BIGLARI HOLDINGS INC.
Form DEFC14A
March 11, 2015

SCHEDULE 14A INFORMATION

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

Filed by the Registrant [ ]
Filed by a Party other than the Registrant [X]

Check the appropriate box:

[ ] Preliminary Proxy Statement
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
[X] Definitive Proxy Statement
[ ] Definitive Additional Materials
[ ] Soliciting Material under Rule 14a-12

BIGLARI HOLDINGS INC.
(Name of Registrant as Specified in its Charter)

Nicholas J. Swenson
Groveland Capital LLC
Groveland Hedged Credit Fund LLC
Groveland Master Fund Ltd.
Seth G. Barkett
Thomas R. Lujan
James W. Stryker
Ryan P. Buckley
Stephen J. Lombardo III
(Name of Person(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:

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):

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BIGLARI HOLDINGS INC.

ANNUAL MEETING OF SHAREHOLDERS
April 9, 2015

PROXY STATEMENT OF THE GROVELAND GROUP
IN OPPOSITION TO
THE BOARD OF DIRECTORS OF BIGLARI HOLDINGS INC.

WHY YOU WERE SENT THIS PROXY STATEMENT

The Groveland Group (sometimes referred to herein as "we," "us," "our" and variants of those words) is seeking your support to elect Messrs. Nicholas J. Swenson, James W. Stryker, Stephen J. Lombardo, III, Thomas R. Lujan, Ryan P. Buckley, and Seth G. Barkett (the "Groveland Nominees") to the board of directors of Biglari Holdings Inc. ("BH" or the "Company"), in opposition to the candidates nominated by the incumbent board of directors at BH. The members of the Groveland Group are identified below under the heading "Certain Information Regarding the Participants." This proxy statement and form of proxy are first being mailed to shareholders on or about March 12, 2015.

OUR GOAL

We are seeking your support to replace the directors of Biglari Holdings Inc.

The Company's stock price has underperformed its benchmark indices and peer group; the financial performance of the Company's operating businesses has deteriorated significantly; and the Company's board has consistently demonstrated poor corporate governance practices.

A new board of directors will be able to make important and necessary changes in the way Biglari Holdings Inc. (formerly Steak n Shake, Inc.) is operated and governed. We strongly believe that shareholders should be primed for change and that a new board is needed now more than ever. See "Accountability" below for a discussion of the need for change and the value that change can drive. Your support will help drive significant value for all shareholders.

OUR CORE PRINCIPLES

Managing corporate resources to drive shareholder returns now and over the long-term,

Corporate governance that drives shareholder value,

A balanced and healthy culture that considers the interests of all stakeholders including customers, franchisees, employees, and shareholders,

Executing to the highest professional standards while treating people fairly and honestly, and

Protecting and strengthening the Steak n Shake brand and franchisee network.

We desire to work with the employees of BH to help create a stronger Company. We believe the Company has significant potential. The right operational focus and improved corporate governance will deliver results for the Company's customers, franchisees, employees, and shareholders. We are running this proxy contest to give BH's shareholders a choice. We believe our efforts will benefit all stakeholders.

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OUR ALIGNED INTERESTS AND PLEDGE

Our Nominees will sign the following pledge, thereby further aligning themselves with shareholders:

We are shareholders of BH and pledge to be good stewards of its business and resources.

Directors will use 100% of their 1st year, after-tax director fees to buy shares of the Company, thereby putting more of our own capital at risk alongside other shareholders.

We will immediately reduce the Company’s spending on board compensation by 20%. We will not issue any stock or options to the board. Any future increase in director compensation must be pre-approved by a vote of shareholders.

We will seek to drive shareholder value by implementing a plan consistent with our Core Principles.

WHY YOUR VOTE IS NEEDED

Many investors understand from experience that the share price of good businesses can suffer when leadership is not focused on shareholder value and not held accountable to shareholders. We believe it is very important that management and the board of directors are held accountable for their decisions at BH. So what should an investor do when a board has not created sufficient shareholder value? We have made it very easy for you to effect change at BH. Vote on the WHITE PROXY CARD. We believe our Nominees will better serve shareholders.

Please take advantage of this opportunity to make a positive change at BH.

VOTE TO CHANGE BH FOR THE BETTER. VOTE FOR OUR DIRECTOR NOMINEES ON THE WHITE PROXY CARD.

MESSAGE TO EMPLOYEE AND FRANCHISEE STAKEHOLDERS

Before we make our case against the BH board, we want to state clearly that we believe BH is filled with skilled and hard-working employees and franchisees--stakeholders who share our vision for a bright and proud corporate future. We intend to partner with the Company’s employees and franchisees to better focus BH’s resources for operational improvement and growth, as well as help management create a culture of transparency, communication, empowerment and accountability.

