

COCA COLA CO
Form 8-K
May 31, 2007

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): **May 31, 2007 (May 24, 2007)**

THE COCA-COLA COMPANY

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-02217

(Commission
File Number)

58-0628465

(IRS Employer
Identification No.)

One Coca-Cola Plaza

Atlanta, Georgia

(Address of principal executive offices)

30313

(Zip Code)

Registrant's telephone number, including area code **(404) 676-2121**

Not Applicable

(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 (see General Instruction A.2. below):

- 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))

Item 1.01. Entry into a Material Definitive Agreement

The Coca-Cola Company, a Delaware corporation (TCCC), Mustang Acquisition Company, LLP, a Delaware limited liability partnership and a wholly-owned subsidiary of TCCC (Merger Sub), Energy Brands Inc. d/b/a Glaceau, a New York corporation (Glaceau), and J. Darius Bikoff (Bikoff) and Michael Repole, each solely in his capacity as, respectively, Initial Stockholder Representative and Substitute Stockholder Representative (as such terms are defined in the Merger Agreement), entered into an Agreement and Plan of Merger (the Merger Agreement), dated as of May 24, 2007, pursuant to which Merger Sub will merge (the Merger) with and into Glaceau with Glaceau surviving the Merger as a subsidiary of TCCC.

Under the terms of the Merger Agreement, TCCC will pay \$4,230,000,000 in cash, less the sum of (x) Glaceau s share of unpaid transaction expenses and (y) the amount by which \$130,000,000 exceeds the amount of cash held by Glaceau at the closing of the Merger, with respect to all of the outstanding shares of common stock of Glaceau and any options, warrants or other rights to acquire any securities of Glaceau.

The Merger Agreement contains customary representations and warranties, covenants and conditions, including the expiration of the applicable waiting period under the Hart-Scott-Rodino Act of 1976. Glaceau has advised TCCC that it has obtained the requisite stockholder approval for the Merger Agreement and the Merger.

The Merger Agreement provides for the indemnification of TCCC with respect to certain matters. Ten percent (10%) of the merger consideration will be held in escrow to satisfy indemnification claims. Indemnification for claims shall be limited to the extent to which claims exceed \$10,000,000, subject to certain exceptions. In addition, Bikoff has entered into a Supplemental Indemnity Agreement (the Supplemental Indemnity Agreement) whereby Bikoff has agreed personally to indemnify TCCC for damages in respect of certain representations contained in the Merger Agreement and in the event that it is determined that TCCC was defrauded in certain respects in connection with the representations, warranties, covenants and other agreements contained in the Merger Agreement, in each case, to the extent such claims are not satisfied from the escrow fund. With the exception of claims which may be made under the Supplemental Indemnity Agreement or claims for fraud, the funds held in escrow will be the exclusive source of recovery for TCCC with respect to any indemnification claim. Indemnification of TCCC under the Merger Agreement shall expire eighteen months following the closing of the Merger, except for certain limited indemnification rights which expire two years following the closing of the Merger. Indemnification of TCCC under the Supplemental Indemnity Agreement shall expire three years following the closing of the Merger.

TCCC has agreed, as set forth in a separate Roll-Over Agreement (the Roll-Over Agreement), to permit certain entities affiliated with The Tata Group (Tata) to exchange their shares of Glaceau common stock for partnership interests in Merger Sub immediately prior to the Merger, with the effect that, following the closing of the Merger, Tata will retain approximately 28.7% of the shares of common stock of the surviving company. Pursuant to a Put and Call Option Agreement (the Put/Call Agreement), such shares will be subject to a call by TCCC, exercisable by TCCC at any time between October 22, 2007 and November 21, 2007, at a price equal to the per share merger consideration less any dividends paid thereon and an amount equal

to 10% of such consideration (which will be deposited in escrow to fund potential indemnity claims and additional transaction expenses). Tata will also have the right under the Put/Call Agreement to put to TCCC, at any time between November 11, 2007 and December 3, 2007, the shares of the entity that will hold such shares of common stock of the surviving corporation at the same price. TCCC currently intends to exercise the call. Upon exercise of the call by TCCC or the put by Tata, TCCC would own 100% of the surviving corporation. Pursuant to a separate Voting Agreement (the "Voting Agreement") between TCCC and Tata, Tata has agreed to vote its shares of common stock in the surviving company in accordance with TCCC's instructions and has granted an irrevocable proxy with respect to the voting of such shares to TCCC.

