SERVICEMASTER CO
Form 8-K
May 16, 2007

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 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): May 16, 2007

THE SERVICEMASTER COMPANY

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**1-14762**	**36-3858106**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

860 Ridge Lake Boulevard, Memphis, Tennessee 38120

(Address of Principal Executive Offices) (Zip Code)

Registrant s telephone number, including area code**(901) 597-1400**

Not Applicable

(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):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

x Soliciting material pursuant to Rule14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule14d-2(b) under the Exchange Act (17 CFR 240.14d(b))

o Pre-commencement communications pursuant to Rule13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 7.01 Regulation FD Disclosure.

On March 18, 2007, The ServiceMaster Company (ServiceMaster) entered into an Agreement and Plan of Merger (the Merger Agreement) with CDRSVM Topco, Inc. (Parent) and CDRSVM Acquisition Co., Inc., an indirect wholly owned subsidiary of Parent (Sub). The Merger Agreement provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, Sub will merge with and into ServiceMaster, with ServiceMaster as the surviving corporation of the merger (the Merger). As a result of the Merger, ServiceMaster will become an indirect wholly owned subsidiary of Parent and each outstanding share of ServiceMaster common stock (other than shares as to which dissenters rights are perfected) will be converted into the right to receive $15.625 in cash.

Unless the context requires otherwise, "ServiceMaster", the "Company", "we", "us" and "our" refers to The ServiceMaster Company and the entities that will be its consolidated subsidiaries, which will include all of ServiceMaster's existing operations, after consummation of the Merger described herein.

The Company hereby furnishes the following information regarding its business that was prepared in connection with the financing activities related to the Merger.

"Safe Harbor" Statement under Private Securities Litigation Reform Act of 1995

This Current Report on Form 8-K (this Current Report) contains "forward-looking statements" within the meaning of the federal securities laws, which involve risks and uncertainties. Forward-looking statements include all statements that do not relate solely to historical or current facts, and you can identify forward-looking statements because they contain words such as "believes", "expects", "may", "will", "should", "seeks", "approximately", "intends", "plans", "estimates", "projects" or "anticipates" or similar expressions that concern our strategy, plans or intentions. Any statements made relating to the Merger described in this Current Report or to our estimated and projected earnings, margins, costs, expenditures, cash flows, growth rates and financial results are forward-looking statements. These forward-looking statements are subject to risks and uncertainties that may change at any time, and, therefore, our actual results may differ materially from those that we expected. We derive many of our forward-looking statements from our operating budgets and forecasts, which are based upon many detailed assumptions. While we believe that our assumptions are reasonable, we caution that it is very difficult to predict the impact of known factors, and, of course, it is impossible for us to anticipate all factors that could affect our actual results.

Some of the important factors that could cause actual results to differ materially from our expectations are more fully disclosed below as well as in our most recent Annual Report on Form 10-K, as amended, and our Quarterly Report for the period ended March 31, 2007, including, without limitation, in conjunction with the forward-looking statements included in this Current Report. All subsequent written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements. We assume no obligation to publicly update or revise any forward-looking statement as a result of new information or future events, except as otherwise required by law.

Factors that could cause actual results to differ materially from those expressed or implied in a forward-looking statement may include the following (among others): failure to obtain shareholder approval of the Merger Agreement or the failure to satisfy other closing conditions, including regulatory approvals, with respect to the proposed Merger; failure of Parent to obtain the necessary financing arrangements to pay the aggregate Merger consideration; the occurrence of any event, change or other circumstance that could give rise to the termination of the Merger Agreement; the failure of the proposed Merger to close for any other reason; the amount of the costs, fees, expenses and charges relating to the Merger and the actual terms of financings that will need to be obtained for the Merger; the impact of substantial indebtedness that will need to be incurred to finance the consummation of the Merger; the successful consolidation of headquarters in Memphis; weather conditions that affect the demand for the Company s services; changes in the source and intensity of competition in the markets served by the Company; labor shortages or increases in wage rates; unexpected increases in operating costs, such as higher insurance premiums, self insurance and health care claim costs; higher fuel prices; changes in the types or mix of the Company s service offerings or products; changes in the estimated recoverable amounts of receivables related to hurricane disaster recovery work; increased governmental regulation, including telemarketing and environmental restrictions; general economic conditions in the United States, especially as they may affect home sales or consumer spending levels; time, expenses and cash flows associated with integrating, selling, or winding down businesses; and other factors described from time to time in documents filed by the Company with the Securities and Exchange Commission.

As provided in General Instruction B.2 of Form 8-K, the information contained in this Current Report shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be deemed to be incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing. By furnishing this information, we make no admission as to the materiality of any information in this Current Report that is required to be disclosed solely by reason of Regulation FD.

Non-GAAP Financial Measures

EBITDA means net income before (income) loss from discontinued operations, net of income taxes; provision (benefit) for income taxes; minority interest and other expense, net; interest expense, net; and depreciation and amortization expense *plus* interest and investment income, net. Adjusted EBITDA is calculated by adding back to EBITDA restructuring charges and non-cash option and restricted stock expense. Run Rate Adjusted EBITDA is calculated to give effect to certain anticipated cost savings and to reflect the full-year estimated impact of acquisitions completed in 2006, as described in the table below. EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA do not represent and should not be considered as alternatives to net income or cash flow from operations, as determined under U.S. generally accepted accounting principles (GAAP).

