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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-8**

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

**THE BOSTON BEER COMPANY, INC.**

(Exact name of registrant as specified in its charter)

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

**04-3284048**  
(I.R.S. Employer  
Identification No.)

**75 Arlington Street  
Boston, Massachusetts 02116**

(Address of Principal Executive Offices)

**The Boston Beer Company, Inc.  
1996 Stock Option Plan for Non-Employee Directors**

(Full title of the plan)

**Frederick H. Grein, Jr., Esq.  
Nixon Peabody LLP  
100 Summer Street  
Boston, Massachusetts 02110  
(617) 345-1195**

(Name and address, including zip code, and telephone number,  
including area code, of agent for service)

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**CALCULATION OF REGISTRATION FEE**

<b>Title of each class of securities to be registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed maximum offering price per share</b>	<b>Proposed maximum aggregate offering price</b>	<b>Amount of registration fee</b>
Class A Common Stock, \$.01 par value, per share	150,000 Shares	\$21.73(2)	\$3,529,500(2)	\$412.98

- (1) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall also cover any additional shares of Class A Common Stock (the "Common Stock") which become issuable under the stock option plan to which this registration relates by reason of any anti-dilution provisions, stock split, stock dividend, recapitalization or any other similar transaction or action taken effected without the receipt of consideration which results in an increase in the number of the registrant's outstanding shares of Common Stock.
  - (2) Computed in accordance with Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The computation is based on the average high and low price of the registrant's Common Stock as reported on the New York Stock Exchange on December 1, 2004.
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#### **NOTE**

This registration statement is being filed solely for the purpose of registering 150,000 additional shares of the Common Stock issuable pursuant to The Boston Beer Company, Inc. 1996 Stock Option Plan for Non-Employee Directors (the "Plan") originally adopted in 1996 and amended and restated on October 19, 2004. The total number of shares issuable under the Plan is 350,000 as of December 7, 2004, of which 100,000 shares were previously registered on a registration statement on Form S-8 by the registrant on September 18, 1996 (Reg. No. 333-12221) and 100,000 shares were previously registered on a registration statement on Form S-8 by the registrant on March 28, 2002 (Reg. No. 333-85110) (together, the "Prior Registration Statements"). Pursuant to Instruction E to Form S-8 and the telephonic interpretation contained in the Securities and Exchange Commission's Division of Corporation Finance's Manual of Publicly Available Telephone Interpretations dated July 1997 (see G. Securities Act Forms, number 97), this registration statement incorporates by reference the contents of the Prior Registration Statements, each to the extent not modified by this registration statement.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 5. Interests of Named Experts and Counsel.

The legality of the shares of Common Stock of the registrant offered hereby will be passed upon for the registrant by Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts 02110.

#### Item 6. Indemnification of Directors and Officers.

##### *Business Corporation Act*

Section 8.51 of Chapter 156D of the General Laws of the Commonwealth of Massachusetts, which became effective on July 1, 2004, authorizes a Massachusetts corporation to indemnify any individual who is a party to a proceeding because such individual serves as a director of such corporation (or who, while serving as a director, at the corporation's request, served as a director, officer, partner, trustee, employee or agent of another organization) against any liability incurred in the proceeding if either: (1) (a) such individual conducted himself or herself in good faith; and (b) such individual reasonably believed that his or her conduct was in the best interests of the corporation or that his or her conduct was at least not opposed to the best interests of the corporation; and (c) in the case of any criminal proceeding, such individual had no reasonable cause to believe his or her conduct was unlawful; or (2) such individual engaged in conduct for which he or she shall not be liable under a provision of the corporation's articles of organization eliminating or limiting the personal liability of a director to the corporation for monetary damages for breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability, which provision may not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the corporation or its shareholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) for improper distributions to shareholders, or (d) for any transaction from which the director derived an improper personal benefit. Section 8.51 of Chapter 156D prohibits a Massachusetts corporation from indemnifying a director if the director's conduct does not satisfy the standards set forth in Section 8.51.