DEFINED TERMS, NATURAL PERSONS AND RELATED PARTIES

Mr. Biglari (“Mr. Biglari”), a natural person serving as Chairman and Chief Executive Officer (“CEO”) of Biglari Holdings Inc. Mr. Biglari also owns 100% of Biglari Capital Corp. (Source: Form 10-K filed 12/9/2013) Since Biglari Capital Corp. is the general partner of the Lion Funds, Mr. Biglari is able to control and vote approximately 19.0% of the shares of Biglari Holdings Inc. while personally owning only 1.5% of the Company’s shares. (Source: Form 4s filed 2/11/2015 and 9/22/2014 and Form 10-K filed 11/24/2014)

Biglari Holdings Inc. (the “Company” or “BH”), a NYSE-traded public company incorporated in the State of Indiana in 1976 and formerly known as Steak n Shake, Inc. (founded in 1934 by Gus Belt).

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Biglari Capital Corp. (“BCC”), general partner of the Lion Funds – an investment management company formerly owned by Biglari Holdings Inc. and now wholly-owned by Mr. Biglari. In 2013, the board of Biglari Holdings Inc. approved the sale of BCC to Mr. Biglari for $1.7 million; (Source: Form 10-K filed 12/9/2013) this after acquiring BCC from Mr. Biglari in 2010 for approximately $4.2 million. (Source: Form 8-K filed 4/30/2010) BCC collects an incentive fee on BH assets held in the Lion Funds equal to 25% of returns above a 6% hurdle. (Source: Form 10-K filed 11/24/2014) BCC collects an incentive fee equal to 25% of returns above a 5% hurdle on all other assets in the Lion Funds. (Source: Form 10-K filed 12/9/2013)

The Lion Fund, L.P. and The Lion Fund II, L.P. (the “Lion Funds”), investment partnerships currently managed by BCC. As of September 24, 2014, Biglari Holdings Inc. had $621 million invested in the Lion Funds7 or more than 86% of BH’s total market capitalization.8 As of September 24, 2014, BH’s capital investment in the Lion Funds represents 88.3% of BCC’s total assets under management. (Source: Form 10-K filed 11/24/2014)

Operating Income or EBIT (“Operating Income” or “EBIT”), is defined as revenues (including restaurant operations, insurance premiums, media advertising, and other) less costs and expenses (including restaurant cost of sales, insurance losses and underwriting expenses, media cost of sales, selling, general and administrative expenses; and depreciation and amortization). Operating income or EBIT does not include interest expense from debt or capital lease obligations. It also does not include dividends, investment gains or losses or any extraordinary gains or losses from the sale of assets.

ACCOUNTABILITY

For the reasons discussed below, we are concerned the Company’s board is failing to look out for the best interests of all of its shareholders. We want to ensure the board is putting the needs of shareholders ahead of the needs of management. We seek accountability for all shareholders. Our major concerns are as follows:

I. THE COMPANY’S STOCK PRICE HAS UNDERPERFORMED ITS BENCHMARK INDICES AND PEER GROUP.

II. THE COMPANY’S OPERATING BUSINESSES HAVE EXPERIENCED A SIGNIFICANT DETERIORATION IN THEIR FINANCIAL PERFORMANCE.

III. THE COMPANY’S CEO HAS RECEIVED OUTSIZED COMPENSATION DESPITE POOR PERFORMANCE.

IV. THE COMPANY’S BOARD OF DIRECTORS HAS DEMONSTRATED POOR CORPORATE GOVERNANCE PRACTICES.

V. THE STEAK N SHAKE BRAND AND FRANCHISEE NETWORK ARE AT RISK.

I. THE COMPANY’S STOCK PRICE HAS UNDERPERFORMED ITS BENCHMARK INDICES AND PEER GROUP.

Over the past 1-year, 3-year, and 5-year timeframes, BH’s stock has underperformed its benchmark indices and peer group by wide margins.

Note: Relative performance is as of November 21, 2014, the date that the Groveland Group announced its intention to run a competitive slate of board nominees.
Source: Capital IQ

Note: Share prices used to calculate relative performance are as of November 21, 2014, the date that the Groveland Group announced its intention to run a competitive slate of board nominees.
Source: Capital IQ

In its annual reports, BH compares its stock performance to that of the S&P 500 Index and S&P 500 Restaurants Index. Mr. Biglari’s annual “Chairman’s Letters” repeatedly request that shareholders compare BH results against the S&P 500 Index. In his own words, “The returns on invested capital from the operating businesses combined with my capital allocation work, will produce an overall return which, according to our criterion, must exceed the S&P 500 Index.” [emphasis added] (Source: Chairman's Letter dated 12/8/2009)

As illustrated above, BH has lagged its benchmarks over the past 1-year, 3-year, and 5-year periods.

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II. THE COMPANY'S OPERATING BUSINESSES HAVE EXPERIENCED A SIGNIFICANT DETERIORATION IN THEIR FINANCIAL PERFORMANCE.

