

DENNYS CORP  
Form DEFA14A  
May 03, 2010

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

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a)  
of the Securities Exchange Act of 1934  
(Amendment No.    )

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

- |                                                                  |                                                    |
|------------------------------------------------------------------|----------------------------------------------------|
| <input type="radio"/> Preliminary Proxy Statement                | <input type="radio"/> Confidential, for Use of the |
| <input type="radio"/> Definitive Proxy Statement                 | Commission Only (as permitted by                   |
| <input checked="" type="radio"/> Definitive Additional Materials | Rule 14a-6(e)(2))                                  |
| <input type="radio"/> Soliciting Material Pursuant to            |                                                    |
| §240.14a-12                                                      |                                                    |

Denny's Corporation

(Name of Registrant as Specified In Its Charter)  
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ No fee required.
- ☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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- ☐ Fee paid previously with preliminary materials.

- o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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Denny's Corporation

Response to  
Dissident Arguments

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In its letter dated April 30, 2010, the dissident group continues to misrepresent the facts and make false allegations. The following slides are intended to address those latest claims and correct the misrepresentations they contain.

1

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5/1/2010

2

Dissident Arguments:

- a. Company is reducing franchise fees on  
Flying J units

\* THERE IS NO REDUCTION OF ANYTHING \*

Facts:

§ Denny's is NOT reducing any fees on the Flying J units  
§ Denny's has partnered with franchisees to establish two programs that will  
enable for the rapid conversion of the Flying J restaurant sites:

§ Denny's has coordinated third party financing

§ Denny's will allow franchisees who are opening multiple sites to pay their  
front end fees over six to twelve months

Dissidents Misrepresent the Facts

- b. Denny's has given a false impression of its

Free Cash Flow

§ Denny's has been consistent and transparent in how we present our EBITDA and

Free Cash Flow metrics

§ Our reported EBITDA metric is explicitly defined in our credit facility and therefore  
of importance to investors as they evaluate our covenant requirements

§ The GAAP measure of Cash Flow from Operations includes the negative cash flow  
impact from balance sheet runoff associated with the sale of restaurants without  
the positive benefit of the restaurant sale proceeds; in our measure both are  
excluded and reflect the ongoing cash flow of our new business model

§ In fact, it is the dissidents' selective use of 2001 and 2002 as part of their  
measuring period that distorts the fact that Denny's has been a strong cash flow  
generator, regardless of which methodology one uses

\* IT'S THE DEFINITION WE'VE USED IN ALL  
OUR PUBLIC RELEASES SINCE 2005 \*

Correcting the Facts

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5/1/2010

3

Dissident Arguments:

Facts:

d. Denny's management has rebuffed attempts for dialogue and cancelled a meeting with one of the Committee members at the Stifel Nicolaus Conference in March

c. Dissident activity has been the sole driver of our recent Stock Price appreciation

§ See attached pages in the appendix from our previously filed stockholder and proxy advisory presentations which highlight the positive trend following the Flying J announcement and our fourth quarter 2009 earnings release

§ Denny's did not attend the Stifel Nicolaus Conference where it was scheduled to meet with dissident group member, Soundpost Partners:

§ Denny's promptly sent a letter to Soundpost asking to reschedule and the following week management had a conference call with Jaime Lester of Soundpost Partners, a Committee member

§ The conversation focused on the Denny's IR presentation, with the exception of Mr. Lester asking if a change in control would trigger any debt covenants or executive compensation payment

§ Denny's management also returned Mr. Dash's 3/31/10 call and offered to set up a time to speak; but he never responded

Dissidents Misrepresent the Facts

**\* MAJORITY OF APPRECIATION OCCURRED  
AFTER FLYING J ANNOUNCEMENT AND Q4  
2009 EARNINGS RELEASE \***

**\* WE ARE STILL WAITING FOR MR.  
DASH TO CALL US BACK \***

e. The dissidents criticize the fact that Mr. Langford serves as a paid consultant to Denny's

§ Mr. Langford's work as a paid consultant to Denny's is well known by the franchisee community and had the consent of the DFA Board

§ The agreement is strongly supported by franchisees and is a direct outcome of the conversations that the Company and its franchisees had over the course of 2009

§ Mr. Langford has exceptional experience in restaurant operations and marketing and has been instrumental in helping address system-wide issues and improve communications and partnership between the Company and franchisees

