

TOOTSIE ROLL INDUSTRIES INC
Form DEF 14A
March 27, 2009

[QuickLinks](#) -- Click here to rapidly navigate through this document

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

SCHEDULE 14A

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:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

Tootsie Roll Industries, Inc.

(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:
 - (2) Aggregate number of securities to which transaction applies:
 - (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):
 - (4) Proposed maximum aggregate value of transaction:
 - (5) Total fee paid:

Edgar Filing: TOOTSIE ROLL INDUSTRIES INC - Form DEF 14A

- o 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.

(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

Tootsie Roll Industries, Inc.
7401 South Cicero Avenue, Chicago, Illinois 60629

March 27, 2009

Dear Shareholder:

You are cordially invited to attend the Annual Meeting of Shareholders of your Company to be held on Monday, May 4, 2009, at 9:00 A.M., Eastern Daylight Savings Time, in Room 1200, Mutual Building, 909 East Main Street, Richmond, Virginia.

At the meeting, you will be asked to consider and vote upon the election of five directors and a proposal to ratify the appointment of PricewaterhouseCoopers LLP as independent registered public accounting firm for the Company for the 2009 fiscal year.

The formal Notice of the Annual Meeting of Shareholders and the Proxy Statement follow. It is important that your shares be represented and voted at the meeting, regardless of the size of your holdings. Accordingly, please promptly mark, sign and date the enclosed proxy and return it in the enclosed envelope, whether or not you intend to be present at the Annual Meeting of Shareholders.

Sincerely,

Melvin J. Gordon
*Chairman of the Board and
Chief Executive Officer*

Ellen R. Gordon
*President and
Chief Operating Officer*

Tootsie Roll Industries, Inc.

7401 South Cicero Avenue, Chicago, Illinois 60629

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON MAY 4, 2009**

To the Shareholders:

Notice is hereby given that the Annual Meeting of Shareholders of **TOOTSIE ROLL INDUSTRIES, INC.** will be held in Room 1200, Mutual Building, 909 East Main Street, Richmond, Virginia, on Monday, May 4, 2009, at 9:00 A.M., Eastern Daylight Savings Time, for the following purposes:

1. To elect the full board of five directors;
2. To consider and act upon ratification of the appointment of PricewaterhouseCoopers LLP as independent registered public accounting firm for the Company for the fiscal year ending December 31, 2009; and
3. To transact such other business as may properly come before the meeting or any adjournments thereof.

Only shareholders of record at the close of business on March 10, 2009 are entitled to notice of, and to vote at, the Annual Meeting and any adjournments thereof. The relative voting rights of the Company's Common Stock and Class B Common Stock in respect of the Annual Meeting and the matters to be acted upon at such meeting are described in the accompanying Proxy Statement.

Your attention is directed to the accompanying Proxy, Proxy Statement and 2008 Annual Report of Tootsie Roll Industries, Inc.

By Order of the Board of Directors

Barry P. Bowen, Assistant Secretary

Chicago, Illinois

March 27, 2009

NOTE: *Please mark, date and sign the enclosed Proxy and return it promptly in the enclosed envelope whether or not you plan to attend the Annual Meeting in person. You may revoke your Proxy at any time before it is voted.*

Tootsie Roll Industries, Inc.

7401 South Cicero Avenue
Chicago, Illinois 60629

PROXY STATEMENT
Annual Meeting of Shareholders May 4, 2009

SOLICITATION OF PROXIES

This Proxy Statement is furnished in connection with the solicitation by the Board of Directors of Tootsie Roll Industries, Inc. (referred to as the "Company," "we" or "us" below) of the accompanying proxy for the Annual Meeting of Shareholders of the Company to be held on Monday, May 4, 2009, and at any adjournments thereof. The purpose of the meeting is for the shareholders of the Company to: (1) elect five directors to terms of office expiring at the 2010 Annual Meeting of Shareholders; (2) consider and act upon a proposal to ratify the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm for the Company for the fiscal year ending December 31, 2009; and (3) transact such other business as may properly come before the meeting and any adjournments thereof.

