WEIS MARKETS INC
Form 8-K
November 01, 2010

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of
The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): October 26, 2010

WEIS MARKETS, INC.

(Exact Name of Registrant as Specified in Charter)

Pennsylvania
(State or Other Jurisdiction of Incorporation)

1-5039	**24-0755415**
(Commission File Number)	(IRS Employer Identification No.)
1000 South Second Street **Sunbury, PA**	**17801**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(570) 286-4571**

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

[ ] Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
[ ] Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
[ ] Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
[ ] Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

David J. Hepfinger Employment Agreement

On October 26, 2010, with retroactive effect to March 1, 2010, Weis Markets, Inc. (the "Company") entered into an employment agreement (the "Employment Agreement") with its President and Chief Executive Officer, David J. Hepfinger. The Employment Agreement has a three year term (the "Term") and supersedes and replaces Mr. Hepfinger's previous employment agreement with the Company, dated March 1, 2008. The Employment Agreement provides Mr. Hepfinger with the following compensation and benefits:

- Annual base salary of no less than $750,000, subject to periodic review and adjustment by the Board of Directors of the Company (the "Board") or the Compensation Committee of the Board;
- Participation in any annual or long-term bonus or incentive plans maintained by the Company for its senior executives;
- A supplemental cash incentive under the Company's CEO Incentive Award Plan (the "Plan"), effective January 1, 2010 (as further described below);
- Participation in any stock option, stock ownership, stock incentive or other equity-based compensation plans maintained by the Company for its senior executives;
- Participation in all compensation or employee benefit plans or programs, and all benefits or perquisites, for which any member of the Company's senior management is eligible under any existing or future Company plan or program; and
- A term life insurance policy with a death benefit of $1,000,000.

The Employment Agreement further provides that if the Board determines that Mr. Hepfinger has been incompetent or negligent in the performance of his duties or engaged in fraud or willful misconduct in a manner that caused or contributed to the need for a material restatement of the Company's financial results, and if the performance-based compensation paid under the Employment Agreement would have been lower if based on such restated results, then the Board and the Company will seek recoupment from Mr. Hepfinger of any portion of such performance-based compensation deemed appropriate.

In the event that Mr. Hepfinger's employment terminates due to a "Without Cause Termination" or is terminated by Mr. Hepfinger for "Good Reason," then, pursuant to the Employment Agreement, Mr. Hepfinger will be entitled to:

- Earned but unpaid base salary as of the date of termination and any earned but unpaid bonuses for prior years (other than any bonuses payable under the Plan) ("Accrued Obligations");
- Continued base salary, as in effect at termination, payable until the end of the Term; and
- Payment, for the year of termination and for each subsequent calendar year or portion thereof during the remainder of the Term, of an amount (prorated in the case of any partial year) equal to the highest annual incentive bonus (not including any bonus paid under the Plan) received for any year in the two years preceding the date of termination.

For these purposes "Without Cause Termination" means a termination of employment by the Company other than due to "Disability" or the expiration of the Term and other than a "Termination for Cause." "Disability" means Mr. Hepfinger shall be disabled so as to be unable to perform for 180 days in any 365-day period, with or without reasonable accommodation, the essential functions of his positions under the Employment Agreement, as determined by Mr. Hepfinger or his representative. A "Termination for Cause" means a termination by the Company by the vote of the majority of the Board because Mr. Hepfinger (a) has been convicted of, or has entered a plea of nolo contendere to, a criminal offense involving moral turpitude, or (b) has willfully continued to fail to substantially perform his duties with the Company after a written demand for substantial performance is delivered by the Board, or (c) has committed an improper action resulting in personal enrichment at the expense of the Company, or (d) has engaged in illegal or gross misconduct that is materially and demonstrably injurious to the Company, or (e) has violated his representations or duties under the Employment Agreement.

In the event of his Disability, the Company may remove Mr. Hepfinger from employment, in which case, pursuant to the Employment Agreement, Mr. Hepfinger will be entitled to:

- Accrued Obligations;
- Continued base salary, offset by any amounts otherwise payable under the Company's disability program, at the rate of 50% of base salary as of the date of disability, payable until the end of the Term; and
- A bonus for the year of disability equal to the amount determined by the Company in good faith to be the amount of bonus that Mr. Hepfinger would have received if he had been employed throughout the bonus year, which will be prorated on a daily basis as of the date of disability.

In the event of his death, pursuant to the Employment Agreement, Mr. Hepfinger will be entitled to:

- Accrued Obligations as of the date of death payable in full; and
- From the date of death until the end of the Term, base salary payments, at the rate of 50% of base salary as of the date of death, to Mr. Hepfinger's surviving spouse and, following the death of his spouse, to his estate.