In addition, Section 8.52 of Chapter 156D requires a Massachusetts corporation to indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

Under Section 8.53 of Chapter 156D, a Massachusetts corporation is permitted to, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a

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director who is a party to a proceeding because he or she is a director if he or she delivers to the corporation: (1) a written affirmation of his or her good faith belief that he or she has met the statutory standard of conduct described in Section 8.51 or that the proceeding involves conduct for which liability has been eliminated under a provision of the corporation's articles of organization; and (2) his or her written undertaking to repay any funds advanced if he or she is not entitled to mandatory indemnification under Section 8.52 and it is ultimately determined that he or she has not met the statutory standard of conduct described in Section 8.51. Authorizations for the advancement of expenses are required to be made (1) by a majority vote of the corporation's disinterested directors (or a committee comprised of two or more disinterested directors) or (2) by a vote of the shareholders (excluding shares owned by or voted under the control of a director who at the time does not qualify as disinterested director); or (3) as otherwise permitted by law.

Section 8.54 of Chapter 156D permits a director of a Massachusetts corporation who is a party to a proceeding because he or she is a director to apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction.

Under Section 8.55 of Chapter 156D, a Massachusetts corporation may not indemnify a director under Section 8.51 unless authorized for a specific proceeding after a determination has been made that indemnification of a director is permissible because he or she meets the standard of conduct set forth in Section 8.51.

Section 8.56 of Chapter 156D permits a Massachusetts corporation to indemnify and advance expenses to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation (or who, while serving as an officer, at the corporation's request, served as a director, officer, partner, trustee, employee or agent of another organization) to the same extent as a director and if he or she is an officer but not a director, to such further extent as may be provided by the articles of organization, the bylaws, a resolution of the board of directors, or contract except for liability arising out of acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law. An officer of a corporation who is not a director is entitled to mandatory indemnification under Section 8.52, and may apply to a court for indemnification or an advance for expenses under Section 8.54, in each case to the same extent to which a director may be entitled to indemnification or advance under those provisions.

### ***Articles of Organization and By-Laws***

Article VI of the Articles of Organization of the registrant provides in relevant part as follows:

No Director of the corporation shall be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director notwithstanding any statutory provision or other law imposing such liability, except for liability of a Director (i) for any breach of the Director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 61 or 62 of Chapter 156B of the Massachusetts General Laws, or (iv) for any transaction from which the Director derived an improper personal benefit. No amendment or repeal of this paragraph shall apply to or have any effect on the liability or alleged liability of any Director of the corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

Article 7 of the registrant's By-Laws, as amended, provides as follows:

*Section 7.1 Definitions.* For purposes of this Article 7:

(a) "Director - or - Officer" means any person who is serving or has served as a Director, officer or employee of the Corporation appointed or elected by the Board of Directors or the stockholders

of the Corporation, or any Director, officer or employee of the Corporation who is serving or has served at the request of the Corporation as a Director, officer, trustee, principal, partner, member of a committee, employee or other agent of any other organization, or in any capacity with respect to any employee benefit plan of the Corporation or any of its subsidiaries.

(b) "Proceeding" means any action, suit or proceeding, whether civil, criminal, administrative or investigative, brought or threatened in or before any court, tribunal, administrative or legislative body or agency, and any claim which could be the subject of a Proceeding.

(c) "Expense" means any fine or penalty, and any liability fixed by a judgment, order, decree or award in a Proceeding, any amount reasonably paid in settlement of a Proceeding and any professional fees and other disbursements reasonably incurred in connection with a Proceeding. The term "Expense" shall include any taxes or penalties imposed on a Director or Officer with respect to any employee benefit plan of the Corporation or any of its subsidiaries.

*Section 7.2 Right to Indemnification.* Except as limited by law or as provided in Sections 7.3 and 7.4 of this Article 7, each Director or Officer (and his heirs and personal representatives) shall be indemnified by the Corporation against any Expense incurred by him in connection with each Proceeding in which he is involved as a result of his serving or having served as a Director or Officer.

*Section 7.3 Indemnification Not Available.* No indemnification shall be provided to a Director or Officer with respect to a Proceeding as to which it shall have been adjudicated that he did not act in good faith in the reasonable belief that his action was in the best interests of the Corporation, or, to the extent that such Proceeding relates to service with respect to an employee benefit plan, in the best interests of the participants or beneficiaries of such employee benefit plan.