The financial performance of the Company's operating businesses has deteriorated significantly over a 1-year, 3-year, and 5-year timeframe, even in the midst of what seems to be an improving economy. Over the past year, the Company's Operating Income has declined from $20.7 million in fiscal 2013 (a 2.7% margin) to $14.3 million in fiscal 2014 (a 1.8% margin), a decline of 30.9%. Over the past three years, the Company's Operating Income has fallen from $52.5 million in fiscal 2011 (a 7.4% margin) to $14.3 million in fiscal 2014 (a 1.8% margin), a decrease of 72.8%. Over a 5-year period, BH's Operating Income has fallen from $20.9 million in fiscal 2009 (a 3.3% margin) to $14.3 million in fiscal 2014 (a 1.8% margin), a decline of 31.6%. (Source: Form 10-K filings for periods reported)

Note: Operating Income or EBIT is defined as revenues (including restaurant operations, insurance premiums, media advertising, and other) less costs and expenses (including restaurant cost of sales, insurance losses and underwriting expenses, media cost of sales, SG&A expenses, and depreciation and amortization). Operating income or EBIT does not include interest expense from debt or capital lease obligations. It also does not include dividends, investment gains or losses or any extraordinary gains or losses from the sale of assets.
Source: Form 10-K filings for periods reported

This underperformance appears to be, in part, a result of ballooning Consolidated Selling, General and Administrative ("SG&A") expenses. The Company's SG&A expenses have increased from approximately $70.0 million in fiscal 2009 (11.1% of revenue) to $128.5 million in fiscal 2014 (16.2% of revenue), an increase of 83.6% over a 5-year period and a compound annual growth rate ("CAGR") of 12.9%. (Source: Form 10-K filings for periods reported) Perhaps some of this increase can be traced to BH's use of private aircraft? According to the FAA Registry, since Mr. Biglari became CEO the Company has acquired interests in three Gulfstream Aerospace G-IVs, as well as an interest in one Cessna Citation X-750. (Source: FAA Registry) BH's interests in four corporate aircraft (each an expensive luxury) are an indicator that SG&A spending is not disciplined. In the words of Mr. Biglari addressing a CEO who purchased a corporate jet, "the private jet symbolizes an ongoing culture, one that doesn't care about its shareholders. An absolute business essential is an ethos with firm self-control involving capital allocation and company expenses." (Source: Friendly Ice Cream Corporation Schedule 14A filed 3/6/2007 by The Lion Fund L.P.)

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Source: Form 10-K filings for periods reported

It is illuminating to review General and Administrative ("G&A") spending using the same method that Mr. Biglari used when he was an outside, dissident shareholder of BH (formerly Steak n Shake). Before he was on the board, Mr. Biglari sent a letter to shareholders dated January 23, 2008, in which he criticized Steak n Shake's management team for their lack of G&A spending discipline from 2001 to 2007. The table below was taken directly from Mr. Biglari's letter: (Source: The Steak n Shake Company Schedule 14A filed 1/23/2008 by The Lion Fund L.P.)

In addition, Mr. Biglari wrote the following about Steak n Shake's G&A spending: "It is appalling that the board would allow overspending to burden shareholders so dearly. Had G&A on a per unit basis remained the same over the last five years, the company could have saved over $44 million." (Source: The Steak n Shake Company Schedule 14A filed 1/23/2008 by The Lion Fund L.P.)

We update the data for fiscal years 2009-2014 in the table below. Let us apply the same logic to this data. If the Company had maintained Restaurant G&A on a per store basis ($89 per store in 2009) for the past 5 years, from fiscal 2010 through fiscal 2014, the Company could have saved over $69 million. (Source: Form 10-K filings for periods reported) The Company's increasing G&A is hard to square with Mr. Biglari's 2008 letter to shareholders, which includes this statement, "The reduction in G&A should become a part of the corporate culture at Steak n Shake to ensure that resources are allocated productively." (Source: The Steak n Shake Company Schedule 14A filed 1/23/2008 by The Lion Fund L.P.) We agree with Mr. Biglari that reducing G&A is important.

Note: The above table uses Restaurant G&A for fiscal years 2012, 2013 & 2014 as disclosed for the first time in the Company's fiscal 2014 Form10-K. Since Restaurant G&A is not available for prior years, we reference total Company G&A for fiscal 2009, 2010 and 2011. Our method for these years is identical to the method Mr. Biglari's used for his entire table (see above). We believe it is safe to assume that total Company G&A is higher than Restaurant G&A for all years. Therefore, we believe our method is conservative; savings would likely have been larger had we used Mr. Biglari's method.
Source: Form 10-K filings for periods reported

We note that the Company's operating performance under Mr. Biglari compares unfavorably to prior management on several other critical financial metrics. For the six years prior to Mr. Biglari becoming Chief Executive Officer of BH in August 2008, the Company's management team generated $220.3 million in cumulative Operating Income. The prior management team also grew revenues from $459.0 million in fiscal 2002 to $611.3 million in fiscal 2008, a CAGR of 4.9%. Over the subsequent six years, the current management team generated $201.6 million in cumulative Operating Income while growing revenues from $611.3 million in fiscal 2008 to $793.8 million in fiscal 2014. The CAGR for that time period is 4.5%. (Source: Form 10-K filings for periods reported) The Company's operating performance with Mr. Biglari at the helm has been worse than that of those predecessors he so criticized in 2008!

