

NEIMAN MARCUS GROUP INC

Form PREM14A

May 20, 2005

Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

**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

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to Rule § 240.14a-12

THE NEIMAN MARCUS GROUP, INC.

(Name of Registrant as Specified In Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than Registrant)

Edgar Filing: NEIMAN MARCUS GROUP INC - Form PREM14A

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Class A Common Stock, par value \$0.01 per share, of The Neiman Marcus Group, Inc. (Class A Common Stock)
Class B Common Stock, par value \$0.01 per share, of The Neiman Marcus Group, Inc. (Class B Common Stock), and together with the
Class A Common Stock and the Class C Common Stock, par value \$0.01 per share, of The Neiman Marcus Group, Inc., the Company
Common Stock)

(2) Aggregate number of securities to which transaction applies:

48,947,578 shares of Company Common Stock

3,050,855 options to purchase shares of Company Common Stock with exercise price less than \$100.00

272,574 shares of restricted Company Common Stock and rights to receive Company Common Stock pursuant to stock unit awards

(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):

The filing fee was determined based upon the sum of (A) 48,947,578 shares of Company Common Stock multiplied by \$100.00 per share, (B) 272,574 shares of restricted Company Common Stock and rights to receive Company Common Stock pursuant to stock unit awards multiplied by \$100.00 and (C) options to purchase 3,050,855 shares of Company Common Stock with exercise prices less than \$100.00, multiplied by \$61.88 per share (which is the difference between \$100.00 and the weighted average exercise price per share). In accordance with Section 14(g) of the Securities Exchange Act of 1934, as amended, the filing fee was determined by multiplying \$0.0001177 by the sum of the preceding sentence.

(4) Proposed maximum aggregate value of transaction:

\$5,110,802,107

(5) Total fee paid:

\$601,541.41

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Table of Contents

ONE MARCUS SQUARE

1618 MAIN STREET

DALLAS, TEXAS 75201

[•], 2005

Dear Stockholder:

The board of directors of The Neiman Marcus Group, Inc. (Neiman Marcus or the Company) has unanimously approved a merger providing for the acquisition of the Company by Newton Acquisition, Inc., an entity currently owned indirectly by private equity funds sponsored by TPG Advisors III, Inc., TPG Advisors IV, Inc., Warburg Pincus & Co., Warburg Pincus LLC and Warburg Pincus Partners LLC. If the merger is completed, you will receive \$100.00 in cash, without interest, for each share of the Company's common stock you own.

You will be asked, at a special meeting of the Company's stockholders, to adopt the merger agreement. The board of directors has unanimously approved and declared advisable the merger, the merger agreement and the transactions contemplated by the merger agreement and has unanimously declared that the merger, the merger agreement and the transactions contemplated by the merger agreement are fair to, and in the best interests of, the Company's stockholders. **The board of directors unanimously recommends that the Company's stockholders vote FOR the adoption of the merger agreement.**

The time, date and place of the special meeting to consider and vote upon the adoption of the merger agreement are as follows:

[•] a.m. Eastern Time, [•], 2005

[•]

The proxy statement attached to this letter provides you with information about the proposed merger and the special meeting of the Company's stockholders. We encourage you to read the entire proxy statement carefully. You may also obtain more information about the Company from documents we have filed with the Securities and Exchange Commission.

YOUR VOTE IS IMPORTANT REGARDLESS OF THE NUMBER OF SHARES OF THE COMPANY'S COMMON STOCK YOU OWN. BECAUSE THE ADOPTION OF THE MERGER AGREEMENT REQUIRES THE AFFIRMATIVE VOTE OF THE HOLDERS OF A MAJORITY OF THE COMBINED VOTING POWER OF THE COMPANY'S OUTSTANDING SHARES OF COMMON STOCK ENTITLED TO VOTE THEREON, A FAILURE TO VOTE WILL HAVE THE SAME EFFECT AS A VOTE AGAINST THE MERGER. ACCORDINGLY, YOU ARE REQUESTED TO SUBMIT YOUR PROXY BY PROMPTLY COMPLETING, SIGNING AND DATING THE

Edgar Filing: NEIMAN MARCUS GROUP INC - Form PREM14A

ENCLOSED PROXY CARD AND RETURNING IT IN THE ENVELOPE PROVIDED OR TO SUBMIT YOUR PROXY BY TELEPHONE OR INTERNET PRIOR TO THE SPECIAL MEETING, WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING.