*Section 7.4 Compromise or Settlement.* In the event that a Proceeding is disposed of by settlement or in the event of any adjudication which, in the opinion of a majority of the disinterested Directors (who may consult or defer to the opinion of the General Counsel or outside counsel to be employed by the Corporation) or, if there are no disinterested Directors, the General Counsel (who may consult or defer to the opinion of outside counsel to be employed by the Corporation), does not make a sufficient determination of conduct which could preclude or permit indemnification in accordance with this section 7, the Director or Officer shall be entitled to indemnification unless, as determined by a majority of the disinterested Directors (who may consult or defer to the opinion of the General Counsel or outside counsel to be employed by the Corporation) or, if there are no disinterested directors, the General Counsel (who may consult or defer to the opinion of outside counsel to be employed by the Corporation), such Director or Officer's conduct was such as precludes indemnification under this Section 7.

*Section 7.5 Advances.* The Corporation shall pay sums on account of indemnification in advance of a final disposition of a Proceeding upon receipt of an undertaking by the Director or Officer to repay such sums if it is subsequently established that he is not entitled to indemnification pursuant to Sections 7.3 and 7.4 hereof, which undertaking may be accepted without reference to the financial ability of such person to make repayment.

*Section 7.6 Not Exclusive.* Nothing in this Article 7 shall limit any lawful rights to indemnification existing independently of this Article 7.

*Section 7.7 Insurance.* The provisions of this Article 7 shall not limit the power of the Board of Directors to authorize the purchase and maintenance of insurance on behalf of any Director or Officer against any liability incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under this Article 7.

## **Directors' and Officers' Liability Insurance**

The directors and officers of the registrant are insured under an insurance policy which insures them against claims made during the policy period, and liability arising therefrom, for certain wrongful acts in their capacity as officers and/or directors.

### **Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended and Restated 1996 Stock Option Plan For Non-Employee Directors.
5.1	Opinion of Nixon Peabody LLP.
23.1	Consent of Nixon Peabody LLP (including in Exhibit 5.1).
23.2	Consent of Deloitte & Touche LLP
23.3	Notice Regarding Consent of Arthur Andersen LLP
24.1	Powers of Attorney (See Page II-2).

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### **SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Boston, Massachusetts on December 7, 2004.

#### **THE BOSTON BEER COMPANY, INC.**

By /s/Martin F. Roper

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Martin F. Roper, President and  
Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints Martin Roper and C. James Koch and each of them acting without the other, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or in his name, place and stead, in any and all capacities to sign any and all amendments or post-effective amendments to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
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<u>/s/Martin F. Roper</u>	President, Chief Executive Officer and Director <i>(principal executive officer)</i>	December 7, 2004
Martin F. Roper		
<u>/s/William F. Urich</u>	Chief Financial Officer and Treasurer <i>(principal financial and accounting officer)</i>	December 7, 2004
William F. Urich		
<u>/s/C. James Koch</u>	Chairman of the Board of Directors and Clerk	December 7, 2004
C. James Koch		
<u>/s/Pearson C. Cummin, III</u>	Director	December 7, 2004
Pearson C. Cummin, III		
<u>/s/Robert N. Hiatt</u>	Director	December 7, 2004
Robert N. Hiatt		
<u>/s/Charles Joseph Koch</u>	Director	December 7, 2004
Charles Joseph Koch		
<u>/s/Jean Michel Valette</u>	Director	December 7, 2004
Jean-Michel Valette		

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## INDEX TO EXHIBITS

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5.1	Opinion of Nixon Peabody LLP.	Filed herewith
23.1	Consent of Nixon Peabody LLP	Contained in opinion filed as Exhibit 5.1 to this Registration Statement
23.2	Consent of Deloitte & Touche LLP	Filed herewith
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24.1 Powers of Attorney

See Page II-2 of this  
Registration Statement

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## EXHIBIT 4.1

### THE BOSTON BEER COMPANY, INC.

#### AMENDED AND RESTATED 1996 STOCK OPTION PLAN FOR NON-EMPLOYEE DIRECTORS

(Effective October 19, 2004)

##### 1. PURPOSE

The purpose of The Boston Beer Company, Inc. Amended and Restated 1996 Stock Option Plan for Non-Employee Directors (the "Plan") is to attract and retain the services of experienced and knowledgeable independent Directors who are not employees ("Non-Employee Directors") of The Boston Beer Company, Inc. ("Boston Beer") for the benefit of Boston Beer and its shareholders and to provide additional incentive for Non-Employee Directors to continue to work in the best interests of Boston Beer and its shareholders through continuing ownership of Boston Beer common stock.

