

CHURCHILL DOWNS INC
Form S-8
June 27, 2006

As filed with the Securities and Exchange Commission on June 27, 2006.

File No. 333-_____

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

Form S-8

**REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

CHURCHILL DOWNS INCORPORATED

(Exact name of registrant as specified in its charter)

Kentucky

61-0156015

(State or other jurisdiction
of incorporation or organization)

(I.R.S. Employer
Identification Number)

700 Central Avenue, Louisville, Kentucky 40208

(Address of Principal Executive
Offices)

(Zip Code)

Churchill Downs Incorporated 2004 Restricted Stock Plan

(Full title of plan)

Thomas H. Meeker
President and Chief Executive Officer
Churchill Downs Incorporated
700 Central Avenue
Louisville, Kentucky 40208

(Name and address of agent for service)

(502) 636-4400

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price per Share ⁽¹⁾ | Proposed Maximum Aggregate Offering Price ⁽¹⁾ | Amount of Registration Fee ⁽¹⁾ |
|--|-------------------------------|--|--|---|
| Common Stock, no par value and associated Preferred Share Purchase Rights ⁽²⁾ | 120,000 shares ⁽³⁾ | \$36.79 | \$4,414,800 | \$472.38 |

- (1) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457. The maximum offering price per share is based on the average of the high and low sale price of the Common Stock as reported by the Nasdaq National Market on June 21, 2006, pursuant to Rule 457(h).
- (2) The Preferred Share Purchase Rights, prior to the occurrence of certain events, are not evidenced separately from the Common Stock.
- (3) The Registrant also registers hereby such indeterminate number of additional shares as may be required to cover antidilutive adjustments under the Churchill Downs Incorporated 2004 Restricted Stock Plan.

Exhibit Index on Page 7.

EXPLANATORY NOTE

The 120,000 shares of Common Stock being registered pursuant to this registration statement (the "Registration Statement") are additional securities of the same class as other securities for which registration statement No. 333-116734 on Form S-8 was filed with the Securities and Exchange Commission (the "Commission") on June 22, 2004. Pursuant to General Instruction E to Form S-8, the contents of such earlier registration statement are incorporated by reference into this Registration Statement, except that the provisions contained in Part II of such earlier registration statement are modified as set forth in this Registration Statement.

On March 9, 2006, the Registrant's Board of Directors adopted a proposal to amend the 2004 Restricted Stock Plan (as amended, "Plan") to increase the aggregate number of shares of Common Stock available for issuance thereunder by 120,000 shares, which was approved by shareholders at the Annual Meeting of Shareholders on June 15, 2006. Accordingly, this Registration Statement is being filed to register the 120,000 additional shares of Common Stock.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates the following documents in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2005 and the portions of the Registrant's Proxy Statement for the 2006 Annual Shareholders' Meeting incorporated by reference therein.
- (b) Report on Form 10-Q for the fiscal quarter ended March 31, 2006.
- (c) The Registrant's Current Reports on Form 8-K filed January 5, 2006, March 10, 2006, April 3, 2006, June 8, 2006 and June 21, 2006.
- (d) The description of the Registrant's common stock, no par value (the "Common Stock"), which is contained in the Registrant's Current Report on Form 8-K filed December 14, 1998 and the Registrant's Current Report on Form 8-K filed July 29, 2005, pursuant to Section 13 of the Securities Exchange Act of 1934, and any amendment or report filed for the purpose of updating such description.
- (e) The description of the Registrant's Preferred Share Purchase Rights contained in the Registrant's Registration Statement on Form 8-A filed March 20, 1998, pursuant to Section 12(g) of the 1934 Act, as amended on Form 8-A/A filed June 30, 2000 and as amended on Form 8-A/A filed September 14, 2000.

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 which indicates that all of the shares of the Common Stock offered have been sold or which deregisters all of the shares of Common Stock then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Item 6. Indemnification of Directors and Officers.

Article XI of the Registrant's Amended and Restated Articles of Incorporation, as amended, limits the liability of directors of the Registrant pursuant to the Kentucky Business Corporation Act. Under this article, directors generally are personally liable to the Registrant or its shareholders for monetary damages only in transactions involving conflicts of interest or improper personal benefit for a director, intentional misconduct, violations of law, or unlawful distributions.