Submitting your proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

Thank you for your cooperation and continued support.

Very truly yours,

Richard A. Smith

Chairman of the Board

THIS PROXY STATEMENT IS DATED [•], 2005

AND IS FIRST BEING MAILED TO STOCKHOLDERS ON OR ABOUT [•], 2005.

Table of Contents

ONE MARCUS SQUARE

1618 MAIN STREET

DALLAS, TEXAS 75201

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD [•], 2005

Dear Stockholder:

A special meeting of stockholders of The Neiman Marcus Group, Inc., a Delaware corporation (Neiman Marcus or the Company), will be held on [•], 2005, at [•] a.m., Eastern Time, at [•], for the following purposes:

1. To consider and vote on the adoption of the Agreement and Plan of Merger, dated as of May 1, 2005 (the merger agreement), among the Company, Newton Acquisition, Inc. (Parent) and Newton Acquisition Merger Sub, Inc., a wholly-owned subsidiary of Parent (Merger Sub), pursuant to which, upon the merger becoming effective, each outstanding share of Class A Common Stock, par value \$0.01 per share, of the Company (the Class A common stock), Class B Common Stock, par value \$0.01 per share, of the Company (the Class B common stock) and Class C Common Stock, par value \$0.01 per share, of the Company (the Class C common stock , and together with the Class A common stock and Class B common stock, the common stock) (other than shares held in the treasury of the Company or owned by Parent, Merger Sub or any direct or indirect wholly-owned subsidiary of Parent or the Company and other than shares held by stockholders who properly demand statutory appraisal rights) will be converted into the right to receive \$100.00 in cash, without interest; and
2. To approve the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement.
3. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

Only stockholders of record on [•], 2005, are entitled to notice of and to vote at the special meeting and at any adjournment or postponement of the special meeting. All stockholders of record are cordially invited to attend the special meeting in person.

Edgar Filing: NEIMAN MARCUS GROUP INC - Form PREM14A

The adoption of the merger agreement requires the approval of the holders of a majority of the combined voting power of the outstanding shares of common stock entitled to vote thereon. Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return the enclosed proxy in the envelope provided, or submit your proxy by telephone or the Internet prior to the special meeting and thus ensure that your shares will be represented at the special meeting if you are unable to attend. If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be voted in favor of the adoption of the merger agreement. If you fail to return your proxy card or fail to submit your proxy by telephone or the Internet and do not attend the special meeting in person, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the special meeting and, if a quorum is present, will have the same effect as a vote against the adoption of the merger agreement. If you are a stockholder of record and you attend the special meeting and wish to vote in person, you may withdraw your proxy and vote in person.

Stockholders of Neiman Marcus who do not vote in favor of the adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares if the merger is completed, but only if they submit a written demand for appraisal to the Company before the vote is taken on the merger agreement and they comply with all requirements of Delaware law, which are summarized in the accompanying proxy statement.

By order of the board of directors,

Brenda A. Sanders

Corporate Secretary

[•], 2005

Table of Contents

TABLE OF CONTENTS

	Page
<u>QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER</u>	1
<u>SUMMARY</u>	3
<u>CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION</u>	12
<u>THE PARTIES TO THE MERGER</u>	14
<u>THE SPECIAL MEETING</u>	15
<u>Time, Place and Purpose of the Special Meeting</u>	15
<u>Record Date and Quorum</u>	15
<u>Required Vote</u>	15
<u>Proxies; Revocation</u>	16
<u>Voting Via the Internet or by Telephone</u>	16
<u>Adjournments and Postponements</u>	17
<u>Solicitation of Proxies</u>	17
<u>THE MERGER</u>	18
<u>Background of the Merger</u>	18
<u>Reasons for the Merger</u>	26
<u>Recommendation of the Company's Board of Directors</u>	28
<u>Opinion of JPMorgan</u>	29
<u>Financing</u>	35
<u>Interests of the Company's Directors and Executive Officers in the Merger</u>	39
<u>Material United States Federal Income Tax Consequences</u>	44
<u>Regulatory Approvals</u>	46
<u>THE MERGER AGREEMENT</u>	48
<u>Effective Time: The Marketing Period</u>	48
<u>Structure</u>	49
<u>Treatment of Stock and Options</u>	50
<u>Exchange and Payment Procedures</u>	50
<u>Representations and Warranties</u>	51
<u>Conduct of Our Business Pending the Merger</u>	53
<u>Stockholders Meeting</u>	56
<u>No Solicitation of Transactions</u>	56
<u>Employee Benefits</u>	58
<u>Agreement to Take Further Action and to Use Reasonable Best Efforts</u>	58
<u>Parent Financing Commitments: Company Cooperation</u>	59
<u>Conditions to the Merger</u>	60
Table of Contents	8

