CRACKER BARREL OLD COUNTRY STORE, INC
Form DFAN14A
October 09, 2012

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

SCHEDULE 14A
(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant o

Filed by a Party other than the Registrant x

Check the appropriate box:

o Preliminary Proxy Statement

¨ Confidential, for Use of the Commission Only (as permitted by Rule14a-6(e)(2))

¨ Definitive Proxy Statement

o Definitive Additional Materials

x Soliciting Material Under Rule 14a-12

CRACKER BARREL OLD COUNTRY STORE, INC.
(Name of Registrant as Specified in Its Charter)

BIGLARI HOLDINGS INC.
BIGLARI CAPITAL CORP.
THE LION FUND, L.P.
STEAK N SHAKE OPERATIONS, INC.
SARDAR BIGLARI
PHILIP L. COOLEY
(Name of Persons(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x 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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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(4) Proposed maximum aggregate value of transaction:

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(5) Total fee paid:

¨ Fee paid previously with preliminary materials:

¨ 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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(1) Amount previously paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

Item 1: On October 8, 2012, Biglari Holdings Inc. issued the following press release containing a letter delivered to the Board of Directors of Cracker Barrel Old Country Store, Inc.:

BIGLARI HOLDINGS SENDS LETTER TO CRACKER BARREL'S BOARD ON DISCOVERY OF DISCREPANCY IN PROFESSED EXPERIENCE OF DESIGNATED CHAIRMAN JAMES BRADFORD

SAN ANTONIO, TX — October 8, 2012 — Biglari Holdings Inc. (NYSE: BH) today sent the following letter to the Board of Directors of Cracker Barrel Old Country Store, Inc. (NASDAQ: CBRL) reporting public filings and statements made by Cracker Barrel, including Chief Executive Officer Sandra B. Cochran, that highlight designated Chairman James W. Bradford's former experience as CEO of a New York Stock Exchange-listed company:

October 8, 2012

Board of Directors
Cracker Barrel Old Country Store, Inc.
305 Hartmann Drive
Lebanon, Tennessee 37087

Dear Board of Directors:

Cracker Barrel's proxy statement filed with the Securities and Exchange Commission in connection with the Company's 2012 annual shareholders' meeting contains the following statement regarding the qualifications of James W. Bradford, Cracker Barrel's designated Chairman of the Board: "An experienced corporate executive, Mr. Bradford previously served … from 1992 to 1999 as President and Chief Executive Officer of AFG Industries Inc., which during his tenure was North America's largest vertically integrated glass manufacturing and fabrication company and was traded on the New York Stock Exchange (the 'NYSE')."

This assertion was repeated to investors at the Wells Fargo Retail & Restaurants Conference on October 2, 2012 by Cracker Barrel's Chief Executive Officer, Sandra Cochran, who stated that "Jim Bradford, who was the former CEO of [a] New York Stock Exchange company, and he's now the Dean of the Business School at Vanderbilt…."

Then on October 4, 2012, Ms. Cochran wrote a letter to shareholders highlighting the changes to the Board by stressing the experience of the incoming Chairman: "[Michael Woodhouse] will be succeeded by Jim Bradford, a former NYSE company CEO …."

As the largest shareholder of the Company, owning approximately 17.3% of the outstanding shares, we felt it was important for us to understand Mr. Bradford's performance as a purportedly former CEO of a public company, in view of his recent appointment as the incoming Chairman of the Board, as well as Ms. Cochran's statements underlining his position as "a former NYSE company CEO." However, a public search reveals that Mr. Bradford has never been CEO of a New York Stock Exchange company. In fact, we found that AFG Industries in 1988 was taken private, four years before Mr. Bradford was appointed CEO.