In fiscal 2014, the Company's consolidated SG&A expenses were $128.5 million, which amounts to approximately 16.2% of fiscal 2014 revenue. The median consolidated SG&A expenses for the Company's peer group was 10.0% of revenues for the same time period. BH's consolidated SG&A expenses are more than 1.6 times its peers. More worrisome, consolidated SG&A expenses as a percentage of revenue have increased since 2011, despite revenue growth. We are concerned that the Company is not demonstrating operating leverage. We note that the Company would have saved $49.3 million in fiscal 2014 if its consolidated SG&A expenses had been equivalent to the median of its peer group. We also note that the Company's consolidated SG&A expenses were 11.1% of revenue as recently as 2009. (Source: Form 10-K and Form 10-Q filings for periods reported)

Note:
(1) Peer group of 49 companies. Includes companies reporting SG&A information for the entire 3-year period.
(2) All data was pulled from individual company income statements as reported to the SEC. For the following companies that reported marketing and advertising separately, these expenses were added to general and administrative: CHUY, TAST, DFRG, RUTH, FRGI, FRSH, and BH for FY2011. Without the addition of marketing and advertising expenses the median for the peer group equals 8.8% for the twelve months ending September of 2014.
(3) To calculate twelve months ending September 2014, data was taken from the closest date reported by each company.
Source: Form 10-K and Form 10-Q filings for periods reported, Piper Jaffray Restaurant Benchmark Analysis July 2014

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III. THE COMPANY'S CEO HAS RECEIVED OUTSIZED COMPENSATION DESPITE POOR PERFORMANCE.

Outsized Compensation

The divergence between BH's performance and Mr. Biglari's compensation has not gone unnoticed. In 2013 and 2014, ISS Proxy Advisory Services recommended shareholders vote AGAINST Mr. Biglari's compensation package. "A vote AGAINST the proposal is warranted. Continued outsized CEO compensation not in alignment with shareholder returns has created a sustained pay-for-performance disconnect." (Source: 2014 ISS Report) Later in the same report ISS continued its criticism, "For the second consecutive year, ISS' quantitative analysis indicates a high level of concern with respect to the magnitude of CEO pay as well as with respect to the alignment between CEO pay and company performance both on an absolute and relative basis. Specifically, CEO pay has outpaced company performance over the last five years on an absolute basis, and on a three-year basis relative to a peer group of companies similar in size and industry. Further, CEO total compensation in FY2013 is over four times the median of CEO peers." (Source: 2014 ISS Report) Mr. Biglari's compensation plan has created outsized compensation for Mr. Biglari, while the financial performance of the Company's operating business has deteriorated significantly over a 1-year, 3-year, and 5-year timeframe (as discussed above).

Mr. Biglari has been quoted as a strong advocate of pay-for-performance compensation plans. In his 2010 letter to shareholders he said: "I have long believed that pay should be tied to performance. What we too often learn in Corporate America is Pay-for-Failure because of asymmetrical payouts through which executives win regardless of whether their Shareholders win or lose." (Source: Chairman's Letter dated 12/9/2010) The Company adopted a pay-for-performance plan for Mr. Biglari in 2010 (the "Amended and Restated 2010 Bonus Agreement" or "Incentive Agreement"). (Source: BH Schedule 14A filed 9/29/2010) Since the Company adopted the Incentive Agreement, Mr. Biglari's compensation has increased significantly, while the Company's stock has underperformed relative to its benchmark indices and peer group (as discussed above). ISS makes the following observation in its 2013 report: "Although Biglari does not receive equity or other forms of compensation, his total pay in FY2012 of $10.9 million is relatively high at 4.57 times the CEO peer median, and represents an increase of approximately 122 percent from his total pay in FY2011 ($4.9 million) and a 514 percent increase from FY2010 ($2.1 million)." (Source: 2013 ISS Report)

Since Mr. Biglari's first year as CEO in fiscal 2009, BH has reported $201.6 million in Operating Income and increased Mr. Biglari's compensation from $515,000 to almost $11 million annually. Over a comparable period of time the Company's former CEOs oversaw the generation of $220.3 million of Operating Income, and their compensation remained between $570,000 and $1.8 million annually. (Source: Form 10-K and Schedule 14A filings for periods reported) This reminds us of Mr. Biglari's statement in his letter to shareholders, about executives winning "regardless of whether their shareholders win or lose," (Source: Chairman's Letter dated 12/9/2010) as it seems Mr. Biglari is winning, while shareholders are losing.