##### 2. SHARES SUBJECT TO THE PLAN

The total number of shares of Class A Common Stock, par value \$.01 per share ("Shares"), of Boston Beer for which options may be granted under the Plan shall not exceed 350,000 in the aggregate, subject to adjustment in accordance with Section 9 hereof.

##### 3. ELIGIBILITY; GRANT OF OPTION

Each Non-Employee Director shall be granted an option to acquire five thousand (5,000) Shares under the Plan upon his or her initial election to the Board of Directors of Boston Beer (the "Board"), effective as of the date of such election or appointment. In addition, each Non-Employee Director shall be granted an option to acquire five thousand (5,000) Shares under the Plan upon his or her election or reelection to the Board at an annual meeting of shareholders or, in the event a new Non-Employee Director is elected or appointed to the Board after the date of the annual meeting of the shareholders of Boston Beer, the number of Shares underlying the option granted to the new Non-Employee Directors shall be pro rated based upon the number of regular meetings of the Board remaining prior to the next annual meeting of shareholders, effective as of the date of such election or appointment. The options shall be non-qualified options not intended to meet the requirements of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

##### 4. OPTION AGREEMENT

Each option granted under the Plan shall be evidenced by an option agreement (the "Agreement") duly executed on behalf of Boston Beer and by the Non-Employee Director to whom such option is granted. Each Agreement shall (i) comply with and be subject to the terms and conditions of the Plan, (ii) provide that the optionee agrees to continue to serve as a Director of Boston Beer during the term for which he or she was elected and (iii) contain such other provisions not inconsistent with the provisions of the Plan, including with respect to obligations of each Non-Employee Director not to compete with Boston Beer, as the Board may determine.

## 5. OPTION EXERCISE PRICE

Subject to the provisions of Section 9 hereof, the option exercise price for options granted under the Plan shall be the fair market value of the Shares covered by the option on the date of grant of the option. For the purposes hereof and of Section 6(b), the fair market value of Shares shall be the mean between the high and low sales prices of the Class A Common Stock of Boston Beer on the New York Stock Exchange as reported in the Wall Street Journal for the date of grant, provided that if the Class A Common Stock of Boston Beer is not listed on or actually trading on the New York Stock Exchange, fair market value shall be determined in good faith by the Board.

## 6. TIME AND MANNER OF EXERCISE OF OPTION

(a) Options granted under the Plan shall, subject to the provisions of Section 7, be immediately exercisable in full; provided, however, that no option granted under the Plan may be exercised prior to approval of the Plan by the holders of Boston Beer's issued and outstanding Class B Common Stock, as required by Section 13.

(b) The option may be exercised in full at one time or in part from time to time by giving written notice to Boston Beer, signed by the person or persons exercising the option, stating the number of Shares with respect to which the option is being exercised, accompanied by payment in full for such Shares, which payment may be in cash or in whole or in part in Shares of the Class A Common Stock of Boston Beer already owned for a period of at least six months by the person or persons exercising the option, valued at fair market value, as determined under Section 5 hereof, on the date of exercise; provided, however, that there shall be no such exercise at any one time as to fewer than two hundred fifty (250) Shares or all of the remaining Shares then purchasable by the person or persons exercising the option, if fewer than two hundred fifty (250) Shares. Upon such exercise, delivery of a certificate for paid-up non-assessable Shares shall be made at the principal Massachusetts office of Boston Beer to the person or persons exercising the option at such time, during ordinary business hours, not more than thirty (30) days from the date of receipt of the notice by Boston Beer, as shall be designated in such notice, or at such time, place and manner as may be agreed upon by Boston Beer and the person or persons exercising the option.

## 7. TERM OF OPTIONS

(a) Each option shall expire ten (10) years from the date of the granting thereof, but shall be subject to earlier termination as herein provided.

(b) In the event of the death of an optionee, the option granted to such optionee may be exercised by the estate of such optionee or by any person or persons who acquired the right to exercise such option by bequest or inheritance or otherwise by reason of the death of such optionee. Such option may be exercised at any time within one (1) year after the date of death of such optionee, at which time the option shall terminate, or prior to the date on which the option otherwise expires by its terms, whichever is earlier.

