find and retain qualified franchisees in new markets, which may include markets in which the Steak n Shake and Western brands are less well known. Furthermore, the loss of any of franchisees due to financial concerns and/or operational inefficiencies could impact our Restaurant Operations' profitability. Moreover, if our franchisees do not successfully operate or market restaurants in a manner consistent with our standards, our restaurant brands' reputations could be harmed, which in turn could adversely affect our business and operating results.

Adverse weather conditions or losses due to casualties could negatively impact our operating performance.

Property damage caused by casualties and natural disasters, instances of inclement weather, flooding, hurricanes, fire, and other acts of nature can adversely impact sales in several ways. Many of Steak n Shake's and Western's restaurants are located in the Midwest and Southeast portions of the United States. During the first and second fiscal quarters, restaurants in the Midwest may face harsh winter weather conditions. During the first and fourth fiscal quarters, restaurants in the Southeast may experience hurricanes or tropical storms. Our sales and operating results may be negatively affected by these harsh weather conditions, which could make it more difficult for guests to visit our restaurants, necessitate the closure of restaurants for a period of time or costly repairs due to physical damage or lead to a shortage of employees resulting from unsafe road conditions or an evacuation of the general population.

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We are subject to health, employment, environmental, and other government regulations, and failure to comply with existing or future government regulations could expose us to litigation or penalties, damage our reputation, and lower profits.

We are subject to various federal, state, and local laws and regulations affecting our business. Changes in existing laws, rules and regulations applicable to us, or increased enforcement by governmental authorities, may require us to incur additional costs and expenses necessary for compliance. If we fail to comply with any of these laws, we may be subject to governmental action or litigation, and our reputation could be accordingly harmed. Injury to our reputation would, in turn, likely reduce revenues and profits.

The development and construction of restaurants is subject to compliance with applicable zoning, land use, and environmental regulations. Difficulties in obtaining, or failure to obtain, the required licenses or approvals could delay or prevent the development of a new restaurant in a particular area.

In recent years, there has been an increased legislative, regulatory, and consumer focus on nutrition and advertising practices in the food industry. As a result, Restaurant Operations may become subject to regulatory initiatives in the area of nutrition disclosure or advertising, such as requirements to provide information about the nutritional content of our food products, which could increase expenses. The operation of the Steak n Shake and Western franchise system is also subject to franchise laws and regulations enacted by a number of states, and to rules promulgated by the U.S. Federal Trade Commission. Any future legislation regulating franchise relationships may negatively affect our operations, particularly our relationship with franchisees. Failure to comply with new or existing franchise laws and regulations in any jurisdiction or to obtain required government approvals could result in a ban or temporary suspension on future franchise sales. Further national, state and local government initiatives, such as mandatory health insurance coverage, “living wage” or other proposed increases in minimum wage rates could adversely affect our business.

Our investment activities may involve the purchase of securities on margin.

We may purchase securities on margin in connection with our investment activities, including through Western Acquisitions, L.P. and The Lion Fund, L.P. (the “Lion Fund”). If we do so, a significant decrease in the value of the securities that collateralize the margin line of credit could result in a margin call. If we do not have sufficient cash available from other sources in the event of a margin call, we may be required to sell those securities at a time when we prefer not to sell them, which could result in material losses.

We are subject to the risk of possibly becoming an investment company under the Investment Company Act of 1940.

Because we are a holding company and a significant portion of our assets may, from time to time, consist of investments in companies in which we own less than a 50% interest, we run the risk of inadvertently becoming an investment company, which would require us to register under the Investment Company Act of 1940, as amended (the “Investment Company Act”). Registered investment companies are subject to extensive, restrictive and potentially adverse regulations relating to, among other things, operating methods, management, capital structure, dividends and transactions with affiliates. Registered investment companies are not permitted to operate their business in the manner in which we operate our business, nor are registered investment companies permitted to have many of the relationships that we have with our affiliated companies.