**\* THE FRANCHISEES WANTED THIS  
ARRANGEMENT AND IT HAS WORKED  
VERY WELL FOR THEM AND THE  
COMPANY \***

Correcting the Facts

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Dissident Arguments:

Facts:

Dissidents Misrepresent the Facts

5/1/2010

f. The Chairman of the Denny's Franchisee Association (DFA) is not speaking on behalf of all franchisees

§ The Company and its franchisees have worked in a collaborative fashion to revitalize the Denny's brand and both parties agree that significant progress has been made

§ The dissidents continued misunderstanding of and lack of respect for the DFA demonstrates that they are ill-suited to serve on the Board of a company with a franchise-based business model

§ As with any association, it will never represent the exact views of every single member at every point in time, but it absolutely speaks on behalf of the Denny's franchisee community

\* THE CHAIRMAN OF THE DFA, AND ITS  
12 MEMBERS, REPRESENT 85% OF ALL  
FRANCHISED RESTAURANTS \*

g. Mr. Marchioli and Mr. Barber have an agreement in the works for Mr. Barber to take over the supply chain purchasing arm of Denny's

§ This is patently false and inaccurate and further illustrates the dissidents' disruptive efforts to promote dissension among the Company's franchisees and their lack of understanding about how a heavily franchised business model works

§ The concept of a Purchasing Cooperative is a standard one within a franchised business and is always on the table as a viable option and it will be considered and implemented if and when it proves to be in the best interest of the company, its franchisees, and its shareholders

§ Absolutely no decisions have been made regarding the Company's purchasing program and none will be made in the context of this proxy contest

§ Any decision regarding a Purchasing Cooperative would be made by the Company in the normal course of business

\* NO SUCH AGREEMENT EXISTS \*

Correcting the Facts

History of “Creeping Control” and  
Misrepresenting Intentions

Source: Company filings and publicly available information as of April 30, 2010. (1) Incorporated by reference to original 13-D.

Biglari Holdings  
(f.k.a. Steak n Shake)  
Western Sizzlin

“[Dissidents] are not seeking control  
of the Board of Directors at the  
Annual Meeting”

-Definitive Proxy Filing, 2/11/2008  
- Addt'l Solicitation material 2/21/2008

“[Dissidents are] seeking Board  
representation. Except as set  
forth above, the Reporting  
Persons have no present plans  
or intentions that would result  
in...any change in the present  
board of directors or  
management of the issuer.”(1)

- 11/10/2005 13-D

Denny's

“[Dissidents] are not seeking  
control of Denny's. In fact, as  
clearly disclosed in our proxy  
statement, we are only seeking  
minority representation on the  
board.”

- 4/30/2010 Fight Letter

?

Ø Only 1 of 9 original directors still on  
Board 2 years after Biglari  
nominated

Ø Biglari assumed Chair, CEO and  
President roles within 5 months of  
joining Board; eventually renamed  
the Company after himself

Ø Premium paid for control = 0%

Ø 6 of 9 directors resign on Biglari's  
nomination to the Board

Ø Dash appointed to the Board within a  
month

Ø In less than a year, Biglari usurps full  
control of all investment decisions

Ø Premium paid for control = 0%

Appendix

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Dissident Claims About Stock Price Performance are Misleading

Share Price Performance

Dissidents focused on 5-year period

ending Dec. 2009 when arguably...

Note: Peer group consists of Burger King, Bob Evans Farms, Buffalo Wild Wings, Cracker Barrel, O'Charley's, CKE Restaurants, California Pizza Kitchen, Domino's Pizza, Darden Restaurants, Brinker International, DineEquity, Jack in the Box, Panera Bread Company, Papa John's, Red Robin Gourmet Burgers, Ruby Tuesday, Steak n' Shake, Sonic, Texas Roadhouse and Wendy's/Arby's Group.

(1) As of 4/23/2010. Does not include reinvestment of dividends.

§ Last twelve months (April 2009 - April 2010); or

§ Since Nelson Marchioli appointed CEO (1/4/01)

In either case, DENN has significantly  
outperformed peers and overall market

3%

(7%)

(51%)

Last Twelve Months (April 2009 - April 2010) (1)

Dissidents Misrepresent the Facts

57%

24%

61%

Flying J

Announcement

13-D Filed

5/1/2010

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Source: Factset, Company filings and Wall Street equity research as of April 23, 2010.