<u>Termination</u>	61
<u>Fees and Expenses</u>	62
<u>Amendment and Waiver</u>	64

Table of Contents

<u>THE STOCKHOLDER AGREEMENT</u>	65
<u>MARKET PRICE OF THE COMPANY'S STOCK</u>	67
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	68
<u>RIGHTS OF APPRAISAL</u>	72
<u>MULTIPLE STOCKHOLDERS SHARING ONE ADDRESS</u>	74
<u>SUBMISSION OF STOCKHOLDER PROPOSALS</u>	75
<u>WHERE YOU CAN FIND ADDITIONAL INFORMATION</u>	75

ANNEX A Agreement and Plan of Merger, dated as of May 1, 2005, among Newton Acquisition, Inc., Newton Acquisition Merger Sub, Inc. and The Neiman Marcus Group, Inc.

ANNEX B Stockholder Agreement, dated as of May 1, 2005, among Newton Acquisition, Inc., Newton Acquisition Merger Sub, Inc. and the Neiman Marcus stockholders party thereto

ANNEX C Opinion of J.P. Morgan Securities Inc.

ANNEX D Section 262 of the General Corporation Law of the State of Delaware

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

The following questions and answers address briefly some questions you may have regarding the special meeting and the proposed merger. These questions and answers may not address all questions that may be important to you as a stockholder of The Neiman Marcus Group, Inc. Please refer to the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement and the documents referred to or incorporated by reference in this proxy statement. In this proxy statement, the terms "Neiman Marcus," "Company," "we," "our," "ours," "us" refer to The Neiman Marcus Group, Inc. and references to subsidiaries of the Company include the Company's majority-owned subsidiaries, Kate Spade LLC and Gurwitch Products, L.L.C.

Q: What is the proposed transaction?

A: The proposed transaction is the acquisition of the Company by an entity currently owned indirectly by private equity funds sponsored by TPG Advisors III, Inc. and TPG Advisors IV, Inc. (together, "TPG") and Warburg Pincus & Co., Warburg Pincus LLC and Warburg Pincus Partners LLC (together, "Warburg Pincus", and together with TPG, the "Sponsors") pursuant to an Agreement and Plan of Merger, dated as of May 1, 2005 (the "merger agreement"), among the Company, Newton Acquisition, Inc. ("Parent") and Newton Acquisition Merger Sub, Inc., a wholly-owned subsidiary of Parent ("Merger Sub"). Once the merger agreement has been adopted by the Company's stockholders and the other closing conditions under the merger agreement have been satisfied or waived, Merger Sub will merge with and into Neiman Marcus (the "merger"). Neiman Marcus will be the surviving corporation in the merger (the "surviving corporation") and will become a wholly-owned subsidiary of Parent.

Q: What will I receive in the merger?

A: Upon completion of the merger, whether you hold our Class A or Class B common stock, you will receive \$100.00 in cash, without interest and less any required withholding taxes, for each share of our common stock that you own. For example, if you own 100 shares of our common stock, you will receive \$10,000.00 in cash in exchange for your shares of common stock, less any required withholding taxes. You will not own shares in the surviving corporation.

Q: Where and when is the special meeting?

A: The special meeting will take place at [•], on [•], at [•] Eastern Time.

Q: What vote of our stockholders is required to adopt the merger agreement?

A: For us to complete the merger, stockholders holding at least a majority of the combined voting power of our common stock outstanding at the close of business on the record date must vote FOR the adoption of the merger agreement. Accordingly, failure to vote or an abstention will have the same effect as a vote against adoption of the merger agreement. For the purpose of the vote on the merger, each share of Class A common stock and each share of Class B common stock will have one vote.