The Company has claimed that Mr. Bradford was CEO of a NYSE company by way of SEC disclosures and statements from Ms. Cochran. The question for shareholders is whether Mr. Bradford was indeed CEO of a NYSE-listed company. If the answer is negative, then misrepresentations have been made in SEC filings, investor presentations, and a letter to shareholders. If Mr. Bradford has embellished his professional record, we believe this undermines his credibility. Therefore, the Board must determine whether Mr. Bradford should continue in his present capacity. After all, it is Mr. Bradford's, Ms. Cochran's and the full Board's responsibility to ensure the accuracy of the Company's public filings and statements. A Board must exercise diligence and care; such a material inaccuracy would be a failure on the part of the Board of Directors, especially the Nominating and Corporate Governance Committee, reflecting poorly on the entire Board's governance process.

In its proxy statement, Cracker Barrel claims to have strict procedures and standards and to have engaged in "significant efforts" to identify qualified candidates for director. Echoing its Corporate Governance Guidelines, Cracker Barrel states in its proxy statement:

"The Nominating and Corporate Governance Committee assesses a candidate's independence, background and experience…. The Nominating and Corporate Governance Committee recommends appropriate candidates with the goal that the Board of Directors be comprised of qualified individuals…. Individual directors and any person nominated to serve as a director should possess the highest moral integrity and should generally have had significant managerial experience in the form of being a current or former senior executive of a publicly traded or privately held company or similar business experience or training."

We certainly understand why the Board, in the midst of a proxy contest, would be interested in highlighting an accomplishment of a director, especially an incoming Chairman, who would have led a NYSE-listed company in the capacity of CEO. Initially we had no reason to doubt the Board or Mr. Bradford. We assumed that the Nominating and Corporate Governance Committee would have conducted a thorough background check on the incoming Chairman. It is certainly the obligation of the full Board, including that of Ms. Cochran, to be fully versed about Mr. Bradford's professional accomplishments. Assuming Mr. Bradford was required to complete Cracker Barrel's 22-page, 33-question director-and-officer questionnaire that Phil Cooley and I were required to submit in connection with our nomination to the Board, we believe that, at the very least, his responses to questions 3 and 33 should have shed light on his experience at the public company. (Enclosed with this letter is Cracker Barrel's questionnaire, which is especially voluminous.)

Should our concerns about the accuracy of Mr. Bradford's experience prove correct, then shareholders should seriously question the level of diligence and oversight exercised by Cracker Barrel's Board of Directors in the vitally important vetting process for identifying qualified directors, including the one director possessing the essential character and experience to serve as Chairman of the Board.

We hope that the Board can provide shareholders with a satisfactory explanation. In order to do so, we call upon the Board to conduct immediately an independent investigation to understand whether Mr. Bradford misrepresented his prior position to the Board and thereby led Ms. Cochran to misrepresent Mr. Bradford's credentials to the public. The investigation should also determine whether the Company's Code of Business Conduct and Ethics has been violated. We believe shareholders have a basic right to know the facts, including the correct answers to the following questions:

1. Did Mr. Bradford mislead the Board regarding his past experience and qualifications to serve as a director of Cracker Barrel?

2. Did Mr. Bradford's misrepresentations lead Ms. Cochran to misinform investors of his credentials in her October 4, 2012 letter to shareholders as well as during her presentation at the Wells Fargo conference on October 2, 2012?

3. Why would CEO Sandra Cochran not be aware of the credentials of the Company's designated Chairman of the Board?

4. By including Mr. Bradford's inaccurate biography in its proxy statement, did any officers or directors of the Company violate its Code of Business Conduct and Ethics, which contains the following requirements: "Directors, officers and employees who are involved in the process of preparing the periodic reports required by applicable securities laws and rules are responsible for ensuring that the disclosure in the Company's periodic reports is full, fair, accurate, timely and understandable….Knowingly making or maintaining false, misleading or incomplete entries, records or documentation is strictly prohibited."

A separate review should also be conducted to understand fully the process by which background checks and the vetting are conducted by the Nominating and Corporate Governance Committee, which bears responsibility for the accuracy of the credentials of Board members. Incidentally, Mr. Bradford is not only the designated Chairman of the Board, but also is the current Chairman of the Nominating and Corporate Governance Committee.

