

BIRKS & MAYORS INC.  
Form F-3/A  
May 13, 2011

As filed with the United States Securities and Exchange Commission on May 13, 2011

Registration No. 333-173110

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**AMENDMENT NO. 1 TO  
FORM F-3**

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

**Birks & Mayors Inc.**

(Exact name of registrant as specified in its charter)

**Not Applicable**

(Translation of Registrant's name into English)

**Canada**  
(State or other jurisdiction of  
incorporation or organization)

**Not Applicable**  
(I.R.S. Employer

Identification Number)

**1240 Phillips Square**

**Montreal, Canada H3B 3H4**

**(514)-397-2501**

(Address and telephone number of Registrant's principal executive offices)

**Michael Rabinovitch**

**Senior Vice President and Chief Financial Officer**

**Birks & Mayors Inc.**

**5870 North Hiatus Road**

**Tamarac, Florida 33321**

**954-590-9462**

(Name, address, and telephone number of agent for service)

*Copy to:*

**Rodney H. Bell, Esq.**

**Holland & Knight LLP**

**701 Brickell Avenue, Suite 3000**

**Miami, Florida 33131**

Approximate date of commencement of proposed sale to the public: **From time to time on or after the effective date of this Registration Statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. [  ]

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. [X]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [  ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [  ]

If this Form is a registration statement pursuant to General Instruction I.C. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. [  ]

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.C. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. [  ]

**CALCULATION OF REGISTRATION FEE**

| <b>Title of each class of securities<br/>to be registered</b> | <b>Amount to<br/>be registered(2)</b> | <b>Proposed maximum<br/>aggregate price per unit(3)</b> | <b>Proposed maximum<br/>aggregate offering price(3)</b> | <b>Amount of<br/>registration fee</b> |
|---|---------------------------------------|---|---|---------------------------------------|
| Class A voting shares, without nominal or par value (1)       | 382,693                               | \$3.42  | \$1,308,810.06  | \$151.95*                             |

- (1) All of the securities offered hereby are for the account of selling shareholders, to register the Class A voting shares issuable upon exercise of warrants granted to the selling shareholders.
- (2) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this registration statement also covers such indeterminate number of shares as may be required to prevent dilution resulting from share splits, share dividends or similar events, or changes in the exercise price of the warrants.
- (3) Estimated solely for purposes of computing the registration fee calculated in accordance with Rule 457(g) under the Securities Act of 1933, as amended, based on the warrants weighted average exercise price per share.

\* Previously paid.

**The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

**Explanatory Note**

This Amendment No. 1 to the Registration Statement on Form F-3 (File No. 333-173110) of Birks & Mayors Inc. (the Company ) is being filed solely to amend Part II in order to amend Item 9 to re-file exhibit 5.1 and to amend Item 10. This Amendment No. 1 does not modify any provision of the preliminary prospectus contained in Part I of the registration statement. Accordingly, this Amendment No. 1 does not include a copy of the preliminary prospectus.

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**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**ITEM 8. INDEMNIFICATION OF DIRECTORS AND OFFICERS.**

Under the Canada Business Corporations Act, R.S.C., 1985, chapter C-44, a corporation may indemnify a present or former director or officer of such corporation or another individual who acts or acted at the corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity. The corporation may advance moneys to the director, officer or other individual for the costs, charges and expenses of any such proceeding. The corporation may not indemnify an individual unless the individual acted honestly and in good faith with a view to the best interests of the corporation, or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the corporation's request and, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful. The individual shall repay any moneys advanced to him or her if he or she does not fulfill the above conditions. Such indemnification and advances may be made in connection with a derivative action only with court approval. Such individual is entitled to indemnification or advances from the corporation as a matter of right in respect of all costs, charges and expenses reasonably incurred by him in connection with the defense of any civil, criminal, administrative, investigative or other proceeding to which he is subject by reason of being or having been a director or officer of the corporation or another entity as described above if the individual was not judged by the court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done and if the individual fulfils the conditions set forth above.

The By-laws of the Company (referred to as the Corporation in the By-laws) state as follows:

34. Liability. No director or officer shall be liable for the acts, receipts, neglects or defaults of any other director, officer or employee of the Corporation, or for joining any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortuous acts of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune which shall happen in the execution of the duties of his office or in relation thereto, provided that nothing herein shall relieve any director or officer from the duty to act in accordance with the Canada Business Corporations Act, R.S.C., 1985, chapter C-44, any statute that may be substituted therefore and any regulations thereunder, as from time to time amended (the Act) or from liability for any breach thereof.