Cap on Payments under Incentive Agreement Undermined

When Mr. Biglari's Incentive Agreement was put in place, the Governance, Compensation and Nominating Committee capped the payments that Mr. Biglari could receive under the Incentive Agreement. The Committee also explained that it would look out for shareholders' interests in connection with the Incentive Agreement, as the Committee "has sole authority for monitoring and administering the Incentive Agreement. This official permission includes final authority over the calculation of adjusted book value and incentive payments. The Committee may also recommend amendments to the Incentive Agreement. Any amendment that would materially increase the benefits to Mr. Biglari, including any amendment that would reasonably be expected to increase his incentive compensation, must be approved by shareholder vote." [emphasis added] (Source: BH Schedule 14A filed 9/29/2010)

Yet as a result of BH selling BCC back to Mr. Biglari in 2013, which was done without shareholder input, Mr. Biglari now has the opportunity to continue to receive his outsized compensation from BH, while also receiving incentive fees for managing the assets of the Lion Funds, with a full 88.3% of those assets being made up of BH's assets that Mr. Biglari himself allocated to the Lion Funds. The public record contains no filings related to BH soliciting shareholder approval (input) regarding the sale of BCC back to Mr. Biglari. So, as noted above, one end result of the sale of BCC back to Mr. Biglari is increased compensation to Mr. Biglari, and shareholder approval (input) was not solicited for this increase.

In almost all of the Chairman's letters Mr. Biglari has written to the shareholders of BH, he has stated that he is the "sole capital allocator" at BH; therefore, he is personally making the decisions to allocate assets into the Lion Funds. For example, in the 2014 Chairman's Letter to Shareholders Mr. Biglari states, "Capital allocation responsibility is highly centralized and managed exclusively by myself rather than through a committee." (Source: Chairman's Letter dated 11/21/2014) In the 2013 Chairman's Letter he also writes, "As the sole capital allocator — unrestrained by institutional limitations — I maintain maximum freedom when redeploying capital." (Source: BH Chairman's Letter dated 12/6/2013) The Lion Funds do not cap the incentive fees payable to Mr. Biglari.

In summary, Mr. Biglari's wholly-owned investment management company, BCC, collects a 25% incentive fee above a 6% hurdle rate on the BH's assets invested in the Lion Funds. As of September 24, 2014, BH had $621.0 million invested in the Lion Funds. BH's capital balance represented approximately 88.3% of the total capital invested in the Lion Funds. It also represented over 86% of BH's market capitalization at the time. As a consequence, Mr. Biglari is paid a 25% incentive fee (above a 6% hurdle) to manage $621.0 million of the shareholders' assets; this is in addition to his outsized compensation to be CEO of BH. In its April 2014 report, Institutional Shareholder Services estimates that Mr. Biglari's total compensation is 4.13 times the median of its peers—and this estimate excludes the $14.7 million that Mr. Biglari collected in 2013 as an incentive fee on BH assets held in the Lion Funds. (Source: 2014 ISS Proxy Advisory Services Report)

Comparison of Outsized Compensation to Peers

The charts below contextualize Mr. Biglari's compensation. We compare Mr. Biglari's compensation to the compensation of the Company's previous CEOs and to cumulative Operating Income.

BH Cumulative Operating Income & Cumulative CEO Compensation

Note: Operating Income or EBIT is defined as revenues (including restaurant operations, insurance premiums, media advertising, and other) less costs and expenses (including restaurant cost of sales, insurance losses and underwriting expenses, media cost of sales, SG&A expenses, and depreciation and amortization). Operating income or EBIT does not include interest expense from debt or capital lease obligations. It also does not include dividends, investment gains or losses or any extraordinary gains or losses from the sale of assets.

Source: Form 10-K and Schedule 14A filings for periods reported

Comparative 6-Year Cumulative Operating Income & Cumulative CEO Compensation
(Both with and without Lion Funds Incentive Payments)

Note:
(1) Includes estimated Lion Fund 2014 incentive fee of $30.9 million.
(2) Operating Income or EBIT is defined as revenues (including restaurant operations, insurance premiums, media advertising, and other) less costs and expenses (including restaurant cost of sales, insurance losses and underwriting expenses, media cost of sales, SG&A expenses, and depreciation and amortization). Operating income or EBIT does not include interest expense from debt or capital lease obligations. It also does not include dividends, investment gains or losses or any extraordinary gains or losses from the sale of assets.
Source: Form 10-K and Schedule 14A filings for periods reported

Mr. Biglari's compensation amounts to 22.6% of the Operating Income of Biglari Holdings Inc. from fiscal 2009 through fiscal 2013. (Source: Form 10-K and Schedule 14A filings for periods reported) How does this figure compare with BH's peer group (made up of the constituents of the S&P 500 Restaurants Index, the ISS Peer Group and the Russell 3000 Restaurant Industry Index) for the same time period? Well…