Proxies in the accompanying form, properly executed and received by the Company prior to the meeting and not revoked, will be voted as directed therein on all matters presented at the meeting. In the absence of a specific direction from the shareholder, proxies will be voted for the election of all named director nominees and for ratification of the appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm. The Board of Directors does not know of any other matters to be brought before the meeting; however, if other matters should properly come before the meeting it is intended that the persons named in the accompanying proxy will vote thereon at their discretion. Any shareholder may revoke his or her proxy by giving written notice of revocation to the Assistant Secretary of the Company at any time before it is voted, by executing a later-dated proxy which is voted at the meeting or by attending the meeting and voting his or her shares in person.

The Board of Directors has fixed the close of business on March 10, 2009 as the record date for the determination of shareholders of the Company entitled to receive notice of and to vote at the Annual Meeting of Shareholders to be held on May 4, 2009, and at any adjournments thereof. As of the close of business on March 10, 2009, there were outstanding and entitled to vote 35,605,397 shares of Common Stock and 19,352,519 shares of Class B Common Stock. Each share of Common Stock is entitled to one vote and each share of Class B Common Stock is entitled to ten votes, and therefore the Common Stock will be entitled to a total of 35,605,397 votes and the Class B Common Stock will be entitled to a total of 193,525,190 votes. The Common Stock and the Class B Common Stock will vote together as a single class with respect to the election of directors and all other matters submitted to the Company's shareholders at the meeting. This Proxy Statement and the enclosed form of proxy are being mailed to shareholders of the Company on or about March 27, 2009.

The entire cost of soliciting proxies in the accompanying form will be borne by the Company. Proxies will be solicited by mail, and may be solicited personally by directors, officers or regular employees of the Company who will not receive special compensation for such services. Upon request, the Company will reimburse brokers, dealers, banks and trustees, or their nominees, for reasonable expenses incurred by them in forwarding proxy material to beneficial owners of shares of the Company's Common Stock and Class B Common Stock.

VOTING INFORMATION

A shareholder may, with respect to the election of directors (i) vote for the election of all named director nominees, (ii) withhold authority to vote for all named director nominees or (iii) vote for the election of all named director nominees other than any nominee with respect to whom the shareholder withholds authority to vote by so indicating in the appropriate space on the proxy. A shareholder may, with respect to each other proposal to be considered and voted upon at the meeting (i) vote "FOR" the proposal, (ii) vote "AGAINST" the proposal or (iii) "ABSTAIN" from voting on the proposal. Proxies properly executed and received by the Company prior to the meeting and not revoked will be voted as directed therein on all matters presented at the meeting. In the absence of a specific direction from the shareholder, proxies will be voted for the election of all named director nominees and for ratification of the appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm. If a proxy indicates that all or a portion of the votes represented by such proxy are not being voted with respect to a particular matter, such non-votes will not be counted in connection with the vote on such matter, although such votes may be counted in connection with the vote on other matters and will count for purposes of determining the presence of a quorum.

The affirmative vote of a plurality of the votes present in person or by proxy at the meeting and entitled to vote in the election of directors is required to elect directors. Thus, assuming a quorum is present, the five persons receiving the greatest number of votes will be elected to serve as directors. Withholding authority to vote for a director(s) and non-votes with respect to the election of directors will not affect the outcome of the election of directors. If a quorum is present at the meeting, in order to ratify the appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm, the number of votes cast favoring the action must exceed the number of votes cast opposing the action. Accordingly, non-votes and abstentions with respect to such matter will not affect the determination of whether such matter is approved.

PROPOSAL 1

ELECTION OF DIRECTORS

It is the intention of the persons named in the accompanying proxy to vote for the election of each of the five persons named in the table below as a director of the Company to serve until the 2010 Annual Meeting of Shareholders and until his or her successor is duly elected and qualified. All of such nominees are now directors of the Company, having been previously elected as directors by the shareholders of the Company or appointed by the Board of Directors. In the event any of the nominees, all of whom have expressed an intention to serve if elected, fail to stand for election, the persons named in the proxy presently intend to vote for a substitute nominee designated by the Board of Directors. The information concerning the nominees and their shareholdings has been furnished by them to the Company.