35. Indemnification. Subject to the Act, the Corporation shall indemnify a director or officer of the Corporation, a former director or officer of the Corporation, or another individual who acts or acted at the Corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Corporation or other entity if:

(a) he acted honestly and in good faith with a view to the best interests of the Corporation, or, as the case may be, to the best interests of the other entity for which the individual acted as a director or officer or in a similar capacity at the Corporation's request; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.

The Corporation shall advance the necessary moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding referred to previously. The individual shall repay the moneys if the individual does not fulfill the previously named conditions.

The Corporation shall also indemnify such person in such other circumstances as the Act permits or requires. Nothing in this by-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law.

36. Insurance. Subject to the Act, the Corporation may purchase and maintain insurance for the benefit of an individual referred to in section 35 against any liability incurred by the individual in his capacity as a director or officer of the Corporation or in the individual's capacity as a director or officer, or similar capacity, of another entity (as such term is defined in the Act), if the individual acts or acted in that capacity at the Corporation's request.

The Company's Indemnity Agreement with each director and officer states as follows:

1. Indemnification. The Company will indemnify and save harmless each director and officer as follows:

1.1 except in respect to actions by or on behalf of the Company to procure a judgment in its favor, the Company will indemnify the individual against any and all costs, charges, expenses, fines, and penalties, including any amounts paid to settle an action or investigative proceeding or satisfy a judgment or investigative determination, which are reasonably incurred by the individual in respect of any civil, criminal, or administrative action or proceeding to which the individual is made a party by reason of being or having been a director or officer of the Company provided that:

(I) The individual acted honestly and in good faith with a view to the best interest of the Company or, as the case may be, to the best interests of the other entity for which (he/she) acted as a director or officer or in a similar capacity at the Company's request; and

(II) in the case of criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that her/his conduct was lawful.

1.2 in respect to actions by or on behalf of the Company to procure a judgment in its favor to which the individual is made a party by reason of being or having been a director or officer of the Company, the Company will (to the extent required by law) apply to a court of competent jurisdiction for an order approving the indemnity of the individual and subject to such approval when required by law, the Company will indemnify the individual respecting any and all costs, charges and expenses reasonably incurred by the individual in connection with such action provided the individual acted in accordance with paragraphs 1.1(I) and 1.1(II) hereof.

1.3 the Company will indemnify the individual against all costs, charges and expenses reasonably incurred by the individual in connection with the defense of any civil, criminal, or administrative action or proceeding to which the individual is made a party by reason of being or having been a director or officer of the Company provided that:

The individual acted in accordance with paragraphs 1.1(I) and 1.1(II) hereof with respect to the behavior which is the subject of the action or proceeding and with respect to the conduct of its defense or her/his participation in the proceeding.

2. Expenses. The Company will advance or pay to the individual from time to time, but no more frequently than monthly, the amount required by the individual, and claimed by the individual in order to pay the cost of participation in any action or investigation or like proceeding, including derivative actions. Such amounts shall include sums sufficient to cover all legal fees and expenses incurred or to be incurred by the individual, on a solicitor to client basis.

When advances are made to cover cost or expenses such shall be reasonable and shall not exceed the foreseeable costs, fees/expenses to cover amounts due during the following month. The individual shall repay the moneys if (he/she) did not act in accordance with paragraphs 1.1(I) and 1.1(II) hereof.

3. Liability Insurance.

3.1 The Company covenants and agrees that, so long as the individual shall continue to serve as a director or officer of the Company and thereafter so long as the individual shall be subject to any possible proceeding by reason of the fact that the individual was a director or officer of the Company, the Company, subject to Section 3.3 of this Agreement, shall promptly obtain and maintain in full force and effect directors and officers liability insurance ( D&O Insurance ) in reasonable amounts from established and reputable insurers.

3.2 In all policies of D&O Insurance, the individual shall be named as an insured in such a manner as to provide the individual the same rights and benefits as are accorded to the most favorably insured of the Company s directors and officers, if the individual is a director or officer.

3.3 Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance if the Company determines in good faith that such insurance is not reasonably available, the premium costs for such insurance are disproportionate to the amount of coverage provided or the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit. If the Company determines to discontinue D&O Insurance coverage, the Company shall give prompt written notice to the individual.