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Note:
(1) Peer Group of 49 companies. Two companies had less than $10.0 million of cumulative EBIT over the 5-year period and were excluded (LUB: $6.7 million & JMBA: -$18.0 million). Excluding these two companies, cumulative EBIT ranged from $44.4 million to $39.0 billion for the 5-year period.
(2) BH & Lion Fund compensation is a total of BH CEO Compensation and Incentive fees paid to BCC as they are reported in the Company's SEC filings.
(3) Operating Income or EBIT is defined as revenues (including restaurant operations, insurance premiums, media advertising, and other) less costs and expenses (including restaurant cost of sales, insurance losses and underwriting expenses, media cost of sales, SG&A expenses, and depreciation and amortization). Operating income or EBIT does not include interest expense from debt or capital lease obligations. It also does not include dividends, investment gains or losses or any extraordinary gains or losses from the sale of assets.
Source: Form 10-K and Schedule 14A filings for periods reported; Capital IQ

IV. THE COMPANY'S BOARD OF DIRECTORS HAS DEMONSTRATED POOR CORPORATE GOVERNANCE PRACTICES.

A. The board of directors approved a transaction between the Company and its Chairman and CEO resulting in apparent conflicts of interest.

Acquisition of Biglari Capital Corp. and New Incentive Plan

In ––––April 2010, Mr. Biglari sold Biglari Capital Corp., general partner of the Lion Fund, L.P., to Biglari Holdings Inc. for approximately $4.2 million. At the time of the transaction, Mr. Biglari was both the sole shareholder of BCC and the Chairman and CEO of BH. BCC had approximately $44.2 million of capital under management when it was sold to BH. (Source: Form 10-Q filed 8/13/2010)

Simultaneously with the sale of Biglari Capital Corp. to Biglari Holdings, the company unveiled a new compensation plan for Mr. Biglari (the "April Incentive Plan"). The Company explained the situation this way: "In connection with the acquisition of BCC (manager of the Lion Fund) and in recognition of Mr. Biglari's increased responsibilities in overseeing the operations, investments and capital allocation of a diversified holding company, the Company entered into the Incentive Bonus Agreement, dated April 30, 2010, …with Mr. Biglari, subject to shareholder approval."…. "The Incentive Bonus Agreement provides Mr. Biglari the opportunity to receive annual incentive compensation payments based on the Company's book value growth for each fiscal year. If the Company exceeds a 5% annual book value growth hurdle, Mr. Biglari would receive an incentive compensation payment equal to 25% of the Company's book value in excess of that hurdle rate." (Source: Form 8-K filed 4/30/2010)

The April Incentive Agreement was not approved as originally proposed. In November 2010, after negotiations that resulted in a modification to the April Incentive Plan, shareholders approved an Amended and Restated Bonus Incentive Agreement. The final and approved plan capped Mr. Biglari's compensation. The original April Incentive plan did not cap Mr. Biglari's compensation. During the Company's efforts to persuade shareholders to approve Mr. Biglari's new incentive plan, the Company explained that shareholder interests would be best served if Mr. Biglari operated both the investment management business and the restaurant business from within BH (see discussion below).

Board Approves Sale of Biglari Capital Corp. Back to Mr. Biglari; BH Immediately Invests $377.6 million

Then in July 2013, Mr. Biglari arranged to buy Biglari Capital Corp. back from Biglari Holdings Inc. for $1.7 million ($2.5 million less than the price BH paid for BCC three years earlier), even though BCC was managing approximately $56.0 million of outside capital in the Lion Fund, L.P. and had generated about $6.0 million of after-tax cash earnings for shareholders during the roughly three years it was owned by BH. Between July 2013 and September 2013, that is, during the three months following the sale of BCC back to Mr. Biglari, a total of $377.6 million was transferred from BH to the Lion Funds. (Source: Form 10-K filed 12/9/2013)

BH’s Governance, Compensation and Nominating Committee was right the first time, when it concluded in 2010 that the “potential for conflicts of interest arising over Mr. Biglari’s compensation arrangement with BCC should be nullified,” and that this is best done “by the consolidation of Mr. Biglari’s sources of income under a single compensation program.” (Source: BH Schedule 14A filed 9/29/2010)

We further observe that in 2010 the Governance, Compensation and Nominating Committee stated that "after the Company's acquisition of BCC, Mr. Biglari's business and investment activities are now conducted through the Company for the benefit of all its shareholders and partners" (Source: BH Schedule 14A filed 9/29/2010) So, what has changed?

Among the Company's stated reasons for selling BCC back to Mr. Biglari were: "The transactions were entered into by BH to, among other things, (a) reduce regulatory burdens related to investments, (b) improve cash management, (c) foster an enhanced understanding of BH and mitigate conflicts of interest through the separation and clear demarcation of BH from The Lion Fund, and (d) simplify the Incentive Bonus Agreement." (Source: Form 8-K filed 7/2/2013)

None of the board's points address the conflicts of interest. Mr. Biglari has two sources of compensation, one of which is not under the supervision of the board and yet this source of Mr. Biglari's income (BCC and the Lion Funds) benefits greatly from BH's assets. Of course, these are the very assets that Mr. Biglari personally allocated to the Lion Funds (as discussed above).