The following table sets forth information with respect to the five nominees for election as directors:

| Name, Age and Other Positions, if any, with Company | Period Served As Director and Business Experience During Past 5 Years |
|---|--|
| Melvin J. Gordon, 89, Chairman of the Board and Chief Executive Officer(1)(2) | Director since 1952; Chairman of the Board since 1962; Director and President of HDI Investment Corp., a family investment company. |
| Ellen R. Gordon, 77, President and Chief Operating Officer(1)(2) | Director since 1969; President since 1978; Director and Vice-President of HDI Investment Corp., a family investment company. |
| Barre A. Seibert, 67(3)(4) | Director since 2005; retired; First Vice-President of Washington Mutual Bank 2003-2007; Vice-President from 2001 to 2003; Chief Financial Officer of TransAlliance LP from 1995 to 2001. |
| Lana Jane Lewis-Brent, 62(3)(4) | Director since 1988; President of Paul Brent Designer, Inc. since 1992; former President of Sunshine-Jr. Stores, Inc. |
| Richard P. Bergeman, 71(3)(4) | Director since December, 2001; retired; former Senior Vice-President of Unilever Bestfoods. |

-
- (1) Member of the Executive Committee. When the Board of Directors is not in session, the Executive Committee has the powers of the Board in the management of the business and affairs of the Company, other than certain actions which under the laws of the Commonwealth of Virginia must be approved by the Board of Directors.
 - (2) Melvin J. Gordon and Ellen R. Gordon are husband and wife.
 - (3) Member of the Audit Committee.
 - (4) Member of the Compensation Committee.

Director Independence and Corporate Governance. The Board of Directors has determined that non-management directors are independent under the New York Stock Exchange ("NYSE") listing standards because they have no direct or indirect relationship with the Company other than through their service on the Board of Directors and as shareholders. Shareholders and other interested parties who wish to communicate with the non-management members of the Board of Directors may do so by writing to Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, Illinois 60629, Attention: Audit Committee Chairman, c/o Corporate Secretary. The Company's Corporate Governance Guidelines, which are posted on our website at www.tootsie.com and are available in print to any shareholder who requests a

Edgar Filing: TOOTSIE ROLL INDUSTRIES INC - Form DEF 14A

copy, provide that the Chair of the Audit Committee shall preside over executive sessions of the non-management directors. The Company has also adopted a Code of Business Conduct and Ethics, which applies to all directors and employees, and which meets the SEC's criteria for a "code of ethics." The Code of Business Conduct and Ethics is posted on the Company's website and is available in print to any shareholder who requests a copy. The Board of Directors has considered the issue of succession over the years but has not to date adopted a formal plan of succession. Mr. and Mrs. Gordon are vigorously engaged in the day to day operation of the Company's business and strategic planning. In addition, Mr. and Mrs. Gordon have advised the Board that they have no present intention of retiring from their current positions as officers and directors.

Meeting Attendance. The Board of Directors held five meetings in 2008. The Board of Directors has two standing committees, the Audit Committee and the Compensation Committee. During 2008, all directors attended at least 75 percent of the meetings of the Board of Directors and the Committees of which they were members. Mr. and Mrs. Gordon attended the 2008 Annual Meeting of Shareholders.

Audit Committee. The Audit Committee operates under a written charter approved by the Board of Directors, a copy of which is posted on our website at www.tootsie.com and is available in print to any shareholder who requests a copy. The Audit Committee held seven meetings during 2008. The Audit Committee is composed of three directors who qualify as "independent" under the NYSE listing standards. The Board of Directors has determined that no member of the Audit Committee qualifies as an "audit committee financial expert" as such term is defined by rules of the Securities and Exchange Commission ("SEC") and the Board does not believe that given the capabilities of the members of the Audit Committee it has been necessary to have or recruit a member who would qualify as an audit committee financial expert as defined by the SEC.

Compensation Committee. The Compensation Committee administers and makes awards under the Tootsie Roll Industries, Inc. Management Incentive Plan. This committee is composed of three directors who qualify as "independent" under the NYSE listing standards and "outside directors" under Section 162(m) of the Code. Otherwise, the entire Board of Directors is responsible for determining the compensation structure and amounts for the executive officers, including the Chief Executive Officer, except that the Chief Executive Officer and the Chief Operating Officer recuse themselves from votes regarding their own compensation, or in circumstances where their participation, as an executive officer of the Company, would affect compliance with federal securities law. Since the Company is a "controlled company" under the NYSE listing standards (see "Controlled Company Status" below), this committee does not maintain a written charter and the entire Board of Directors makes compensation decisions with regard to the Chief Executive Officer or other executive officers as described above. Given the Company's status as a controlled company the Board believes that this allocation of responsibilities between the Compensation Committee and the full Board for compensation decisions is appropriate. The Compensation Committee held one meeting during 2008. This committee has not delegated any of its duties to others.