The Amended and Restated Bylaws of the Registrant require the Registrant to indemnify and hold harmless each director and officer and permit the Registrant to indemnify and hold harmless any other employee or agent of the Registrant who is, was or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal by reason of the fact that he is or was a director, officer, employee or agent of the Registrant, against all liability and loss suffered and expenses (including any obligation to pay a judgment, settlement, penalty or fine) incurred by such person to the fullest extent permitted by law.

The Amended and Restated Bylaws of the Registrant further provide that the Registrant shall pay expenses (including attorneys' fees) incurred by an officer or director in defending any proceeding in advance of its final disposition, provided, however, that the payment of such expenses shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it shall ultimately be determined that the person is not entitled to be indemnified.

The circumstances under which Kentucky law requires or permits a corporation to indemnify its directors, officers, employees and/or agents are set forth at KRS 271B.8-500, et seq. Generally, under KRS 271B.8-500 et seq., a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

(1) he conducted himself in good faith; and

(2) he reasonably believed

(a) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(b) in all other cases, that his conduct was at least not opposed to its best interests.

(3) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

A corporation may not indemnify a director:

- (1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
- (2) in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Indemnification permitted in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

In addition, the Registrant maintains directors' and officers' liability insurance covering certain liabilities which may be incurred by the directors and officers of the Registrant in connection with the performance of their duties.

Item 8. Exhibits.

The Exhibits listed on the Exhibit Index appearing on page 7 of this Registration Statement are hereby incorporated by reference.

/s/ Leonard S. Coleman, Jr. Director
Leonard S. Coleman, Jr.

/s/ Craig J. Duchossois Director
Craig J. Duchossois

/s/ Richard L. Duchossois Director
Richard L. Duchossois

/s/ Robert L. Fealy Director
Robert L. Fealy

/s/ J. David Grissom Director
J. David Grissom

/s/ Seth W. Hancock Director
Seth W. Hancock

/s/ Daniel P. Harrington Director
Daniel P. Harrington

/s/ G. Watts Humphrey, Jr. Director
G. Watts Humphrey, Jr.

/s/ Susan Elizabeth Packard Director
Susan Elizabeth Packard

/s/ Darrell R. Wells Director
Darrell R. Wells

INDEX TO EXHIBITS

| <u>Exhibit Number</u> | <u>Description of Exhibit</u> | <u>Page</u> |
|---------------------------|---|-------------|
| 4(a) | Amended and Restated Articles of Incorporation of the Registrant (incorporated herein by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed July 29, 2005) (Commission File No. 0-1469). | |
| 4(b) | Amended and Restated Bylaws of the Registrant (incorporated herein by reference to Exhibit 3(b) to the Registrant's Report on Form 10-K for the year ended December 31, 2005) (Commission File No. 0-1469). | |
| 4(c) | Specimen Stock Certificate (incorporated herein by reference to Exhibit 4(d) to the Registrant's Registration Statement on Form S-8, File No. 33-85012). | |
| 4(d) | Rights Agreement dated as of March 19, 1998, between the Registrant and Fifth Third Bank as Rights Agent (incorporated herein by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on March 20, 1998, Exhibit 4.1 to the Registrant's Registration Statement on Form 8-A/A filed June 30, 2000 and Exhibit 4.1 to the Registrant's Registration Statement on Form 8-A/A filed September 14, 2000) (Commission File No. 0-1469). | |
| 4(e) | 2004 Restricted Stock Plan, as amended (incorporated herein by reference to Exhibit 10.1 to the Registrant's Report on Form 8-K filed June 21, 2006) (Commission File No. 0-1469). | |
| 5 | Opinion and Consent of Wyatt, Tarrant & Combs, LLP as to the legality of the shares being registered. | 8 |
| 23(a) | Consent of Wyatt, Tarrant & Combs (contained in Exhibit 5). | |
| 23(b) | Consent of PricewaterhouseCoopers LLP. | 10 |
| 24 | Power of Attorney (precedes signatures). | |