To avoid becoming and registering as an investment company under the Investment Company Act, we monitor the value of our investments and structure transactions accordingly. As a result, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions due to those concerns. In addition, events beyond our control, including

significant appreciation or depreciation in the market value of certain of our publicly traded holdings or adverse developments with respect to our ownership of certain of our subsidiaries, could result in our inadvertently becoming an investment company. If it were established that we were an investment company, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the Securities and Exchange Commission (the "SEC"), that we would be unable to enforce contracts with third parties or that third parties could seek to obtain rescission of transactions with us undertaken during the period it was established that we were an unregistered investment company.

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Our investments are unusually concentrated and fair values are subject to a loss in value.

Our investments are generally concentrated in common stocks. A significant decline in the major values of our larger investments may produce a large decrease in our consolidated shareholders' equity and can have a material adverse effect on our consolidated book value per share. Under certain circumstances, significant declines in the fair values of these investments may require the recognition of losses in the statement of earnings.

We may not be able to adequately protect our intellectual property, which could decrease the value of our brand and products.

The success of our business depends on the continued ability to use the existing trademarks, service marks, and other components of our brand to increase brand awareness and further develop branded products. While we take steps to protect our intellectual property, our rights to our trademarks could be challenged by third parties or our use of these trademarks may result in liability for trademark infringement, trademark dilution, or unfair competition, adversely affecting our profitability. We may also become subject to these risks in the international markets in which we plan to operate.

Litigation could have a material adverse effect on our financial position, cash flows and results of operations.

We are or may be from time to time a party to various legal actions, investigations and other proceedings brought by employees, consumers, suppliers, shareholders, government agencies or other third parties in connection with matters pertaining to our business, including related to our investment activities. The outcome of such matters is often difficult to assess or quantify and the cost to defend future proceedings may be significant. Even if a claim is unsuccessful or is not fully pursued, the negative publicity surrounding any negative allegation regarding our Company, our business or our products could adversely affect our reputation. While we believe that the ultimate outcome of routine legal proceedings individually and in the aggregate will not have a material impact on our financial position, we cannot assure that an adverse outcome on, or reputational damage from, any of these matters would not, in fact, materially impact our business and results of operations for the period when these matters are completed or otherwise resolved.

Certain agreements with our Chairman and CEO may deter third parties from acquiring us.

We have entered into a license agreement with Sardar Biglari, Chairman and Chief Executive Officer, under which Mr. Biglari has granted the Company an exclusive license to use his name when connected to the provision of certain products and services. In the event of a change of control of the Company, Mr. Biglari would be entitled to receive revenue-based royalty payments related to the usage of his name under the terms of the license agreement for a defined period of no less than five years. In addition, we have an incentive agreement with Mr. Biglari, in which he is entitled to receive performance-based annual incentive payments contingent on the growth of the Company's adjusted book value in each fiscal year. In the event of a change in Control after the third anniversary of the Incentive Agreement, Mr. Biglari would receive specified payments thereunder. The combination of these provisions along with others referenced (e.g., contracts cancellable if Mr. Biglari is no longer Chairman and CEO) together could have the effect of preventing a transaction involving a change of control of the Company or deterrence of a potential proxy contest.

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SELECTED CONSOLIDATED FINANCIAL DATA

The following table shows selected consolidated financial data. The selected consolidated financial data as of September 26, 2012 and September 28, 2011 and for our fiscal years ended 2012, 2011 and 2010 are derived from our audited consolidated financial statements incorporated by reference in this prospectus. The selected consolidated financial data as of September 29, 2010, September 30, 2009 and September 24, 2008 and for our fiscal years ended 2009 and 2008 are derived from our audited consolidated financial statements which are not incorporated by reference in this prospectus. The selected consolidated financial data as of December 19, 2012 and for each of the 12 weeks ended December 19, 2012 and December 21, 2011 are derived from our unaudited consolidated financial statements incorporated by reference in this prospectus. The selected consolidated financial data as of December 21, 2011 are derived from our unaudited consolidated financial statements which are not incorporated by reference in this prospectus. The selected consolidated financial data below should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes thereto contained in our annual and quarterly reports filed with the SEC, including those incorporated by reference in this prospectus.

Selected Financial Data

(dollars in thousands except per share data)	12 Weeks Ended	52 Weeks Ended	53 Weeks Ended	52 Weeks Ended
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