The Company has engaged Compensation Strategies, Inc., an independent executive compensation consulting firm, to provide advice and assistance to both management and the Board regarding the Company's executive compensation practices. Compensation Strategies, Inc. is referred to below as the "consultant." The consultant conducts periodic reviews of total compensation of the Company's executive officers, based on the process described in the Compensation Discussion and Analysis section below, for review by management and the Board of Directors in determining the appropriate levels of compensation for each executive officer. The consultant also provides advice with respect to other executive compensation issues that might arise throughout the year. The consultant does not attend meetings of the Board of Directors or of the Compensation Committee but is available to answer questions. The consultant does not receive any fees from the Company other than for executive compensation consulting services.

Edgar Filing: TOOTSIE ROLL INDUSTRIES INC - Form DEF 14A

Director Nominations. As a controlled company under NYSE listing standards, the Company is permitted to have the entire Board of Directors discuss and determine the nominees for election to the Board and oversee the Company's corporate governance. The Board does not believe that given the current size and composition of the Board that it needs to have a separately-designated nominating committee to perform this function. The Board will consider director candidates recommended by shareholders, but the Board does not otherwise have a policy with regard to the consideration of director candidates recommended by shareholders, nor has it established any specific minimum qualifications that it believes must be met by a nominee for director, whether recommended by it or by a shareholder, or any specific qualities or skills that it believes are necessary for one or more of its directors to possess, as it believes that it can adequately consider the suitability and qualifications of any such candidates on a case by case basis. The Board does not currently have a policy for identifying or evaluating nominees for director, including nominees recommended by shareholders. If a candidate for nomination is recommended by a shareholder the Board would evaluate that candidate in the same manner as all other candidates to be nominees for director. Any shareholder wishing to submit such a recommendation should do so in writing addressed to Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, Illinois 60629, Attention: Ellen R. Gordon, President. See "Shareholder Proposals for 2010 Annual Meeting" below in this proxy statement for information regarding procedures that must be followed by shareholders in order to nominate directors at the 2010 annual meeting.

Controlled Company Status. The Company is a "controlled company" under the NYSE listing standards since the Gordon family collectively holds more 50% of the total voting power of the outstanding capital stock of the Company.

DIRECTOR COMPENSATION

As described more fully below, this chart summarizes the annual compensation for the Company's non-management directors during 2008.

| Name | Fees Earned or Paid in Cash | All Other Compensation | Total |
|-----------------------|-----------------------------------|---------------------------|----------|
| Barre A. Seibert | \$ 64,000 | | \$64,000 |
| Lana Jane Lewis-Brent | 64,000 | \$ 2,000 | 66,000 |
| Richard P. Bergeman | 69,500 | \$ 4,000 | 73,500 |

Mr. and Mrs. Gordon do not receive fees for their service on the Board of Directors or its committees. Non-management directors received the following cash compensation for 2008:

an annual retainer of \$49,000

\$1,500 per Board meeting attended

an annual retainer of \$13,000 for the Chair of, and \$7,500 to other members for serving on, the Audit Committee

\$1,500 for attending each meeting of the Compensation Committee

During 2008, all of the directors attended at least 75 percent of the meetings of the Board of Directors and the Committees of which they were members. No perquisites or other personal benefits were provided to the non-management directors in 2008 other than occasional samples of the Company's products.

The Board of Directors recommends a vote FOR the election of all named director nominees.