Price

Volume

('000s)

Stock Price Performance

Last Twelve Months

61%

5/1/2010

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Timeline of Dissident Events

8/26/2009

Walsh calls

Denny's; typical

investor call

4/14/2010

Denny's 1st

Fight Letter

released

3/16/2010

Dissidents

release letter

outlining

arguments

against current

Denny's Board

1/21/2010

Dissidents file

first 13-D

3/2/2010

Dissidents

announce intent

to nominate 3

directors

8/27/2009

Oak Street and

Walsh begin to

accumulate

shares

January 2010

February

April

March

Dec.

Nov.

Oct.

Sept.

Aug.

2009

11/25/2009

Lyrical begins to

accumulate

shares

12/15/2009

Soundpost begins

to accumulate

shares

12/21/2009

Dash begins  
to accumulate  
shares  
1/13/2010  
Arbor begins  
to accumulate  
shares  
9/2009

Walsh calls several more  
times with questions; asks  
to speak with CEO (1)

(1) Denny's IR leadership used the same criteria in determining that the IR director, not the CEO, would remain the  
main point of contact with Oak Street.

10/2009  
David Makula  
leaves voicemail  
asking to speak to  
CEO. Denny's  
follow-up not  
returned

3/16/2010  
Denny's sends  
letter to Oak  
Street to open the  
door for  
conversation; no  
response

3/19/2010  
Denny's has  
conference call with  
Jaime Lester of  
Soundpost, who  
asked if a change in  
control would trigger  
any executive  
compensation or debt  
covenants

3/31/2010  
Jonathan Dash calls  
Rob Marks; call is  
returned by IR  
leadership and CFO,  
but no response from

Dash

For Over 5 Months (October to March) the Dissidents Did Not Reach Out And When They Did, It  
Was With Their Fight Letter

Our Attendance at 5 Conferences and Roadshows in 6 Cities From June 2009 Through January  
2010 Demonstrate That We Have Been Active and Accessible

5/1/2010



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Denny's Corporation urges caution in considering its current trends and any outlook on earnings disclosed in this presentation. In addition, certain matters discussed may constitute forward-looking statements. These forward-looking statements involve risks, uncertainties, and other factors that may cause the actual performance of Denny's Corporation, its subsidiaries and underlying restaurants to be materially different from the performance indicated or implied by such statements. Words such as "expects", "anticipates", "believes", "intends", "plans", "hopes", and variations of such words and similar expressions are intended to identify such forward-looking statements. Except as may be required by law, the

Company expressly disclaims any obligation to update these forward-looking statements to reflect events or circumstances after the date of this presentation or to reflect the occurrence of unanticipated events. Factors that could cause actual performance to differ materially from the performance indicated by these forward-looking statements include, among others:

the competitive pressures from within the restaurant industry; the level of success of the Company's operating initiatives, advertising and promotional efforts; adverse publicity; changes in business strategy or development plans; terms and availability of capital; regional weather conditions; overall changes in the general economy, particularly at the retail level; political environment (including acts of war and terrorism); and other factors from time to time set forth in the Company's SEC reports, including but not limited to the discussion in Management's Discussion and Analysis and the risks identified in Item

1A. Risk Factors contained in the Company's Annual Report on Form 10-K for the year ended December 30, 2009. The Company has filed with the Securities and Exchange Commission ("SEC") and mailed to its stockholders a definitive proxy statement in connection with its 2010 Annual Meeting of Stockholders. Stockholders are strongly advised to read the Company's definitive proxy statement and the accompanying WHITE proxy card before making any voting decisions. Stockholders may obtain copies of the Company's definitive proxy statement, any amendments or supplements to the proxy statement and other documents filed by the Company with the SEC in connection with its 2010 Annual Meeting of Stockholders free of charge at the SEC's website at [www.sec.gov](http://www.sec.gov), or on the Company's website at [www.dennys.com](http://www.dennys.com). The

Company, its directors and officers and certain employees may be deemed to be participants in the solicitation of proxies from stockholders in connection with the Company's 2010 Annual Meeting of Stockholders. Information concerning persons who may be considered participants in the solicitation of the Company's stockholders under the rules of the SEC is set forth in the

Company's definitive proxy statement filed with the SEC on April 8, 2010.

Forward Looking Statements &  
Solicitation Materials  
5/1/2010