We use EBITDA and Adjusted EBITDA to facilitate operating performance comparisons from period to period. We believe EBITDA facilitates company-to-company operating performance comparisons by backing out potential differences caused by variations in capital structures (affecting net interest income and expense), taxation and the age and book depreciation of facilities and equipment (affecting relative depreciation expense), which may vary for different companies for reasons unrelated to operating performance. We further believe that EBITDA is frequently used by securities analysts, investors and other interested parties in their evaluation of companies, many of which present an EBITDA measure when reporting their results. We use Adjusted EBITDA as a supplemental measure to assess our performance because it excludes restructuring charges and non-cash option and restricted stock expense. We present Adjusted EBITDA because we believe that it is useful for investors to analyze disclosures of our operating results on the same basis as that used by our management. We present Run Rate Adjusted EBITDA as a supplemental measure to assess our performance because it gives effect to certain anticipated cost savings and reflects the full-year estimated impact of acquisitions completed in 2006.

EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA are not necessarily comparable to other similarly titled financial measures of other companies due to the potential inconsistencies in the method of calculation. EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA have limitations as analytical tools, and should not be considered in isolation or as substitutes for analyzing our results as reported under GAAP. Some of these limitations are:

- EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital needs;
- EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA do not reflect our interest expense, or the cash requirements necessary to service interest or principal payments, on our debt;
- EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA do not reflect our tax expense or the cash requirements to pay our taxes;
- EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA do not reflect historical cash expenditures or future requirements for capital expenditures or contractual commitments;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA do not reflect any cash requirements for such replacements;
- other companies in our industries may calculate EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA differently, limiting their usefulness as comparative measures; and
- adjustments to get to Run Rate Adjusted EBITDA are based on current estimates, which are subject to change based on a variety of factors.

A reconciliation of net income to EBITDA, Adjusted EBITDA and Run Rate Adjusted EBITDA is set forth in the following table:

	Year ended December 31,		
(in millions)	**2006**	**2005**	**2004**
Net income	$169.7	$198.9	$331.2
(Income) loss from discontinued operations, net of income taxes	16.9	(18.4)	(14.6)
Provision (benefit) for income taxes	96.1	114.1	(45.8)
Minority interest and other expense, net	8.2	8.2	8.2
Interest expense, net (a)	35.5	37.2	45.2
Depreciation and amortization expense	59.9	49.8	48.7
EBITDA before adding back interest and investment income, net	386.3	389.8	372.9
Interest and investment income, net (b)	25.9	19.8	15.5
EBITDA	**$412.2**	**$409.6**	**$388.4**
Restructuring charges (c)	21.6		
Non-cash option and restricted stock expense	10.9	8.6	5.8
Adjusted EBITDA	**$444.7**	**$418.2**	**$394.2**
Anticipated cost savings from Project Accelerate (d)	7.9		
Anticipated headquarters consolidation savings (e)	3.0		
Public company costs (f)	8.5		
Run rate effect of 2006 acquisitions (g)	17.8		
Run Rate Adjusted EBITDA	**$481.9**		

(a) Represents interest expense less interest and investment income, net.

(b) Interest and investment income is primarily comprised of investment income and realized gains/losses on our American Home Shield (AHS) segment investment portfolio. Cash, short-term and long-term marketable securities associated with regulatory requirements in connection with AHS and for other purposes totaled approximately $412 million as of December 31, 2006. AHS interest and investment income was $10.5 million, $17.0 million and $20.4 million for the years ended December 31, 2004, 2005 and 2006, respectively. The balance of interest and investment income primarily relates to (i) a portion of the earnings generated by ServiceMaster Acceptance Corporation (SMAC), our financing subsidiary exclusively dedicated to providing financing to our franchisees and retail customers of our operating units; (ii) interest and investment income from the investment portfolio of Steward Insurance Company, the Company s wholly-owned insurance company; and (iii) investment income from our employee deferred compensation trust (for which there is a corresponding and offsetting increase in compensation expense within operating income). We view our total interest and investment income as an integral part of our business model and earnings stream.

(c) Represents costs associated with Project Accelerate (a firm-wide initiative designed to improve the effectiveness and efficiency of functional support areas), severance costs and costs related to the Company s consolidation of its corporate headquarters into its operations support center in Memphis, Tennessee, including the closing of the Company s office in Downers Grove, Illinois.

(d) Represents the estimated incremental annualized impact of cost reductions from Project Accelerate initiatives implemented in 2006.

(e) Represents the estimated annual cost reductions from the relocation of the Company s corporate headquarters to its operations support center in Memphis, Tennessee. These cost reductions are primarily lease and travel costs.

(f) Represents the expected annual reduction in corporate expenses associated with no longer having publicly traded stock following the Merger.

(g) Represents the full-year estimated impact on EBITDA of acquisitions completed during 2006 as if they had been made on January 1, 2006. We have made a number of assumptions in calculating this estimate, and there can be no assurance that we would have generated the projected levels of EBITDA had we owned the acquired businesses on January 1, 2006.

SIGNATURE

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

Date: May 16, 2007	THE SERVICEMASTER COMPANY
	By: /s/ Jim L. Kaput Jim L. Kaput Senior Vice President and General Counsel