With regard to incentive compensation payable to Mr. Biglari, the expectation was that "any amendment that would materially increase the benefits to Mr. Biglari, including any amendment that would reasonably be expected to increase his incentive compensation, must be approved by shareholder vote." (Source: BH Schedule 14A filed 9/29/2010) Yet this protection was of little help in the end because the board indirectly approved increasing the benefits to Mr. Biglari as result of BH selling BCC back to Mr. Biglari, a transaction that did not require shareholder approval.

As a result of BH selling BCC back to Mr. Biglari, Mr. Biglari has the opportunity to continue to receive his outsized compensation, while also receiving incentive fees for managing the assets of the Lion Funds, with 88.3% of those assets coming from BH (assets that Mr. Biglari allocated to the Lion Funds). The Lion Funds do not cap the incentive fees payable to Mr. Biglari. As recently as fiscal 2014, BH transferred an additional $174.4 million of cash and securities into the Lion Funds. (Source: Form 10-K filed 11/24/2014)

B. The board of directors has failed to treat shareholders the way owners should be treated, like partners who are knowledgeable about their business' operations.

Mr. Biglari believes that financial transparency is important so that shareholders are "treated the way they should be, like partners who are knowledgeable about their business' operations." (Source: Steak n Shake Schedule 14A filed 1/23/2008) We support this belief, and believe that such transparency in other matters is also vital. Shareholders own the business and should be treated as knowledgeable partners.

We are puzzled by the board's reasons for jettisoning the investment management business with the sale of BCC to Mr. Biglari in 2013. Prior to 2013, the Company repeatedly said that the investment management business was a cornerstone of its growth strategy, "The Company's growing asset management business is a cornerstone of its long-term strategy to maximize shareholder value creation. The Company views its acquisition from Mr. Biglari of Biglari Capital Corp. ("BCC"), the general partner of The Lion Fund, L.P. ("Lion Fund"), as a sensible springboard to develop the Company's investment business. It also gives the Company an immediate, new source of earnings in the form of fund management fees." (Source: BH Schedule 14A filed 9/29/2010) Why then did the board approve the sale of BCC, an important and growing operating subsidiary of BH, to BH's Chairman and CEO?

When BH acquired BCC in 2010, it was expected that the Lion Fund would be a source of capital for BH. The Company said, "Therefore, the Committee considered a wide range of factors, including, among others, its judgment that combining the operations of the Corporation and of the Lion Fund would more closely harmonize the interests of the Corporation's public shareholders and the Lion Fund's limited partners. The Committee firmly believes its decision is further supported by potential long-term efficiencies that can be achieved as a result of the combined capital resources of the Corporation and of the Lion Fund." (Source: BH Schedule 14A filed 9/29/2010) But it appears to have worked the other way; BH has been a source of capital for the Lion Funds. After the sale of BCC to Mr. Biglari in 2013, BH contributed cash and securities with an aggregate value of $377.6 million to the Lion Funds. In fiscal 2014, BH contributed cash and securities of $174.4 million to the Lion Funds. These investments are subject to a rolling five-year lock-up period under the terms of the respective partnership agreements, partnership agreements that are not publicly available.

BCC collects a 25% incentive fee on performance above a 6% hurdle rate. Most of the assets in the Lion Funds are BH assets, directed to the Lion Funds by Mr. Biglari with the board's approval. As of September 24, 2014, BH had $621.0 million invested in the Lion Funds. BH's capital balance represented approximately 88.3% of the total capital invested in the Lion Funds. It also represented over 86% of BH's market capitalization. Therefore, it appears that the board of directors has successfully worked with Mr. Biglari in effectively circumventing the cap on his incentive compensation. The board of directors presided over BH while the overwhelming majority of the Company's assets have been transferred into entities beyond the board's direct governance oversight and controlling influence. In addition to the foregoing, Steak n Shake has incurred significant debt (over $215 million as of September 24, 2014) in the process. (Source: Form 10-K filed 11/24/2014)

Note:
(1) Incentive fee that BH is paying BCC to manage its investment in the Lion Funds. 2013 fees are as reported in BH's Form 10-Q filing on May 16, 2014 and Groveland Group's estimate for 2014. Fees listed are for the BCC fiscal year.
(2) Estimated incentive of $30.9 million is based on CBRL stock appreciation from $110.07 on 12/31/13 to $140.76 on 12/31/14 as well as dividends received. BH's capital balance represents approximately 95.8% of the assets under management in The Lion Fund II, L.P. It is our understanding that as of 12/31/14 The Lion Fund II, L.P. owned 4,737,794 shares of CBRL.
Source: Form 10-K and Schedule 14A filings for periods reported

C. The Board of Directors has Entrenched Itself and the Company's CEO and disenfranchised shareholders.

The board of directors at BH has entrenched itself and the CEO of the Company by putting in place takeover protection (discussed below) that is unfriendly to shareholders and potentially harmful to the Company's financial results. Like Mr. Biglari, we believe "shareholders are the true owners" of a company, and "they should decide whether or not an entrenched board is good policy." (Source: Friendly Ice Cream Corporation Schedule 14A filed 1/8/2007 by The Lion Fund L.P.)

