

CHURCHILL DOWNS INC  
Form 8-K  
September 27, 2010

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 27, 2010

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**CHURCHILL DOWNS INCORPORATED**

(Exact Name of Registrant as Specified in Its Charter)

**Kentucky**  
(State or Other Jurisdiction  
of Incorporation)

**001-33998**  
(Commission  
File Number)

**61-0156015**  
(IRS Employer  
Identification No.)

**700 Central Avenue, Louisville, Kentucky 40208**

(Address of Principal Executive Offices) (Zip Code)

**Registrant's Telephone Number, Including Area Code: (502) 636-4400**

**Not Applicable**

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

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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.**

On September 27, 2010, Churchill Downs Incorporated (the "Company") entered into an amended and restated employment agreement (the "Employment Agreement") with its President and Chief Executive Officer, Robert L. Evans. The Employment Agreement amends and restates the previous employment agreement dated as of July 18, 2006, as subsequently amended on November 25, 2008, between the Company and Mr. Evans (the "Prior Agreement"). The Employment Agreement was approved by the Board of Directors of the Company and became effective upon execution.

The initial term of the Employment Agreement will expire on August 14, 2016, and will be automatically extended for subsequent one-year periods, unless either party provides a written notice not to extend the term of employment at least 90 days prior to the then-current expiration date. The Employment Agreement provides for earlier termination under certain circumstances.

The Employment Agreement provides for an annual base salary of \$550,000, with reviews for potential increase at the discretion of the Board. Mr. Evans will continue to be eligible to participate in the Company's annual performance bonus plan, with a target bonus opportunity for each performance period of 100% of his base salary. The Prior Agreement provided for a target bonus opportunity of 75% of Mr. Evans' base salary.

The Employment Agreement further provides that Mr. Evans will receive the following equity-based awards: (i) 45,000 restricted shares of the Company's common stock, with vesting contingent upon the Company's common stock reaching certain closing prices on Nasdaq for 20 consecutive trading days beginning on and after August 14, 2011; (ii) 81,250 restricted shares of the Company's common stock, vesting quarterly over approximately five years beginning September 30, 2011; and (iii) stock options, vesting quarterly over approximately three years beginning September 30, 2010, to purchase an aggregate of 180,000 shares of the Company's common stock, with an exercise price equal to the fair market value of a share of the Company's common stock on the date of grant. All of the equity grants are awarded effective as of September 27, 2010, and are made under and pursuant to the Company's 2007 Omnibus Stock Incentive Plan. Mr. Evans shall retain all outstanding equity grants provided in the Prior Agreement, whether or not vested as of the effective date of the Employment Agreement, in accordance with the terms of the Prior Agreement and applicable plan documents and award agreements.

In the event of a "change in control," as defined in the Employment Agreement, during Mr. Evans' employment with the Company, he shall receive accelerated vesting of: (i) fifty percent (50%) of the then-unvested restricted stock units granted pursuant to the Prior Agreement; (ii) fifty percent (50%) of the then-unvested restricted shares granted pursuant to the Employment Agreement and the Prior Agreement; and (iii) fifty percent (50%) of the then-unvested stock options granted pursuant to the Employment Agreement. The restricted stock units, restricted shares and stock options that are subject to this accelerated vesting shall be taken pro-rata from each then-unvested tranche of the applicable award, and the remaining portion of each tranche shall vest according to the original terms of the applicable award agreement.

Mr. Evans will continue to be: (i) eligible to participate in any annual or long-term cash or equity-based incentive plan or other arrangements of the Company, as they exist from time to time; (ii) provided the opportunity to participate in the Company's qualified 401(k) profit-sharing plan and non-qualified deferred compensation plan; and (iii) entitled to participate in the Company's employee benefit plans, programs and arrangements, and perquisite programs and arrangements, if any, on the same basis as generally provided to other similarly situated executives of the Company. In addition, Mr. Evans will continue to receive a ground transportation benefit and will be entitled to reimbursement of his attorney fees related to the review and negotiation of the Employment Agreement, up to a maximum amount of \$5,000.