Richard A. Smith, the Chairman of our board of directors, and members of his family have entered into a stockholder agreement, pursuant to which they have agreed to vote their shares, which as of the record date represent approximately [•]% of the combined voting power of our common stock, in favor of the adoption of the merger agreement and against any competing transaction proposed to the Company's stockholders, unless the merger agreement is terminated in accordance with its terms.

Q: How does the Company's board of directors recommend that I vote?

A: Our board of directors unanimously recommends that our stockholders vote FOR the adoption of the merger agreement. You should read The Merger Reasons for the Merger for a discussion of the factors that our board of directors considered in deciding to recommend the adoption of the merger agreement.

Table of Contents

Q: What do I need to do now?

A: We urge you to read this proxy statement carefully, including its annexes, and to consider how the merger affects you. If you are a stockholder of record, then you can ensure that your shares are voted at the special meeting by submitting your proxy via:

telephone, using the toll-free number listed on each proxy card (if you are a registered stockholder, that is if you hold your stock in your name) or vote instruction card (if your shares are held in *street name*, meaning that your shares are held in the name of a broker, bank or other nominee and your bank, broker or nominee makes telephone voting available);

the Internet, at the address provided on each proxy card (if you are a registered stockholder) or vote instruction card (if your shares are held in *street name* and your bank, broker or nominee makes Internet voting available); or

mail, by completing, signing, dating and mailing each proxy card or vote instruction card and returning it in the envelope provided.

Q: If my shares are held in *street name* by my broker, will my broker vote my shares for me?

A: Yes, but only if you provide instructions to your broker on how to vote. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. Without those instructions, your shares will not be voted, which will have the same effect as voting against the merger.

Q: Can I change my vote?

A: Yes, you can change your vote at any time before your proxy is voted at the special meeting. If you are a registered stockholder, you may revoke your proxy by notifying the Company's Corporate Secretary in writing or by submitting a new proxy by telephone, the Internet or mail, in each case, dated after the date of the proxy being revoked. In addition, your proxy may be revoked by attending the special meeting and voting in person (you must vote in person, simply attending the special meeting will not cause your proxy to be revoked).

*Please note that if you hold your shares in *street name* and you have instructed a broker to vote your shares, the above-described options for changing your vote do not apply, and instead you must follow the instructions received from your broker to change your vote.*

Q: What does it mean if I get more than one proxy card or vote instruction card?

A: If your shares are registered differently or are in more than one account, you will receive more than one card. Please complete and return all of the proxy cards or vote instruction cards you receive (or submit your proxy by telephone or the Internet, if available to you) to ensure that all of your shares are voted.

Q: Should I send in my stock certificates now?

A: No. Shortly after the merger is completed, you will receive a letter of transmittal with instructions informing you how to send in your stock certificates to the paying agent in order to receive the merger consideration. You should use the letter of transmittal to exchange stock certificates for the merger consideration to which you are entitled as a result of the merger. **DO NOT SEND ANY STOCK CERTIFICATES WITH YOUR PROXY.**

Q: Who can help answer my other questions?

A: If you have more questions about the merger, please contact Stacie Shirley, our VP, Finance and Treasurer, at (214) 757-2967. If you need assistance in submitting your proxy or voting your shares or need additional copies of the proxy statement or the enclosed proxy card, you should contact Brenda Sanders at (214) 743-7615. You may also contact our proxy solicitation agent, Innisfree M&A Incorporated, toll-free at (877) 456-3507. If your broker holds your shares, you should also call your broker for additional information.

Table of Contents

SUMMARY

The following summary highlights selected information from this proxy statement and may not contain all of the information that may be important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to or incorporated by reference in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that item.

The Parties to the Merger (Page 14)

The Neiman Marcus Group, Inc.

One Marcus Square

1618 Main Street

Dallas, Texas 75201

(214) 743-7600

The Neiman Marcus Group, Inc. is among the leading luxury retailers in the world, focusing on high-end apparel, accessories, jewelry, beauty and decorative home products. At the end of our previous fiscal year, July 31, 2004, we operated 35 Neiman Marcus stores, two Bergdorf Goodman stores and fourteen Last Call clearance centers. We also sell merchandise through Neiman Marcus Direct, our catalog and online operations, and own majority interests in Kate Spade LLC and Gurwitch Products, L.L.C., which produces the Laura Mercier line of cosmetics.

