

FIESTA RESTAURANT GROUP, INC.

FORM 8-K (Current report filing)

Filed 11/27/13 for the Period Ending 11/26/13

Address	14800 LANDMARK BOULEVARD, SUITE 500 ADDISON, TX 75254
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CIK	0001534992
Symbol	FRGI
SIC Code	5812 - Eating Places
Industry	Restaurants
Sector	Services
Fiscal Year	12/31

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) November 26, 2013

Fiesta Restaurant Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35373
(Commission
File Number)

90-0712224
(I.R.S. Employer
Identification No.)

14800 Landmark Boulevard, Suite 500, Addison, Texas
(Address of principal executive offices)

75254
(Zip Code)

Registrant's telephone number, including area code (972) 702-9300

N/A
(Former name or former address, if changed since last report.)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13a-4(c))
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ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

On November 26, 2013, Fiesta Restaurant Group, Inc. (“Fiesta”) and The Bank of New York Mellon Trust Company, N.A., the trustee under the indenture (the “Existing Indenture”) governing Fiesta’s 8.875% Senior Secured Second Lien Notes due 2016 (the “Existing Notes”), entered into a supplemental indenture (the “Supplemental Indenture”) that amends the Existing Indenture. The amendments became operative when \$122,701,000 in aggregate principal amount of the Existing Notes that were validly tendered on or prior to 5:00 p.m. on November 25, 2013, the expiration of the consent solicitation period, were accepted for payment and paid for by Fiesta on November 26, 2013 pursuant to the terms of the previously announced tender offer for the Existing Notes, which has not yet expired. The amendments will, among other things, eliminate a significant portion of the restrictive covenants in the Existing Indenture, eliminate certain events of default and amend the number of days prior to any redemption date that Fiesta must send a notice of redemption. The elimination (or, in certain cases, amendment) of these restrictive covenants and other provisions permit Fiesta and its subsidiaries to, among other things, incur indebtedness, pay dividends or make other restricted payments, incur liens or make investments, in each case which otherwise may not have been permitted pursuant to the Existing Indenture. The amendments to the Existing Indenture are binding upon the holders of Existing Notes not tendered into the tender offer. The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Supplemental Indenture, which is attached hereto as Exhibit 4.1 and is incorporated by reference herein.

ITEM 8.01. OTHER EVENTS.

On November 26, 2013, Fiesta issued a press release announcing the amendment to the Existing Indenture, the entire text of which is attached as Exhibit 99.1 and is incorporated by reference herein.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits

- 4.1 Supplemental Indenture dated as of November 26, 2013 between Fiesta Restaurant Group, Inc. and The Bank of New York Mellon Trust Company, N.A.
- 99.1 Fiesta Restaurant Group, Inc. Press Release dated November 26, 2013

Signatures

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

FIESTA RESTAURANT GROUP, INC.

Date: November 27, 2013

By: /s/ Joseph A. Zirkman

Name: Joseph A. Zirkman

Title: Vice President, General Counsel and Secretary

SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE, dated as of November 26, 2013 (this “Supplemental Indenture”), by and between Fiesta Restaurant Group, Inc., a Delaware corporation (the “Issuer”), and The Bank of New York Mellon Trust Company, N.A., a national banking association, as Trustee (the “Trustee”) under the Indenture referred to below.

W I T N E S S E T H:

WHEREAS, the Issuer, the Subsidiary Guarantors named therein and the Trustee are parties to an Indenture, dated as of August 5, 2011 (as amended, supplemented, waived or otherwise modified, the “Indenture”), providing for the issuance of 8.875% Senior Secured Second Lien Notes due 2016 of the Issuer (the “Notes”);

WHEREAS, Section 9.2(a) of the Indenture provides that with the consent of the Holders of not less than a majority in aggregate principal amount of outstanding Notes, the Issuer, the Guarantors and the Trustee may enter into an indenture or indentures supplemental to the Indenture (together with other consents required thereby) for the purpose of adding any provisions to or changing in any manner or eliminating any provisions of the Indenture or the Notes or of modifying in any manner the rights of the Holders of the Notes under the Indenture, including the definitions therein;

WHEREAS, the consent of each Holder is not required to enact the amendments contained herein;

WHEREAS, pursuant to an Offer to Purchase and Consent Solicitation Statement dated November 12, 2013 (as amended or supplemented, the “Tender Offer”), the Issuer has offered to purchase any and all of the outstanding Notes and has proposed certain amendments to the Indenture and the Security Documents;

WHEREAS, the Holders of not less than a majority in aggregate principal amount of the outstanding Notes have tendered their Notes for purchase by the Issuer in connection with the Tender Offer and have approved the proposed amendments described in this Supplemental Indenture; and

WHEREAS, all acts and requirements necessary to make this a legal, valid and binding agreement of the Issuer have been done.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuer and the Trustee mutually covenant and agree for the benefit of the Holders of the Notes as follows:

ARTICLE I
AMENDMENTS TO INDENTURE

Section 1.01 Amendments .

a. Sections 4.3, 4.5, 4.7, 4.8, 4.9, 4.11, 4.12, 4.13, 4.16, 4.18, 4.19, 5.1 and 5.2, the first sentence of clause (a), clauses (a)(1)-(4), the first sentence of clause (b), (b)(1) and (b)(2) of Section 4.10, clauses (6), (7) and (8) of Section 6.1, the second paragraph of Section 6.2, the fourth paragraph of Section 7.7 and clause (b) of Section 11.6 of the Indenture are hereby deleted in their entirety.

b. The last sentence of Section 2.4 of the Indenture is hereby deleted in its entirety.

c. The first paragraph of Section 2.17 of the Indenture is hereby amended to delete the phrase “including Section 4.9” appearing in the first sentence thereof.

d. Section 3.3 of the Indenture is hereby amended to delete the words “30 but not more than 60 days” appearing in the first sentence thereof, and to insert the words “three (3) Business Days” between the words “least” and “before” appearing in the first sentence thereof.

e. Clause (a) of Section 3.7 of the Indenture is hereby amended to delete the words “30 nor more than 60 days” appearing thereof and to insert the words “three (3) Business Days” between the words “than” and “prior” appearing thereof, and clause (b) of Section 3.7 of the Indenture is hereby amended to delete the words “30 nor more than 60 days” appearing thereof and to insert the words “three (3) Business Days” between the words “than” and “notice” appearing thereof.

f. The first paragraph of Section 4.15 of the Indenture is hereby amended to delete the words “and Article V” and the phrase “as the case may be” appearing in the first sentence thereof.

g. The second paragraph of Section 4.17 of the Indenture is hereby amended to delete the phrase “Subject to Section 4.19,” appearing in the first sentence thereof.

h. The final paragraph of Section 6.1 of the Indenture is hereby amended to delete the words “Delivery of reports, information and documents to the Trustee under Section 4.3 is for informational purposes only and” appearing in the second sentence thereof.

i. The first paragraph of Section 6.2 of the Indenture is hereby amended to delete the phrase “(other than an Event of Default specified in clause (8) of Section 6.1 with respect to the Issuer)” appearing in the first sentence thereof.

j. The final paragraph of Section 6.2 of the Indenture is hereby amended to delete the first sentence thereof.

k. Section 8.3 of the Indenture is hereby amended to insert the word “and” before the word “4.17” appearing in the first sentence thereof, to delete the words “4.3,” “4.7, 4.8, 4.9,” “4.11, 4.12,” “4.16,” and “4.18, 4.19 and 5.1” appearing in the first sentence thereof and to delete the words “(6), (7)” appearing in the last sentence thereof.

1. The final paragraph of Section 11.5 of the Indenture is hereby amended to delete the words “and V” appearing therein.

m. Any terms defined in the Indenture which are used in any Section of the Indenture which are deleted by any Section of this Supplemental Indenture and which are not otherwise used in any Section of the Indenture not affected by this Supplemental Indenture are hereby deleted.

ARTICLE II
MISCELLANEOUS PROVISIONS

1. Governing Law. THIS SUPPLEMENTAL INDENTURE, THE INDENTURE AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT SUCH PRINCIPLES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

2. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby. The Trustee makes no representation or warranty as to the validity or sufficiency of this Supplemental Indenture. The recitals herein are deemed to be those of the Issuer and not of the Trustee.

3. Counterparts. The parties hereto may sign one or more copies of this Supplemental Indenture in counterparts, all of which together shall constitute one and the same agreement.

4. Headings. The section headings herein are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

FIESTA RESTAURANT GROUP, INC.

By: /s/ Joseph A. Zirkman
Name: Joseph A. Zirkman
Title: Vice President, General Counsel and
Secretary

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee

By: /s/ Michael Countryman
Name: Michael Countryman
Title: Vice President

FOR IMMEDIATE RELEASE

Investor Relations Contact:
Raphael Gross
203-682-8253
investors@frgi.com

Fiesta Restaurant Group, Inc. Receives the Requisite Consents Pursuant to its Tender Offer and Consent Solicitation for its Outstanding 8.875% Senior Secured Second Lien Notes Due 2016