If Mr. Evans' employment is terminated by the Company other than for "cause," "disability," or death, or if he resigns for "good reason" (as each term is defined in the Employment Agreement), then Mr. Evans is entitled to the following: (i) cash payments equal to the product of 1.5 times the sum of (x) his base salary plus (y) his target bonus for the year of termination of employment, payable in equal installments over the 18 months following termination of employment (the Prior Agreement provided that Mr. Evans would continue to receive his base salary through the end of the calendar quarter in which termination of employment occurs); (ii) treatment of all equity-based awards per the terms of the Prior Agreement, the Employment Agreement and the applicable plan or agreement; provided, however, that vesting of any equity awards granted pursuant to the Employment Agreement and the Prior Agreement shall be calculated through the end of the calendar quarter in which termination of employment occurs; and (iii) continuation of medical benefits through the end of the calendar quarter in which termination of employment occurs; provided, however, that such medical benefit shall be reduced or eliminated to the extent Mr. Evans receives similar benefits from a subsequent employer.

If, during the two-year period following a "change in control," as defined in the Employment Agreement, Mr. Evans is terminated by the Company other than for "cause," "disability," or death, or if he resigns for "good reason," then Mr. Evans shall receive: (i) the same benefits just described above (except that the cash payments due upon termination of employment shall be payable in a lump sum on the 60<sup>th</sup> day following termination of employment), and (ii) full accelerated vesting of any then-unvested equity awards granted pursuant to the Employment Agreement and the Prior Agreement. In addition, if, following such a termination, Mr. Evans' benefits and payments constitute a parachute payment under Section 280(G)(b)(2) of the Internal Revenue Code, which would subject him to an excise tax under Section 4999 of the Internal Revenue Code, Mr. Evans will be entitled to receive an additional tax gross-up payment from the Company in an amount which, after imposition of all federal, state and local income and excise taxes, is equal to the excise tax on all such payments received by Mr. Evans.

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In the event Mr. Evans' employment is terminated due to his death or disability, Mr. Evans or his estate, as the case may be, will be entitled to 18 months accelerated vesting of the 81,250 share restricted stock grant described above for which vesting is time-based (that is, the portion of the original grant that otherwise would have vested over the 18 months following his death or disability).

As defined in the Employment Agreement, "cause" for termination by the Company of Mr. Evans' employment means any of the following:

- (i) the willful and continued failure of Mr. Evans to perform substantially his duties to the Company (other than any such failure resulting from incapacity due to disability), after written demand to cure such failure is provided to Mr. Evans;
- (ii) Mr. Evans' conviction of, or plea of guilty or no contest to (A) a felony or (B) a misdemeanor involving dishonesty or moral turpitude; or
- (iii) the willful engaging by Mr. Evans in illegal conduct or gross misconduct which is materially and demonstrably injurious to the business or reputation of the Company.

A termination by Mr. Evans of his employment with the Company for "good reason" means the occurrence (without his express written consent) of any one of the following acts by the Company or failures by the Company to act:

- (i) the assignment to Mr. Evans of any duties inconsistent in any material respect with the position of President and Chief Executive Officer (including status, office, title and reporting requirements), or the authority, duties or responsibilities of the President and Chief Executive Officer, or any other diminution in any material respect in such position, authority, duties or responsibilities unless agreed to by him;
- (ii) the Company's requiring Mr. Evans to be based at, or perform his principal functions at, any office or location other than a location within 35 miles of the Company's main office unless such other location is closer to his then-primary residence than the main office;
- (iii) a reduction in base salary;

(iv) a reduction in Mr. Evans' welfare benefits plans, qualified retirement plan, or paid time off benefit unless other senior executives suffer a comparable reduction;

(v) any purported termination of Mr. Evans' employment under the Employment Agreement by the Company other than for "cause", death or "disability" (as such terms are defined in the Employment Agreement); and

(vi) the Company's notice to Mr. Evans of non-renewal of the Employment Agreement, or failure of the parties to reach mutually agreeable revised extension terms within 60 days following a party's notice of non-renewal of the Employment Agreement.

Under the Employment Agreement, Mr. Evans will continue to be bound by perpetual confidentiality and proprietary information covenants and, during his employment and for a two (2) year period thereafter, is prohibited from competing with the Company, soliciting or hiring its employees, or soliciting the Company's customers or vendors for the purpose of obtaining or receiving the same business as the Company.

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**SIGNATURE**

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.

**CHURCHILL DOWNS INCORPORATED**

September 27, 2010

By:

**/s/ Rebecca C. Reed**  
**Rebecca C. Reed**  
**Senior Vice President and Secretary**