Newton Acquisition, Inc.

c/o Texas Pacific Group

301 Commerce Street, Suite 3300

Fort Worth, TX 76102

(817) 871-4000

and

c/o Warburg Pincus LLC

466 Lexington Avenue

Edgar Filing: NEIMAN MARCUS GROUP INC - Form PREM14A

New York, NY 10017

(212) 878-0600

Parent is a Delaware corporation owned in equal parts by the Sponsors through certain investment funds affiliated with the Sponsors. Parent was formed solely for the purpose of entering into the merger agreement and consummating the transactions contemplated by the merger agreement. It has not conducted any activities to date other than activities incidental to its formation and in connection with the transactions contemplated by the merger agreement.

Newton Acquisition Merger Sub. Inc.

c/o Texas Pacific Group

301 Commerce Street, Suite 3300

Fort Worth, TX 76102

(817) 871-4000

and

c/o Warburg Pincus LLC

466 Lexington Avenue

New York, NY 10017

(212) 878-0600

Table of Contents

Merger Sub is a Delaware corporation and a wholly-owned subsidiary of Parent. Merger Sub was formed solely for the purpose of entering into the merger agreement and consummating the transactions contemplated by the merger agreement. It has not conducted any activities to date other than activities incidental to its formation and in connection with the transactions contemplated by the merger agreement.

Parent and Merger Sub are each entities currently indirectly owned by private equity funds sponsored by TPG Advisors III, Inc., TPG Advisors IV, Inc., Warburg Pincus & Co., Warburg Pincus LLC and Warburg Pincus Partners LLC.

Each of TPG Advisors III, Inc. and TPG Advisors IV, Inc. (together, TPG) is serving as the sole general partner of related entities engaged in making investments in securities of public and private companies.

Warburg Pincus & Co., Warburg Pincus LLC and Warburg Pincus Partners LLC (together, Warburg Pincus) are engaged in making private equity and related investments.

The Special Meeting

Time, Place and Date (Page 15)

The special meeting will be held on [•], starting at [•], Eastern Time, at [•].

Purpose (Page 15)

You will be asked to consider and vote upon adoption of the merger agreement. The merger agreement provides that Merger Sub will be merged with and into the Company, and each outstanding share of the Company's common stock (other than shares held in the treasury of the Company or owned by Parent, Merger Sub or any direct or indirect wholly-owned subsidiary of Parent or the Company and other than shares held by stockholders who properly demand statutory appraisal rights) will be converted into the right to receive \$100.00 in cash, without interest.

The persons named in the accompanying proxy card will also have discretionary authority to vote upon other business, if any, that properly comes before the special meeting and any adjournments or postponements of the special meeting.

Record Date and Quorum (Page 15)

You are entitled to vote at the special meeting if you owned shares of the Company's common stock at the close of business on [•], 2005, the record date for the special meeting. You will have one vote for each share of the Company's common stock that you owned on the record date.

Edgar Filing: NEIMAN MARCUS GROUP INC - Form PREM14A

As of the record date, there were [•] shares of the Company's common stock entitled to be voted, consisting of [•] shares of Class A common stock and [•] shares of Class B common stock. (There were no outstanding shares of the Company's Class C common stock as of the record date.)

Required Vote (Page 15)

For us to complete the merger, stockholders holding at least a majority in combined voting power of our common stock outstanding at the close of business on the record date must vote FOR the adoption of the merger agreement. All of our stockholders are entitled to one vote per share, and there is no difference in voting power between holders of the Class A common stock and the Class B common stock for purposes of voting to adopt the merger agreement. A failure to vote your shares of the Company's common stock or an abstention will have the same effect as a vote against the merger.

Table of Contents

In connection with the execution of the merger agreement, Richard A. Smith, the Chairman of our board of directors, and members of his family (collectively, the Smith Family Holders), entered into a stockholder agreement pursuant to which they have agreed to vote in favor of the merger and against any competing transaction proposed to the Company's stockholders, unless the merger agreement is terminated in accordance with its terms. As of the record date, the Smith Family Holders beneficially own an aggregate of [●] shares of Neiman Marcus common stock (excluding options), which represents approximately [●]% of the voting power for purposes of voting on the adoption of the merger agreement.