**OWNERSHIP OF COMMON STOCK AND CLASS B COMMON STOCK
BY CERTAIN BENEFICIAL OWNERS**

The following table sets forth, as of March 10, 2009 (except as noted below), information with respect to the beneficial ownership of our Common Stock and Class B Common Stock by each person known by the Company to be the beneficial owner of more than five percent of such Common Stock or Class B Common Stock. The information has been furnished by these persons or derived from filings with the SEC.

| Name | | Number of Shares of Common Stock and Class B Common Stock Owned Beneficially and Nature of Beneficial Ownership(1) | | Percentage of Outstanding Shares of Class |
|---|---------|--|--------------|--|
| | | Direct | Indirect | |
| Melvin J. Gordon | Common | 1,360,207 | | 3.8% |
| | Class B | 1,360,207 | | 7.0% |
| Ellen R. Gordon | Common | 8,364,119 | 104,892(2) | 23.8% |
| | Class B | 9,133,046 | 41,316(2) | 47.4% |
| Melvin J. Gordon and Ellen R. Gordon, jointly as fiduciaries | Common | | 5,730,356(3) | 16.1% |
| | Class B | | 5,263,741(3) | 27.2% |
| Leigh R. Weiner | Common | 1,232,262 | 241,658(4) | 4.1% |
| | Class B | 2,305,767 | 394,302(4) | 14.0% |
| Mario J. Gabelli and Affiliates | Common | | 1,951,062(5) | 5.5% |

The address of Mr. and Mrs. Gordon is c/o Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, Illinois 60629. The address of Mr. Weiner is c/o Becker Ross, LLP, 317 Madison Ave., New York, New York 10017-5372. The address of Mario J. Gabelli and affiliates is One Corporate Center, Rye, New York 10580.

- (1) Except as set forth in note 5 below, the persons named in the above table have sole investment and voting power over the shares indicated therein as being owned directly and share investment and voting power over the shares indicated therein as being owned indirectly. Shares of Class B Common Stock are at all times convertible into shares of Common Stock on a share-for-share basis. Shares and percent of class indicated for Common Stock do not reflect the shares of Common Stock that could be acquired upon the conversion of the shares of Class B Common Stock.
- (2) Includes 39,656 shares of Common Stock and 41,316 shares of Class B Common Stock held as co-trustee of one of the Company's tax qualified retirement plans, and 65,236 shares of Common Stock held as co-trustee of a trust which holds such shares of Common Stock with regard to one of the Company's nonqualified deferred compensation plans.
- (3) Includes 4,891,022 shares each of Common Stock and Class B Common Stock held by Mr. and Mrs. Gordon as fiduciaries for their children and 839,334 shares of Common Stock and 372,719 shares of Class B Common Stock owned by a charitable foundation of which members of the Gordon family are directors.
- (4) Includes 77,698 shares of Common Stock and 48,970 shares of Class B Common Stock held by Mr. Weiner's wife (as to which he disclaims beneficial ownership), 163,195 shares of Common Stock and 149,057 shares of Class B Common Stock held by Mr. Weiner or by his wife as custodian for their children and 765 shares of Common Stock and 196,275 shares of Class B Common Stock held by a charitable foundation of which Mr. Weiner and members of his family are directors.
- (5) As of May 28, 2008, based solely on a Schedule 13D filed with the Securities and Exchange Commission on June 9, 2008, in which GAMCO Asset Management ("GAMCO"), reported that it

Edgar Filing: TOOTSIE ROLL INDUSTRIES INC - Form DEF 14A

held sole voting and dispositive power with respect to 1,362,307 such shares and Gabelli Funds, LLC ("Gabelli Funds") reported that it held sole voting and sole dispositive power with respect to 588,755 such shares. The Schedule 13D also reports that Gabelli Funds and GAMCO are investment advisers registered under the Investment Advisers Act of 1940, and that Mario J. Gabelli directly or indirectly controls, or acts as chief investment officer for, GAMCO and Gabelli Funds.

OWNERSHIP OF COMMON STOCK AND CLASS B COMMON STOCK BY MANAGEMENT

The following table sets forth, as of March 10, 2009, the beneficial ownership of Common Stock and Class B Common Stock by each nominee for director, by each executive officer who is named in the summary compensation table included in this proxy statement, and by all directors and executive officers of the Company as a group.