In the event that Mr. Hepfinger's employment terminates due to a Termination for Cause or Mr. Hepfinger terminates employment other than for "Good Reason," Disability, retirement under the Company's established policies, or death, then Accrued Obligations and vested benefits as of the date of termination will be payable to Mr. Hepfinger in full. No other payments will be made to Mr. Hepfinger, except for benefits that have already become vested under the terms of the Company's employee benefit programs. For these purposes, a termination by Mr. Hepfinger for "Good Reason" means a termination by notice given at any time due to (a) any reduction without his consent in Mr. Hepfinger's salary below $750,000 per annum or (b) failure of the Company or its successor to fulfill its obligations under the Employment Agreement in any material respect.

The Employment Agreement also provides that Mr. Hepfinger may not disclose or use any confidential information of the Company during or after the Term of the Employment Agreement. During his employment with the Company and for a period of four years following his termination of employment for any reason, Mr. Hepfinger is also precluded from engaging or assisting in any business which is in competition with the Company and from soliciting any Company employee, consultant, vendor or supplier.

The preceding description of the Employment Agreement is a summary of its material terms, does not purport to be complete, and is qualified in its entirety by reference to the Employment Agreement, a copy of which is being filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

CEO Incentive Award Plan

On October 26, 2010, the Compensation Committee of the Board adopted the CEO Incentive Award Plan (the "Plan"), with retroactive effect to January 1, 2010, which is designed to provide a strong financial incentive for chief executive officer ("CEO") performance by making a significant percentage of the CEO's total cash compensation dependent upon yearly corporate performance, and to encourage CEO retention.

Pursuant to the Plan, the CEO is entitled to receive an incentive award for each fiscal year consisting of the following:

- A retention award equal to the participant's base salary for such fiscal year; and
- A profit performance award equal to the base salary for the fiscal year if the Net Income of the Company increases by 5% or more from the Net Income of the previous fiscal year (the "Performance Target").

For purposes of the Plan, "Net Income" means the "Net Income" as set forth in the Company consolidated statements of income; provided, however, that in comparing the Net Income for a particular plan year (the "Current Year") to the Net Income for the prior plan year (the "Prior Year"), such comparison shall be done on a "same store profit comparison," meaning that in calculating Net Income for a Current Year, only the results of stores in such Current Year that also were in operation as of December 31 in the Prior Year shall be included.

Although the right to receive awards under the Plan are measured and determined on an annual basis, except in the case of a Without Cause Termination (as defined above) or death, no Plan award will be paid to the participant until after December 31, 2014, provided that the participant remains employed as such from January 1, 2010 through December 31, 2014. Within three months following the end of the fiscal year, the Compensation Committee will determine in accordance with the terms of the Plan and certify in writing whether the Performance Target was achieved. Subject to exception in the event that a delay in payment is required under Section 409A of the Internal Revenue Code ("Section 409A") and any deferral election made by the participant under any deferral plan of the Company then in effect, any incentive award to which a participant becomes entitled will be paid in a lump sum cash payment within 2 ½ months after December 31, 2014, subject to the determination and certification by the Committee of each profit performance award for each plan year. The maximum amount of the incentive award payable under the Plan in any fiscal year will be limited to $1,500,000.

Under the Plan, if the participant's employment is subject to a Without Cause Termination, the Company will pay the participant as follows:

If the Without Cause Termination occurs on or between the following dates:	**Amount to be Paid**
January 1, 2011 to December 31, 2011	1,000,000
January 1, 2012 to December 31, 2012	1,500,000
January 1, 2013 to December 31, 2013	2,000,000
January 1, 2014 to December 31, 2014	2,500,000

Subject to exception in the event that a delay in payment is required under Section 409A, any amounts payable due to a Without Cause Termination will be paid in a lump sum cash payment within 2 ½ months after the end of the calendar year in which such Without Cause Termination occurs.

Upon the death of the participant, the Company will pay $1,000,000 to the participant's surviving spouse, if any, or otherwise to the participant's estate. Such payment will be made within sixty (60) days of the date of death of the participant. In the case of any other termination of employment prior to December 31, 2014, including for disability, retirement, resignation or Termination for Cause, the participant will not be entitled to receive payment of any amounts under the Plan.

Incentive awards payable under the Plan are subject to the same recoupment provisions as apply for payments made pursuant to the Employment Agreement, as described above.

The preceding description of the Plan is a summary of its material terms, does not purport to be complete, and is qualified in its entirety by reference to the Plan, a copy of which is being filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed herewith:

Exhibit No.	Description
10.1	Employment Agreement, effective March 1, 2010, by and between Weis Markets, Inc. and David J. Hepfinger.
10.2	Weis Markets, Inc. CEO Incentive Award Plan, effective January 1, 2010.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

WEIS MARKETS, INC.

By: /s/Scott F. Frost
Name: Scott F. Frost
Title: Vice President, Chief Financial Officer
and Treasurer
(Principal Financial Officer)

Dated: November 1, 2010

EXHIBIT INDEX

Number	Description	Method of Filing
10.1	Employment Agreement, effective March 1, 2010, by and between Weis Markets, Inc. and David J. Hepfinger.	Filed herewith.
10.2	Weis Markets, Inc. CEO Incentive Award Plan, effective January 1, 2010.	Filed herewith.