Share Ownership of Directors and Executive Officers (Page 15)

As of the record date, the directors and current executive officers of Neiman Marcus beneficially owned in the aggregate (excluding options) approximately [●]% of the shares of the Company's common stock entitled to vote at the special meeting. Each of them either agreed to vote, or has advised us that he or she plans to vote, all of his or her shares in favor of the adoption of the merger agreement.

Voting and Proxies (Page 16)

Any Neiman Marcus stockholder of record entitled to vote may submit a proxy by telephone, the Internet or returning the enclosed proxy card by mail, or may vote in person by appearing at the special meeting. If your shares are held in street name by your broker, you should instruct your broker on how to vote your shares using the instructions provided by your broker. If you do not provide your broker with instructions, your shares will not be voted and that will have the same effect as a vote against the merger.

Revocability of Proxy (Page 16)

Any Neiman Marcus stockholder of record who executes and returns a proxy card (or submits a proxy via telephone or the Internet) may revoke the proxy at any time before it is voted in any one of the following ways:

filing with the Company's Corporate Secretary, at or before the special meeting, a written notice of revocation that is dated a later date than the proxy;

sending a later-dated proxy relating to the same shares to the Company's Corporate Secretary, at or before the special meeting;

submitting a later-dated proxy by the Internet or by telephone, at or before the special meeting; or

attending the special meeting and voting in person by ballot.

Simply attending the special meeting will not constitute revocation of a proxy. If you have instructed your broker to vote your shares, the above-described options for revoking your proxy do not apply and instead you must follow the directions provided by your broker to change these instructions.

When the Merger Will be Completed (Page 48)

We are working to complete the merger as soon as possible. We anticipate completing the merger by [●] 2005, subject to adoption of the merger agreement by the Company's stockholders and the satisfaction of the other closing conditions. In addition, Merger Sub is not obligated to complete the merger until the expiration of a 40 consecutive calendar day marketing period throughout which Merger Sub shall have the financial information that the Company is required to provide pursuant to the merger agreement to complete its debt financing of the merger. So long as we have provided all required financial information to Merger Sub for

Table of Contents

purposes of its completing its offerings of debt securities, the marketing period begins to run on the twentieth day after we first mail this proxy statement to our stockholders. If the marketing period would end on or after August 15, 2005, however, the marketing period would begin to run (so long as we have provided Merger Sub all required financial information) on the later of (i) September 1, 2005 and (ii) the date on which we file our annual report on Form 10-K for the fiscal year ended July 30, 2005 with the Securities and Exchange Commission (SEC). Because we are first mailing this proxy statement to our stockholders on or about [●], 2005, we expect that the marketing period will begin on or about [●], 2005.

Board Recommendation (Page 29)

After careful consideration, our board of directors has unanimously:

determined that the merger, the merger agreement and the transactions contemplated by the merger agreement are advisable, fair to and in the best interests of the Company and its stockholders;

approved the merger agreement; and

recommended that Neiman Marcus stockholders vote FOR the adoption of the merger agreement.

Stockholder Agreement with the Smith Family Holders (Page 65 and Annex B)

The Smith Family Holders, including, among others, Richard A. Smith, the Chairman of our board of directors, and Robert A. Smith and Brian J. Knez, the co-Vice Chairmen of our board, have entered into a stockholder agreement, dated as of May 1, 2005, with Parent and Merger Sub with respect to the 6,055,057 shares of common stock (16,471 shares of Class A common stock and 6,038,586 shares of Class B common stock) owned in the aggregate by the Smith Family Holders as of the date of the stockholder agreement as well as any shares of common stock acquired by the Smith Family Holders after such date. As of the record date, the Smith Family Holders held [●] shares of the Company's common stock.

The Smith Family Holders have agreed to vote all of these shares in favor of the adoption of the merger agreement and against any competing transaction proposed to the Company's stockholders, unless the merger agreement is terminated in accordance with its terms, and have delivered an irrevocable proxy to Parent for the purpose of voting such shares. The stockholder agreement will terminate upon the earlier of (i) the termination of the merger agreement and (ii) the effective time of the merger. The full text of the stockholder agreement is attached to this proxy statement as Annex B. We encourage you to read the full text of the stockholder agreement in its entirety.