| Name | | Number of Shares of Common Stock and Class B Common Stock Owned Beneficially and Nature of Beneficial Ownership(1) | | Percentage of Outstanding Shares of Class |
|---|---------|--|-----------|--|
| | | Direct | Indirect | |
| | | Melvin J. Gordon | Common | |
| | Class B | (2) | (2) | (2) |
| Ellen R. Gordon | Common | (2) | (2) | (2) |
| | Class B | (2) | (2) | (2) |
| Barre A. Seibert | Common | 2,476 | | (5) |
| | Class B | | | (5) |
| Richard P. Bergeman | Common | 1,261 | | (5) |
| | Class B | | | (5) |
| Lana Jane Lewis-Brent | Common | 5,373 | 18,041(3) | (5) |
| | Class B | | | (5) |
| John W. Newlin, Jr. | Common | | 14,135(4) | (5) |
| | Class B | | 15,624(4) | (5) |
| Thomas E. Corr | Common | | | (5) |
| | Class B | | | (5) |
| G. Howard Ember, Jr. | Common | 1,489 | 15,339 | (5) |
| | Class B | | | (5) |
| All directors and executive officers as a group (10 persons) | Common | 9,734,925 | 5,882,763 | 43.9% |
| | Class B | 10,493,253 | 5,320,681 | 81.7% |

- (1) The persons named in the above table have sole investment and voting power over the shares indicated therein as being owned directly and share investment and voting power over the shares indicated therein as being owned indirectly. Shares of Class B Common Stock are at all times convertible into shares of Common Stock on a share-for-share basis. Shares and percent of class indicated for Common Stock do not reflect the shares of Common Stock that could be acquired upon the conversion of the shares of Class B Common Stock.
- (2) See the table under the caption "Ownership of Common Stock and Class B Common Stock by Certain Beneficial Owners" above for shareholdings of Mr. and Mrs. Gordon.
- (3) Includes 3,018 shares held for the benefit of a minor child, 12,616 shares held jointly with Ms. Lewis-Brent's spouse and 912 shares (as to which she disclaims beneficial ownership) held by her spouse.
- (4) Mr. Newlin disclaims beneficial ownership of such shares, which are held in a family partnership, other than his pecuniary interest in such shares.
- (5) Less than 1% of the outstanding shares.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934 requires our directors, executive officers and persons who own more than ten percent of our Common Stock or Class B Common Stock to file reports of ownership and changes in ownership with the SEC and NYSE. Such persons are also required to furnish the Company with copies of all such reports.

Based solely on a review of the copies of such reports, and written representations from certain reporting persons, we are pleased to note that our directors, executive officers and greater than ten percent shareholders filed all required reports during or with respect to fiscal year 2008 on a timely basis.

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

The following Compensation Discussion and Analysis describes the material elements of the compensation program for the Company's executive officers identified in the Summary Compensation Table below, who we refer to in this discussion as the "named executive officers."

Corporate Principles

We believe that the differences among companies are attributable to the caliber of their people, and therefore we strive to attract and retain superior executives. We maintain a conservative financial posture in deploying and managing our assets and do not jeopardize long-term growth for immediate, short-term results.

Objectives of Compensation Program

The objectives of our compensation program for named executive officers consistent with these corporate principles are to:

encourage and reward individual effort and teamwork in order to improve the Company's financial performance, and

attain the Company's principal long-term objective of profitably building the Company's well-known brands.

All compensation and benefits for named executive officers described below have as a primary purpose meeting the need to attract, retain and motivate the types of individuals who will be able to execute our business strategy while upholding our values in an ever changing competitive environment. The Company's compensation program includes salary, annual cash incentives, annual awards under the Company's Career Achievement Plan, which we refer to as the "CAP" below, participation in the Excess Benefit Plan, which we refer to as the "EBP" below, a Supplemental Savings Plan, which we refer to as the "SSP" below, and split-dollar life insurance coverage.

None of our employees receive stock options, restricted stock or other forms of equity compensation. The Board does not grant equity compensation to the Chief Executive Officer and the Chief Operating Officer because of their significant equity stake in the Company. Other named executive officers also do not receive equity compensation, as the Board has decided to motivate executive behavior based on financial and management objectives consistent with our corporate principles.