We urge the Cracker Barrel Board to report the results of this investigation to shareholders in sufficient time for them to cast their votes for directors at the 2012 annual meeting. Shareholders have a fundamental right to know that the stewards of their investment have been chosen with great care and possess the requisite qualities of leadership.

Furthermore, this proxy contest should have been avoided, for, in our view, we bring shareholder representation of 17.3%, including a long-term perspective, relevant industry experience, yet no business or legal conflicts. Because we are independent, we would critically and objectively discuss business issues. Patently, as the Company's largest shareholder, we are interested in finding ways to advance shareholder value. Moreover, the current proxy contest is centered on Phil Cooley's and my holding two board seats out of ten; that is, we are neither asking nor seeking board control or ownership control of Cracker Barrel.

We await your immediate response.

Sincerely,

/s/ Sardar Biglari

Sardar Biglari

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CERTAIN INFORMATION CONCERNING PARTICIPANTS

Biglari Holdings Inc., an Indiana corporation ("BH"), together with the other participants named herein, has made a preliminary filing with the Securities and Exchange Commission ("SEC") of a proxy statement and an accompanying proxy card to be used to solicit votes in connection with the solicitation of proxies for the election of individuals to the Board of Directors of Cracker Barrel Old Country Store, Inc. (the "Company") at the 2012 annual meeting of shareholders of the Company.

BH ADVISES ALL STOCKHOLDERS OF THE COMPANY TO READ THE PROXY STATEMENT AND OTHER PROXY MATERIALS AS THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. SUCH PROXY MATERIALS WILL BE AVAILABLE AT NO CHARGE ON THE SEC'S WEB SITE AT HTTP://WWW.SEC.GOV. IN ADDITION, THE PARTICIPANTS IN THE PROXY SOLICITATION WILL PROVIDE COPIES OF THE PROXY STATEMENT WITHOUT CHARGE UPON REQUEST. REQUESTS FOR COPIES SHOULD BE DIRECTED TO THE PARTICIPANTS' PROXY SOLICITOR, MORROW & CO., LLC, TOLL-FREE AT (877) 849-0763, BANKS AND BROKERS CALL COLLECT AT (203) 658-9400.

The participants in the proxy solicitation are BH, Biglari Capital Corp., a Texas corporation ("BCC"), The Lion Fund, L.P., a Delaware limited partnership ("Lion Fund"), Steak n Shake Operations, Inc., an Indiana corporation ("Steak n Shake"), Sardar Biglari and Philip L. Cooley (the "Participants").

As of the close of business on October 5, 2012, BH owned directly 3,650,952 shares of Common Stock. As of the close of business on October 5, 2012, the Lion Fund owned directly 140,100 shares of Common Stock. As of the close of business on October 5, 2012, Steak n Shake owned directly 299,985 shares of Common Stock. Each of BCC, as the general partner of the Lion Fund, and BH, as the parent of BCC, may be deemed to beneficially own the shares of Common Stock directly owned by the Lion Fund. BH, as the parent of Steak n Shake, may be deemed to beneficially own the shares of Common Stock directly owned by Steak n Shake. Mr. Biglari, as the Chairman and Chief Executive Officer of each of BH, BCC and Steak n Shake, may be deemed to beneficially own the shares of Common Stock directly owned by BH, the Lion Fund and Steak n Shake.

As members of a "group" for the purposes of Rule 13d-5(b)(1) of the Securities Exchange Act of 1934, as amended, each of the Participants is deemed to beneficially own the shares of Common Stock of the Company beneficially owned in the aggregate by the other Participants. Each of the Participants disclaims beneficial ownership of such shares of Common Stock except to the extent of his or its pecuniary interest therein.

Item 2: The following materials were posted by Biglari Holdings Inc. to http://www.enhancecrackerbarrel.com:

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As members of a "group" for the purposes of Rule 13d-5(b)(1) of the Securities Exchange Act of 1934, as amended, each of the Participants is deemed to beneficially own the shares of Common Stock of the Company beneficially owned in the aggregate by the other Participants. Each of the Participants disclaims beneficial ownership of such shares of Common Stock except to the extent of his or its pecuniary interest therein.