(c) In the event that an optionee ceases to be a Director of Boston Beer the option granted to such optionee may be exercised by him or her, any time within three (3) years

after the date such optionee ceases to be a Director of Boston Beer, at which time the option shall terminate, but in any event prior to the date on which the option expires by its terms, whichever is earlier, unless termination as a Director (i) was by Boston Beer for cause, in which case the option shall terminate immediately at the time the optionee ceases to be a Director of Boston Beer, (ii) was because the optionee has become disabled (within the meaning of Section 22(e)(3) of the Code), or (iii) was by reason of the death of the optionee. In the case of death, see Section 7(b) above. In the case of disability, the option may be exercised at any time within one (1) year after the date of termination of the optionee's directorship with Boston Beer, at which time the option shall terminate, but in any event prior to the date on which the option otherwise expires by its terms, whichever is earlier.

#### 8. OPTIONS NOT TRANSFERABLE

The right of any optionee to exercise an option granted to him or her under the Plan shall not be assignable or transferable by such optionee otherwise than by will or the laws of descent and distribution, or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder. Any option granted under the Plan shall be exercisable during the lifetime of such optionee only by him or her. Any option granted under the Plan shall be null and void and without effect upon the bankruptcy of the optionee, or upon any attempted assignment or transfer, except as herein provided, including without limitation any purported assignment, whether voluntary or by operation of law, pledge, hypothecation or other disposition, attachment, trustee process or similar process, whether legal or equitable, upon such option.

#### 9. ADJUSTMENTS UPON CHANGES IN CAPITALIZATION

In the event that the outstanding shares of the Class A Common Stock of Boston Beer are changed into or exchanged for a different number or kind of shares or other securities of Boston Beer or of another corporation by reason of any reorganization, merger, consolidation, recapitalization, reclassification, stock split-up, combination of shares or dividends payable in capital stock, appropriate adjustment shall be made in the number and kind of shares as to which outstanding options, or portions thereof then unexercised, shall be exercisable, to the end that the proportionate interest of the optionee shall be maintained as before the occurrence of such event, and such adjustment in outstanding options shall be made without change in the total price applicable to the unexercised portion of such options and with a corresponding adjustment in the option price per share.

#### 10. RESTRICTIONS ON ISSUE OF SHARES

Notwithstanding the provisions of Section 6 hereof, Boston Beer may delay the issuance of Shares covered by the exercise of any option granted under the Plan and the delivery of a certificate for such Shares until one of the following conditions shall be satisfied:

(i) the Shares with respect to which an option has been exercised are at the time of the issue of such Shares effectively registered under applicable Federal and state securities acts now in force or hereafter amended; or

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(ii) counsel for Boston Beer shall have given an opinion, which opinion shall not be unreasonably conditioned or withheld, that such Shares are exempt from registration under applicable Federal and state securities acts now in force or hereafter amended.

It is intended that all exercises of options granted under the Plan shall be effective. Accordingly, Boston Beer shall use its best efforts to bring about compliance with the above conditions within a reasonable time, except that Boston Beer shall be under no obligation to cause a registration statement or a post-effective amendment to any registration statement to be prepared at its expense solely for the purpose of covering the issue of Shares in respect of which any option may be exercised, except as otherwise agreed to by Boston Beer in writing.

#### 11. RIGHTS OF HOLDER ON PURCHASE FOR INVESTMENT; SUBSEQUENT REGISTRATION

Unless the Shares to be issued upon exercise of an option granted under the Plan have been effectively registered under the Securities Act of 1933 (the "1933 Act"), as now in force or hereafter amended, Boston Beer shall be under no obligation to issue any Shares covered by any option unless the person who exercises such option, in whole or in part, shall give a written representation and undertaking to Boston Beer which is satisfactory in form and scope to counsel to Boston Beer and upon which, in the opinion of such counsel, Boston Beer may reasonably rely, that he or she is acquiring the Shares issued to him pursuant to such exercise of the option for his or her own account as an investment and not with a view to, or for sale in connection with, the distribution of any such Shares, and that he or she will make no transfer of the same except in compliance with any rules and regulations in force at the time of such transfer under the 1933 Act, or any other applicable law, and that if Shares are issued without such registration a legend to this effect may be endorsed upon the securities so issued. In the event that Boston Beer shall, nevertheless, deem it necessary or desirable to register under the 1933 Act or other applicable statutes any Shares with respect to which an option shall have been exercised, or to qualify any such Shares for exemption from the 1933 Act or other applicable statutes, then Boston Beer shall take such action at its own expense and may require from each optionee such information in writing for use in any registration statement, prospectus, preliminary prospectus or offering circular as is reasonably necessary for such purpose and may require reasonable indemnity to Boston Beer and its Officers and Directors from such holder against all losses, claims, damages and liabilities arising from such use of the information so furnished and caused by any untrue statement of any material fact therein or caused by the omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made.