Addison, TX – (Businesswire) – November 26, 2013 - Fiesta Restaurant Group, Inc. (“Fiesta” or the “Company”) (NASDAQ: FRGI), the owner, operator, and franchisor of the Pollo Tropical[®] and Taco Cabana[®] fast-casual restaurant brands, today announced that Fiesta has received the requisite tenders and consents from holders of its 8.875% Senior Secured Second Lien Notes due 2016 (the “Notes”) to amend the indenture governing such Notes. On November 12, 2013, Fiesta commenced its cash tender offer and consent solicitation relating to the Notes pursuant to an Offer to Purchase and Consent Solicitation Statement, dated November 12, 2013, and a related Consent and Letter of Transmittal, which more fully set forth the terms and conditions of the tender offer and consent solicitation. The consent solicitation expired at 5:00 p.m., New York City time, on Monday, November 25, 2013. Tenders may no longer be withdrawn and consents may no longer be revoked. Holders who tender after 5:00 p.m. New York City time, on Monday, November 25, 2013 will not be entitled to the consent payment. As of the expiration of the consent solicitation, holders of approximately \$122.7 million of Notes, representing 61.3% of the outstanding principal amount of the Notes, had tendered their Notes and consented to the proposed amendments to the indenture governing the Notes.

Fiesta and The Bank of New York Mellon Trust Company, N.A., the trustee under the indenture governing the Notes, have entered into a supplemental indenture that amends the indenture. The supplemental indenture became effective upon execution by Fiesta and The Bank of New York Mellon Trust Company, N.A. on November 26, 2013. The amendments became operative when the Notes that had been validly tendered on or prior to the expiration of the consent solicitation were accepted for payment and paid for by Fiesta pursuant to the terms of the tender offer on November 26, 2013. The amendments, among other things, eliminate a significant portion of the restrictive covenants, eliminate certain events of default and amend the number of days prior to any redemption date that Fiesta must send a notice of redemption. The amendments to the indenture are binding upon the holders of Notes not tendered into the tender offer.

The tender offer and consent solicitation, which expires at 12:01 a.m., New York City time, on December 11, 2013, continue to be subject to the satisfaction of certain conditions, including (i) the Financing Condition, which requires (a) the consummation of a public offering of up to \$100,000,000 of Fiesta’s common stock (including an option to purchase from Fiesta and certain selling stockholders up to a number of additional shares of Fiesta common stock equal to 15% of the number of Fiesta common stock offered by Fiesta in the public offering), which has been complied with; and (b) completion by Fiesta of a new senior secured revolving credit facility of Fiesta, which condition has been waived in connection with the payment for the tendered Notes; and (ii) the Documentation Condition, which requires that the supplemental indenture implementing the proposed amendments must have been executed.

Wells Fargo Securities, LLC is acting as dealer manager and solicitation agent for the tender offer and the consent solicitation. The tender agent and information agent for the tender offer is D.F. King & Co., Inc.

Questions regarding the tender offer and consent solicitation may be directed to Wells Fargo Securities, Liability Management Group, at (866) 309-6316 (toll free) or (704) 410-4760 (collect). Requests for copies of the Offer to Purchase and Consent Solicitation Statement or other tender offer materials may be directed to D.F. King & Co., Inc., telephone number (800) 431-9645 (toll free) and (212) 269-5550 (for banks and brokers) or by e-mail at fiesta@dfking.com.

This press release is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell the Notes. This press release also is not a solicitation of consents to the proposed amendments to the indenture. The tender offer and consent solicitation are being made solely by means of the tender offer and consent solicitation documents, including the Offer to Purchase and Consent Solicitation Statement, dated November 12, 2013, and the related Consent and Letter of Transmittal, that Fiesta is distributing to holders of Notes. The tender offer and consent solicitation are not being made to holders of Notes in any jurisdiction in which the making or acceptance thereof would not be in compliance with the securities, blue sky or other laws of such jurisdiction.

About Fiesta Restaurant Group, Inc.

Fiesta Restaurant Group, Inc. owns, operates and franchises the Pollo Tropical[®] and Taco Cabana[®] restaurant brands with 310 restaurants in the U.S and internationally as of September 29, 2013. The brands specialize in the operation of fast-casual, ethnic restaurants that offer distinct and unique flavors with broad appeal at a compelling value. Both brands feature made-from-scratch cooking, fresh salsa bars, and drive-thru service and catering. For more information about Fiesta Restaurant Group, Inc., visit the corporate website at www.frgi.com.

Forward-Looking Statements

Except for the historical information contained in this news release, the matters addressed are forward-looking statements. Forward-looking statements, written, oral or otherwise made, represent Fiesta's expectation or belief concerning future events. Without limiting the foregoing, these statements are often identified by the words "may," "might," "believes," "thinks," "anticipates," "plans," "expects", "intends" or similar expressions. In addition, expressions of Fiesta's strategies, intentions or plans, are also forward-looking statements. Such statements reflect management's current views with respect to future events and are subject to risks and uncertainties, both known and unknown. You are cautioned not to place undue reliance on these forward-looking statements as there are important factors that could cause actual results to differ materially from those in forward-looking statements, many of which are beyond Fiesta's control. Investors are referred to the full discussion of risks and uncertainties as included in Fiesta's filings with the Securities and Exchange Commission.