Licensing Agreement

In January 2013, BH entered into a Trademark License Agreement with Mr. Biglari, Chairman and CEO of BH (the "2013 Licensing Agreement"), which does not require payments to Mr. Biglari as long as Mr. Biglari controls BH, but which requires BH to pay Mr. Biglari a royalty equal to 2.5% of revenue for a minimum of five years in the event that there is a change of control at BH; and a change of control appears to be triggered if, among other things, Mr. Biglari no longer has the "sole capital allocation authority" at BH. (Source: Form 8-K filed 1/11/2013) We estimate such payment would currently total approximately $20 million annually or $100 million over the five years. Each year Mr. Biglari remains as CEO, the minimum Licensing payment increases making it more expensive to remove him as every year passes.

This seems an unnecessary and unreasonable obstacle to change at BH. Commenting on the arrangement, Bernard Black, Chabraja Professor at Northwestern University, Law School and Kellogg School of Management has stated, "The [Biglari] license agreement has no business justification, and is equivalent to a super golden parachute, on top of the rich parachute that BH has already granted to Biglari"…"The license agreement is a form of asset tunneling in; the payment on a change of control grossly exceeds any plausible value of the Biglari name to the BH restaurants." (Source: Case 1:13-cv-00891-SEB-MJD, Southern District of Indiana 9/6/2013)

The 2013 Licensing Agreement was unanimously approved by the Governance, Compensation, and Nominating Committee of the board of directors. (Source: Form 8-K filed 1/11/2013)

Golden Parachute

In 2010, the board of directors also approved a "golden parachute" for the Company's CEO, Mr. Biglari, equal to 299% of the average annual cash compensation (consisting of his base salary and incentive compensation) paid to him since the date of the Incentive Agreement. (Source: BH Schedule 14A filed 9/29/2010) If Mr. Biglari's cash compensation from fiscal 2011-2014 is used to calculate the payout, he would receive approximately $20.6 million from the Company. This sum represents almost 1.5 times what BH earned in Operating Income in fiscal 2014. Again, this seems an unnecessary and unreasonable obstacle to change at BH.

Voting Authority

The Lion Funds own shares of BH, and Mr. Biglari currently has sole authority to vote the shares of BH held by the Lion Funds. So, with the Lion Funds now managed by BCC (which is wholly owned by Mr. Biglari), and with the assets of the Lion Funds currently at his sole discretion (with the vast majority of those assets being assets of BH), Mr. Biglari has been able to use BH's assets to increase the number of shares over which he has sole voting authority. Mr. Biglari now has sole voting authority over approximately 19.0% of Biglari Holdings' shares, while Mr. Biglari personally owns only 1.5% of the Company's shares. Approximately 216,913 shares of BH or 10.5% of the Company's outstanding common stock currently owned by The Lion Fund, L.P. was purchased with capital belonging to BH and directed to the Lion Funds by Mr. Biglari.

Selling Low then Buying High

We expect the board and management to do their best to issue the Company's stock when it is priced above intrinsic value and buy it back when it is trading below intrinsic value. Making these judgments is always difficult and uncertain. In the case of the Company, this challenge is complicated by apparent conflicts of interest.

In both September 2013 and September 2014, Biglari Holdings issued new shares via offerings of transferable subscription rights, distributing one transferable subscription right ("Rights") for each share of its common stock. In turn, every five Rights entitled a shareholder to subscribe for one share of common stock. The rights offering shares were priced at $265.00 in 2013 and $250.00 in 2014. Shareholders on the record date who fully exercised the Rights distributed to them were also entitled to subscribe for and purchase additional shares of common stock not purchased by other Rights holders through their basic subscription privileges. The offerings were oversubscribed, resulting in 286,767 and 344,261 new shares of common stock being issued, respectively. The Company received net proceeds of $75.6 million and $85.9 million, respectively. (Source: Form 10-K filed 11/24/2014)

On November 21, 2014, the Groveland Group filed its Notice of Intent with the SEC to nominate a competitive board slate at BH.53 Since then, The Lion Fund, L.P. has acquired 48,405 shares of BH or 2.3% of the Company's outstanding common stock at an average price per share of $399. (Source: Form 4 and Schedule 13D filings of Lion Funds and related parties)

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The Company sold shares in September 2014 at $250 per share and The Lion Fund, L.P. repurchased them at $399 per share four months later! Since approximately 61.6% of The Lion Fund, L.P. assets are sourced from BH, Mr. Biglari's purchases of BH shares in The Lion Fund, L.P. were 61.6% funded by BH shareholders. (Source: Form 10-K filed 11/24/2014)

V. THE STEAK N SHAKE BRAND AND FRANCHISEE NETWORK ARE AT RISK

A. "Steak n Shake" is a great brand. Why now "Steak n Shake by Biglari"?