#### 12. LOANS PROHIBITED

Boston Beer shall not, directly or indirectly, lend money to an optionee or to any person or persons entitled to exercise an option by reason of the death of an optionee for the purpose of assisting any of them in the acquisition of Shares covered by an option granted under the Plan.

### 13. APPROVAL OF SHAREHOLDERS

The Plan shall be subject to approval by the affirmative vote of the holders of a majority of the issued and outstanding shares of the Class B Common Stock of Boston Beer present or represented and entitled to vote at a duly held shareholders' meeting, or by written consent of all of the holders of such Class B Common Stock, and shall take effect immediately as of its date of adoption upon such approval.

### 14. EXPENSES OF THE PLAN

All costs and expenses of the adoption and administration of the Plan shall be borne by Boston Beer, and none of such expenses shall be charged to any optionee.

### 15. TERMINATION AND AMENDMENT OF PLAN

Unless sooner terminated as herein provided, the Plan shall terminate on May 21, 2006. The Board may at any time terminate the Plan or make such modification or amendment thereof as it deems advisable; provided, however, that, except as provided in Section 9 hereof, no modification or amendment to the provisions of the Plan may be made more than once every six (6) months other than to comport with changes in the Code, the Employee Retirement Income Security Act, or the rules thereunder, if the effect of such amendment or modification would be to change (i) the requirements for eligibility under the Plan, (ii) the timing of the grants of options to be granted under the Plan or the exercise price thereof, or (iii) the number of Shares subject to options to be granted under the Plan either in the aggregate or to one Director. Any amendment to the provisions of the Plan which (i) materially increases the number of Shares which may be subject to options granted under the Plan, (ii) materially increases the benefits accruing to Non-Employee Directors under the Plan, or (iii) materially modifies the requirement for eligibility to participate in the Plan, shall be subject to approval by the holders of Boston Beer's Class B Common Stock obtained in the manner stated in Section 13 hereof. Termination or any modification or amendment of the Plan shall not, without the consent of an optionee, affect his or her rights under an option previously granted to him or her.

### 16. LIMITATION OF RIGHTS IN THE OPTION SHARES

An optionee shall not be deemed for any purpose to be a shareholder of Boston Beer with respect to any of the options except to the extent that the option shall have been exercised with respect thereto and, in addition, a certificate shall have been issued theretofore and delivered to the optionee.

### 17. NOTICES

Any communication or notice required or permitted to be given under the Plan shall be in writing, and mailed by registered or certified mail or delivered by hand, if to Boston Beer, to its principal place of business, Attention: President, and, if to an optionee, to the address as appearing on the records of Boston Beer.

18. COMPLIANCE WITH RULE 16b-3

It is the intention of Boston Beer that the Plan comply in all respects with Rule 16b-3 promulgated under Section 16(b) of the Securities Exchange Act of 1934 (the "1934 Act") and that Participants remain disinterested persons for purposes of administering other employee benefit plans of Boston Beer and having transactions under such other plans be exempt from Section 16(b) of the 1934 Act. Therefore, if any Plan provision is found not to be in compliance with Rule 16b-3 or if any Plan provisions would disqualify Participants from remaining disinterested persons, that provisions shall be deemed null and void, and in all events the Plan shall be construed in favor of its meeting the requirements of Rule 16b-3.

ADOPTED BY THE BOARD OF DIRECTORS ON MAY 21, 1996 APPROVED BY THE SOLE HOLDER OF THE CLASS B COMMON STOCK ON MAY 21, 1996.

AMENDED BY THE BOARD OF DIRECTORS AND THE SOLE HOLDER OF THE CLASS B COMMON STOCK EFFECTIVE DECEMBER 19, 1997.

AMENDED BY THE BOARD OF DIRECTORS AND THE SOLE HOLDER OF THE CLASS B COMMON STOCK EFFECTIVE DECEMBER 14, 2001.

AMENDED AND RESTATED BY THE BOARD OF DIRECTORS AND THE SOLE HOLDER OF THE CLASS B COMMON STOCK EFFECTIVE OCTOBER 19, 2004.

