

HERSHEY CO
Form 8-K
July 28, 2006

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

July 26, 2006

Date of Report (Date of earliest event reported)

The Hershey Company

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

1-183

(Commission File Number)

23-0691590

(IRS Employer Identification No.)

100 Crystal A Drive, Hershey, Pennsylvania 17033

(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (717) 534-7628

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 240.13e-4(c))

INFORMATION TO BE INCLUDED IN REPORT

Item Entry Into a Material Definitive Agreement

1.01

On July 28, 2006, The Hershey Company (the "Company") announced that it has entered into an agreement ("Agreement") with Hershey Trust Company, as Trustee for the benefit of Milton Hershey School (the "Milton Hershey School Trust"), dated July 26, 2006, under which the Milton Hershey School Trust intends to continue to participate on a proportional basis in plans approved by the Company's Board of Directors ("Board") to repurchase the Company's outstanding Common Stock, par value one dollar per share ("Common Stock"). The Board had approved the repurchase of \$250 million of its Common Stock in April 2005, and in December 2005 approved the repurchase of an additional \$500 million of its Common Stock. The Company completed the April 2005 repurchase authorization in February, 2006, and expects to complete the December 2005 authorization by the end of 2006. The term of the Agreement will commence on July 31, 2006 and expire on February 2, 2007 (the "Term"). The parties, by mutual consent, may renew the Agreement for subsequent additional terms. This Agreement is a renewal of an existing agreement that commenced on January 30, 2006 and will expire on July 31, 2006.

Under the terms of the Agreement, the Milton Hershey School Trust will sell to the Company on a weekly basis during the Term the number of shares of Common Stock equal to the product of the aggregate number of shares of Common Stock the Company has purchased on the open market from persons other than the Milton Hershey School Trust during the preceding calendar week (the "Prior Week Shares") multiplied by .46. The purchase price for each weekly purchase will be the volume weighted average price ("VWAP") paid by the Company for the Prior Week Shares. The VWAP is calculated by dividing the total consideration paid by the Company, without taking commissions into account, for the Prior Week Shares by the Prior Week Shares, excluding any transaction involving the purchase of shares of Common Stock directly from affiliates of the Company. The Milton Hershey School Trust is not required to sell shares to the Company if the VWAP for the shares for such week is less than \$55 per share.

A copy of the Agreement is attached hereto and filed as Exhibit 10.1. The description of the Agreement contained herein is not complete and is qualified in its entirety by reference to the Agreement which is incorporated by reference herein.

The Milton Hershey School Trust owns approximately 31% of the Company's outstanding equity securities. As of June 30, 2006, the Milton Hershey School Trust owned 7.4% of the Company's Common Stock and 99.7% of the Company's Class B Common Stock outstanding. Based on these holdings, the Milton Hershey School Trust would be entitled to cast 79.2% of the votes entitled to be cast by holders of the Common Stock and Class B Common Stock voting together on matters to be voted on without regard to class.

Item Regulation FD

7.01

The Company issued a press release on July 28, 2006 announcing its entry into the Agreement with the Milton Hershey School Trust. A copy of that press release is attached hereto and furnished as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

10.1 Agreement dated July 26, 2006 between The Hershey Company and Hershey Trust Company, Trustee for the Benefit of Milton Hershey School

99.1 Press Release dated July 28, 2006

SIGNATURE

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, thereunto duly authorized.

Date: July 28, 2006

THE HERSHEY COMPANY

By: /s/ David J. West
David J. West
Senior Vice President, Chief Financial Officer

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EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 10.1 | Agreement dated July 26, 2006 between The Hershey Company and Hershey Trust Company, Trustee for the Benefit of Milton Hershey School |
| 99.1 | Press release dated July 28, 2006 |