**ITEM 9. EXHIBITS.**

| Exhibit No. | Description  |
|-------------|--|
| 4.1         | Warrant Agreement dated November 14, 2005 between Mayor s Jewelers, Inc. and Carlo Coda-Nunziante. Incorporated by reference from Birks & Mayors Inc. s Form 20-F filed on July 19, 2006.  |
| 4.2         | Warrant Agreement dated November 14, 2005 between Mayor s Jewelers, Inc. and Joseph A. Keifer. Incorporated by reference from Birks & Mayors Inc. s Form 20-F filed on July 19, 2006.  |
| 4.3         | Warrant Agreement dated November 14, 2005 between Mayor s Jewelers, Inc. and Marco Pasteris. Incorporated by reference from Birks & Mayors Inc. s Form 20-F filed on July 19, 2006.  |
| 4.4         | Amended and Restated Warrant Agreement dated November 14, 2005 between Mayor s Jewelers, Inc. and Henry Birks & Sons Inc. Incorporated by reference from Exhibit 4.53 of Birks & Mayors Inc. s Form 20-F filed on July 19, 2006. |
| 4.5         | Letter Agreement, dated November 14, 2005, between Mayor s Jewelers, Inc. and Thomas A. Andruskevich <sup>(1)</sup>  |
| 4.6         | Letter Agreement, dated November 14, 2005, between Mayor s Jewelers, Inc. and Filippo Recanti <sup>(1)</sup>   |
| 4.7         | Letter Agreement, dated November 14, 2005, between Mayor s Jewelers, Inc. and Joseph A. Keifer <sup>(1)</sup>  |
| 4.8         | Letter Agreement, dated November 14, 2005, between Mayor s Jewelers, Inc. and Marco Pasteri <sup>(1)</sup>   |
| 4.9         | Letter Agreement, dated November 14, 2005, between Mayor s Jewelers, Inc. and Carlo Coda-Nunziante <sup>(1)</sup>  |
| 5.1         | Opinion of Stikeman Elliott LLP <sup>(2)</sup>   |
| 23.1        | Consent of Stikeman Elliott LLP (included in 5.1 opinion) <sup>(2)</sup>   |
| 23.2        | Consent of KPMG LLP <sup>(1)</sup>   |
| 24.1        | Power of Attorney (included on signature page) <sup>(1)</sup>  |

(1) Previously filed.

(2) Filed herewith.



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**ITEM 10. UNDERTAKINGS.**

(a) Rule 415 Offering. The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) To file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A. of Form 20-F at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Securities Act of 1933 need not be furnished, provided that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to a registration statement on Form F-3, a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Securities Act of 1933 or Rule 3-19 if such financial statements and information are contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F-3.

(5) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the

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registration statement as of the date it is first used after effectiveness. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

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- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.
- (h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of the issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing this Amendment No. 1 to Registration Statement on Form F-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Tamarac, Florida, on May 13, 2011.

**BIRKS & MAYORS INC.**

By:     /s/ Michael Rabinovitch    

Name: Michael Rabinovitch

Title: Senior Vice President and

Chief Financial Officer

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Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to Registration Statement on Form F-3 has been signed by the following persons in the capacities and on the dates indicated.

| <b>Signature</b>  | <b>Capacity</b>  | <b>Date</b>  |
|---|--|--------------|
| *<br><b>Thomas Andruskevich</b>                           | President, Chief Executive Officer and Director (Principal Executive Officer)                                    | May 13, 2011 |
| /s/ MICHAEL RABINOVITCH<br><b>Michael Rabinovitch</b>     | Senior Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | May 13, 2011 |
| *<br><b>Lorenzo Rossi di Montelera**</b>                  | Chairman of the Board of Directors   | May 13, 2011 |
| *<br><b>Gérald Berclaz**</b>                              | Director   | May 13, 2011 |
| *<br><b>Emily Berlin</b>                                  | Director   | May 13, 2011 |
| *<br><b>Shirley Dawe**</b>                                | Director   | May 13, 2011 |
| *<br><b>Elizabeth Eveillard</b>                           | Director   | May 13, 2011 |
| *<br><b>Ann Spector Lief</b>                              | Director   | May 13, 2011 |
| *<br><b>Louis L. Roquet**</b>                             | Director   | May 13, 2011 |
| *<br><b>Niccolò Rossi di Montelera**</b>                  | Director   | May 13, 2011 |
| *<br><b>Guthrie J. Stewart**</b>                          |  |              |
| By: /s/ MICHAEL RABINOVITCH<br><b>Michael Rabinovitch</b> |  |              |
| <b>Attorney-in-Fact</b>                                   |  |              |

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**SIGNATURE OF AUTHORIZED REPRESENTATIVE**

Pursuant to the Securities Act of 1933, the undersigned, the duly authorized representative in the United States of the registrant and other foreign persons\*\* has signed this registration statement on May 13, 2011.

/s/ Michael Rabinovitch  
Michael Rabinovitch

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**EXHIBIT INDEX**

| <b>Exhibit<br/>Number</b> | <b>Description</b>  |
|---------------------------|---|
| 5.1                       | Opinion of Stikeman Elliott LLP                           |
| 23.1                      | Consent of Stikeman Elliott LLP (included in 5.1 opinion) |