## EXHIBIT 5.1

100 Summer Street  
Boston, Massachusetts 02110-2131  
(617) 345-1000  
Fax: (617) 345-1300

December 7, 2004

The Boston Beer Company, Inc.  
75 Arlington Street  
Boston, MA 02116

Ladies and Gentlemen:

We have acted as counsel to The Boston Beer Company, Inc., a Massachusetts corporation (the "Company"), in connection with the registration statement on Form S-8 (the "Registration Statement") of the Company to be filed with the Securities and Exchange Commission (the "Commission") with respect to the registration under the Securities Act of 1933, as amended (the "Act"), of 150,000 shares of the Company's Common Stock, \$.01 par value per share (the "Shares"), to be issued from time to time pursuant to the Company's 1996 Stock Option Plan for Non-Employee Directors, as amended (the "Plan").

We have examined originals or copies, certified or otherwise identified to our satisfaction, of all such records of the Company and all such agreements, certificates of public officials, certificates of officers or other representatives of the Company, and such other documents, certificates and corporate or other records as we have deemed necessary or appropriate as a basis for the opinions set forth herein, including (i) the Articles of Organization of the Company as amended through the date hereof, (ii) the By-Laws of the Company as amended through the date hereof, and (iii) the Plan.

As to questions of fact material to our opinion expressed herein, we have, when relevant facts were not independently established, relied upon certificates of, and information received from, the Company and/or representatives of the Company. We have made no independent investigation of the facts stated in such certificates or as to any information received from the Company and/or representatives of the Company and do not opine as to the accuracy of such factual matters. We also have relied, without investigation, upon certificates and other documents from, and conversations with, public officials.

In rendering the opinions expressed below, we have assumed, without investigation, the authenticity of any document or other instrument submitted to us as an original, the conformity to the originals of any document or other instrument submitted to us a copy, the genuineness of all signatures on such originals or copies, and the legal capacity of natural persons who executed any such document or instrument at the time of execution thereof.

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The Boston Beer Company, Inc.  
December 7, 2004  
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The opinion expressed below is limited to the Business Corporation Act of the Commonwealth of Massachusetts, and we do not express any opinion herein concerning any other law.

Based upon and subject to the foregoing, and the other qualifications and limitations contained herein, and after (a) the above-referenced Registration Statement has become effective under the Act and assuming that such effectiveness remains in effect throughout the period during which Shares are offered and sold, and (b) the Shares have, if required, been duly qualified or registered, as the case may be, for sale under applicable state securities laws and all applicable state securities laws are complied with, we are of the opinion that the Shares are duly authorized and, if and when issued in accordance with the terms of the Plan, will be validly issued, fully-paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Nixon Peabody LLP

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**Exhibit 23.2**

**CONSENT OF INDEPENDENT  
REGISTERED PUBLIC ACCOUNTING FIRM**

We consent  
to the incorporation by reference in this Registration Statement of The Boston Beer  
Company on Form S-8 of our report dated February 24, 2004, appearing in the Annual  
Report on Form 10-K of The Boston Beer Company for the year ended December 27,  
2003.

/s/ DELOITTE & TOUCHE LLP

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Boston, Massachusetts  
December 7, 2004

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### **Exhibit 23.3**

#### **Notice Regarding Consent of Arthur Andersen LLP**

On May 1, 2002, The Boston Beer Company, Inc. (the "Registrant") announced that it had appointed Deloitte & Touche LLP to replace Arthur Andersen LLP ("Andersen") as the Registrant's independent auditors. The Registrant's financial statements for the fiscal year ended December 29, 2001, which are incorporate by reference in this registration statement, were audited by Andersen. Because Andersen ceased practicing before the Securities and Exchange Commission on August 31, 2002, the Registrant is unable to obtain Andersen's consent to the incorporation by reference to this registration statement of its report with respect to these financial statements. Under these circumstances, Rule 437a under the Securities Act of 1933, as amended (the "Securities Act"), permits the Registrant to file this registration statement without a written consent from Andersen. However, because of the omission of that consent, Andersen will not have any liability under Section 11 of the Securities Act for any untrue statement of a material fact contained in the financial statement audited by Andersen that are incorporated by reference into this registration statement or for any omission of a material fact required to be stated in this registration statement.

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