Process for Setting Executive Compensation

As discussed above, the Board of Directors is responsible for determining the compensation structure and amounts for the named executive officers, except that the Compensation Committee (which we refer to in this Compensation Discussion and Analysis as the "committee"), is responsible for administering and

determining the annual cash incentives for the named executive officers. The named executive officers' compensation program is balanced between short-term and long-term compensation and incentives. The Board of Directors believes that too much emphasis on incentive compensation can lead to behaviors that are not necessarily in the long-term best interests of shareholders. Therefore, the compensation program has been intentionally balanced to avoid a mix of pay elements that places too much weight on the role of incentive pay. As a result, the Company's compensation program carries a heavier weighting on base salary than is typical in the competitive marketplace. However, when comparing the Company's executive compensation program as a whole to that of its direct competitors for executive talent, the primary focus is on total compensation. In addition, the Board of Directors considers the degree to which the named executive officers have performed during the fiscal year when exercising discretion to adjust annual compensation. The Board of Directors believes that this program will lead to increased shareholder value on a long-term basis and serves to mitigate risk taking activities that are inconsistent with the Company's long-term shareholder interests.

Competitiveness Assessment

The Board periodically reviews compensation levels for similarly situated executives of a group of industry peers. With the assistance of an independent compensation consultant, statistical analysis is used to adjust all market compensation data to reflect the current annual revenues and market capitalization of the Company given the variation in size of the companies from which compensation data is collected. Each element of compensation as well as total compensation is quantified and reviewed to determine the Company's competitiveness compared to the market. However, the Company does not target any specific level of compensation with respect to the market such as the 50% percentile of peer companies. In determining appropriate individual compensation levels for the named executive officers, the Board considers this competitive market compensation data, as well as the individual's experience, internal equity among the executive officers, as well as individual and Company performance. Compensation levels for all named executive officers, except the Chief Executive Officer and the Chief Operating Officer, are approved by the Board (and in the case of the Management Incentive Plan, the Compensation Committee) based on the recommendation of, and performance evaluation by, the Chief Executive Officer and the Chief Operating Officer. In the case of the Chief Executive Officer and the Chief Operating Officer, the independent members of the Board review and approve their compensation levels after conducting an evaluation of their prior-year performance.

Peer Group

The group of peer companies used in the review of total compensation levels consists of publicly traded companies in the snack and confectionary industries with annual revenues ranging from \$531 million to \$42.2 billion and market capitalizations ranging from \$330 million to \$39.4 billion. The Board

Edgar Filing: TOOTSIE ROLL INDUSTRIES INC - Form DEF 14A

reviews the make-up of the group on an on-going basis. Each company included in the group is shown below:

| Peer Group | Annual Revenues (in millions) | Market Capitalization, as of 12/31/2008 (in millions) |
|---------------------------|----------------------------------|--|
| Campbell Soup Company | \$ 7,998 | \$ 10,714 |
| Dean Foods Company | \$ 12,455 | \$ 2,766 |
| Del Monte Foods Company | \$ 3,737 | \$ 1,412 |
| Diamond Foods, Inc. | \$ 531 | \$ 330 |
| Flowers Foods, Inc. | \$ 2,415 | \$ 2,259 |
| General Mills Inc | \$ 13,652 | \$ 19,908 |
| H. J. Heinz Company | \$ 10,071 | \$ 11,823 |
| Hershey Company | \$ 5,133 | \$ 7,889 |
| J & J Snack Foods Corp | \$ 629 | \$ 673 |
| Kellogg Company | \$ 12,834 | \$ 16,707 |
| Kraft Foods Inc | \$ 42,201 | \$ 39,446 |
| Lancaster Colony Corp | \$ 981 | \$ 966 |
| Lance Inc | \$ 852 | \$ 723 |
| McCormick & Company Inc | \$ 3,177 | \$ 4,145 |
| Ralcorp Holdings Inc | \$ 2,824 | \$ 3,287 |
| The J. M. Smucker Company | \$ 2,525 | \$ 2,379 |
| TreeHouse Foods, Inc. | \$ 1,501 | \$ 857 |

In 2008, the peer group was reviewed and expanded to include Del Monte Foods Company, Diamond Foods, Inc., Flowers Foods, Inc., H. J. Heinz Company, Kellogg Company and TreeHouse Foods, Inc. Wm. Wrigley Jr. Company was acquired by Mars, Inc. in October 2008 and was removed from the peer group. The Board conducted a review of executive compensation versus this revised peer group in late 2008.