TCCC also entered into Investment Agreements, dated as of May 24, 2007, with each of J. Darius Bikoff, Michael Repole and Michael Venuti, the senior executives of Glaceau, pursuant to which they have agreed, in accordance with the terms and subject to the conditions set forth in their Investment Agreements, including the closing of the Merger and receipt of the Merger proceeds to be received by them, to purchase a number of shares of common stock of TCCC having an aggregate value equal to approximately \$180 million based on the closing price of TCCC common stock on the trading day immediately prior to such purchase.

The foregoing description of the Merger, the Merger Agreement, the Supplemental Indemnity Agreement, the Roll-Over Agreement, the Put/Call Agreement, the Voting Agreement and the Investment Agreement are not complete and are qualified in their entirety by reference to the Merger Agreement, the Supplemental Indemnity Agreement, the Roll-Over Agreement, the Put/Call Agreement, the Voting Agreement and the form of Investment Agreement, copies of which are filed as Exhibit 2.1 and 99.1 through 99.5 respectively.

The Merger Agreement, which is being filed to provide investors with information regarding its terms, contains various representations and warranties of Glaceau and TCCC. The assertions embodied in those representations and warranties were made for purposes of the Merger Agreement and are subject to qualifications and limitations agreed by the parties in connection with negotiating the terms of the Merger Agreement. In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standard of materiality different from what a shareowner might view as material, or may have been made for purposes of allocating contractual risk among the parties rather than establishing matters as facts. Accordingly, investors should not view the representations and warranties contained in the Merger Agreement as disclosures with respect to the actual state of facts concerning the business, operations or condition of any of the parties to the Merger Agreement and should not rely on them as such. Investors should read the Merger Agreement together with the other information concerning TCCC contained in reports and statements that TCCC files with the Securities and Exchange Commission.

Item 8.01. Other Events.

A press release announcing the execution of the Merger Agreement was issued by TCCC on May 25, 2007. The full text of the press release, a copy of which is attached hereto as Exhibit 99.6, is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

- 2.1 Agreement and Plan of Merger by and among The Coca-Cola Company, Mustang Acquisition Company, LLP, Energy Brands Inc. d/b/a Glaceau, and the Stockholder Representatives identified therein, dated as of May 24, 2007. In accordance with Item 601(b)(2) of Regulation S-X, the disclosure schedules to the Agreement and Plan of Merger have not been filed. The Agreement and Plan of Merger contains a list briefly identifying the contents of all omitted disclosure schedules and The Coca-Cola Company hereby agrees to furnish supplementally a copy of any omitted disclosure schedule to the Securities and Exchange Commission upon request.
- 99.1 Roll-Over Agreement among Tata Tea (GB) Investments Limited, Tata Limited and Mustang Acquisition Company, LLP, dated as of May 24, 2007
- 99.2 Put and Call Option Agreement among Tata Tea (GB) Limited, Tata Tea (GB) Investments Limited, Tata Limited and The Coca-Cola Company, dated as of May 24, 2007
- 99.3 Voting Agreement among Tata Limited, Tata Tea (GB) Investments Limited and The Coca-Cola Company, dated as of May 24, 2007
- 99.4 Supplemental Indemnity Agreement between J. Darius Bikoff and The Coca-Cola Company, dated May 24, 2007
- 99.5 Form of Investment Agreement, dated as of May 24, 2007, between each of J. Darius Bikoff, Michael Repole and Michael Venuti and The Coca-Cola Company
- 99.6 Press release issued by The Coca-Cola Company on May 25, 2007

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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.

THE COCA-COLA COMPANY

By:

/s/ Geoffrey J. Kelly
Name: Geoffrey J. Kelly
Title: Senior Vice President and
General Counsel

Date: May 31, 2007

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EXHIBIT INDEX

| Exhibit No. | Description |
|--------------------|--|
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