Elements of Compensation

Base Salary

The Board annually reviews each named executive officer's base salary. The Board does not establish base salary based on individual or corporate performance factors fixed in advance. The factors considered by the Board include the following:

Individual performance and contribution to the Company;

Comparative compensation levels of other companies, including the periodic compensation studies performed by an independent compensation consultant;

Overall competitive environment for executives and the level of compensation considered necessary to attract and retain executive talent;

Historical compensation and performance levels for the Company;

Length of service, which can be a significant factor for some executives; and

A desire to adhere to Section 162(m) Internal Revenue Code regulations on deductible compensation, thus maximizing the Company's ability to receive federal income tax deductions.

Any changes to base salary levels typically become effective as of January 1st. Effective January 1, 2007, base salary increases ranging from 2.4% to 4.2% were approved by the Board for the named executive officers other than the Chief Executive Officer and the Chief Operating Officer. These adjustments reflect the Board's assessment of the factors outlined above. Effective January 1, 2008, base salary increases of 4.0% were approved by the Board for the named executive officers other than the Chief

Edgar Filing: TOOTSIE ROLL INDUSTRIES INC - Form DEF 14A

Executive Officer, the Chief Operating Officer and the Vice President/Manufacturing. Effective January 1, 2009, base salary increases ranging from 1.0% to 4.0% were approved by the Board for the Chief Financial Officer and the Vice President/Marketing and Sales. As with the prior year, these adjustments reflect the Board's assessment of the factors described above. No increases were approved for the Chief Executive Officer or the Chief Operating Officer in either 2007, 2008 or 2009 or for the Vice President/Manufacturing in 2008 or 2009 due to the non-deductibility of salary in excess of \$1 million under federal tax laws.

Annual Incentives

All of the named executive officers are eligible to participate in the Management Incentive Plan, which we refer to as the "MIP" below and which was approved by shareholders at the Company's 2006 Annual Meeting of Shareholders. The MIP is designed to recognize and reward the named executive officers for their contribution to the Company's overall financial performance as well as the attainment of individual and Company goals, while maintaining the tax deductibility of the annual incentive bonuses. Under the terms of the MIP, if the Company has net earnings (as defined in the MIP) of greater than \$35 million during the applicable performance period, each named executive officer is deemed to have earned an award equal to the MIP's maximum award of \$3.5 million. The committee then uses its discretion rather than predetermined targets to determine the level of performance achieved and to reduce the awards, even to zero, for each named executive officer based on its consideration and assessment of the following factors,:

Net earnings and earnings per share;

Increase in sales of core brands and total sales;

Net earnings as a percentage of sales;

Performance in accomplishing cost savings and operational improvements;

Performance in accomplishing and integrating successful acquisitions, and

Other strategic objectives that may be determined from time to time.

To date, the Company has not paid the \$3.5 maximum award available under the MIP to any named executive officer. The \$3.5 million maximum payment figure was selected for the MIP to provide the Compensation Committee flexibility in awarding an appropriate bonus payment given the facts and circumstances consistent with preserving tax deductibility under Section 162(m).

For fiscal years 2008, 2007 and 2006, the committee used its discretion to reduce the maximum payments to the levels set forth in the Summary Compensation Table. The Company's 2008 net earnings were \$38,777,000 and earnings per share were \$0.70. Net product sales were \$492,051,000. Net earnings as a percent of sales were 7.9%. Of the forgoing, net earnings and earnings per share, as compared to the prior year, are the predominant factors considered by the committee in determining bonus awards for each named executive officer. In addition to the substantial differences in the responsibilities of the Chief Executive Officer and the Chief Operating Officer, as opposed to those of the other named executive officers, the increased level of bonus provided to the Chief Executive Officer and the Chief Operating Officer reflects the Board's decision to limit salary for named executive officers to \$999,999 in light of the \$1 million deduction limitation under Section 162(m). Amounts that might otherwise have been provided to the Chief Executive Officer and the Chief Operating Officer as salary based on amounts paid to comparable executives at peer companies have been put at risk under the MIP.

Career Achievement Plan and Excess Benefit Plan

All of the named executive officers were eligible to receive annual CAP awards in 2008. The CAP is designed to provide executive officers an incentive to achieve both short-term and long-term financial and other strategic goals of the Company and is also intended to provide an incentive for the named executive

officers to remain with the Company on a long-term basis. As with the MIP, the Committee uses its discretion to determine the