Opinion of JPMorgan (Page 29 and Annex C)

J.P. Morgan Securities Inc. (JPMorgan) delivered its opinion to the Company's board of directors that, as of the date of its opinion and based upon and subject to the factors and assumptions set forth therein, the merger consideration of \$100.00 in cash per share to be received by the Company's Class A and Class B stockholders pursuant to the merger agreement was fair, from a financial point of view, to such stockholders (other than the Smith Family Holders).

The opinion of JPMorgan is addressed to the Company's board of directors, is directed only to the consideration to be paid in the merger and does not constitute a recommendation as to how any of our stockholders should vote with respect to the merger agreement or whether such stockholders should exercise any dissenter's rights or appraisal rights with respect to the merger or any other matter. The full text of the written opinion of JPMorgan, dated May 1, 2005, which sets forth the procedures followed, limitations on the review undertaken, matters considered and assumptions made in connection with such opinion, is attached as Annex C

Table of Contents

to this proxy statement. We recommend that you read the opinion carefully in its entirety. Pursuant to the terms of the engagement letter with JPMorgan, the Company has agreed to pay to JPMorgan a fee. Payment of the fee to JPMorgan is not contingent upon consummation of the merger.

Financing (Page 35)

The Company and the Sponsors estimate that the total amount of funds necessary to consummate the merger and related transactions (including payment of the aggregate merger consideration, the repayment or refinancing of some of the Company's currently outstanding debt and all related fees and expenses) will be approximately \$5.4 billion. Merger Sub has received commitments from Credit Suisse First Boston and Goldman Sachs Mortgage Company with respect to the financing.

In connection with the execution and delivery of the merger agreement, Merger Sub has obtained commitments to provide up to approximately \$3.9 billion in debt financing (not all of which is expected to be drawn at closing) consisting of (1) a senior secured asset-based revolving facility with a maximum availability of \$600 million and (2) term and bridge loan facilities and senior secured notes with an aggregate principal amount of up to \$3.3 billion to finance, in part, the payment of the merger consideration, the repayment or refinancing of certain debt of the Company outstanding on the closing date of the merger and to pay fees and expenses in connection therewith and, in the case of the revolving facility, for general corporate purposes after the closing date of the merger.

In addition, Merger Sub has obtained a commitment to provide up to \$750 million under a limited recourse secured asset-based revolving credit facility relating to the Company's credit card operations to finance the acquisition of such operations on the closing date of the merger in the event that a credit card transaction has not been completed by the closing date of the merger. Parent has agreed to use its reasonable best efforts to arrange the debt financing on the terms and conditions described in the commitments. In addition, Parent and Merger Sub have obtained an aggregate of \$1.55 billion in equity commitments from the Sponsors. The facilities and notes contemplated by the debt financing commitments are conditioned on the merger being consummated prior to the merger agreement termination date, as well as other conditions, as described in further detail under *The Merger Financing Debt Financing* beginning on page 36.

The closing of the merger is not conditioned on the receipt of the debt financing by Merger Sub. Parent, however, is not required to consummate the merger until after the completion of the marketing period as described above under *When the Merger Will be Completed* and in further detail under *The Merger Agreement Effective Time; The Marketing Period* beginning on page 48.

Treatment of Stock Options (Page 39)

The merger agreement provides that all outstanding Company stock options issued pursuant to the Company's stock option and incentive plans, whether or not vested or exercisable, will be cashed out and canceled (to the extent permitted under the governing plan documents and related agreements) in connection with the completion of the merger. Each option holder will receive an amount in cash, less applicable withholding taxes and without interest, equal to the product of:

the number of shares of our common stock subject to each option as of the effective time of the merger, multiplied by

the excess, if any, of \$100.00 over the exercise price per share of common stock subject to such option.

Table of Contents

Treatment of Restricted Stock and Stock Units (Page 40)

The merger agreement provides that:

each outstanding share of our restricted stock, the restrictions of which have not lapsed immediately prior to the effective time of the merger, will become fully vested and will be converted into the right to receive \$100.00 in cash, without interest and less applicable withholding taxes; and

each outstanding right to receive our common stock, restricted stock or cash equal to or based on the value of our common stock pursuant to a stock unit award under any of our stock or other incentive plans, whether or not vested, will be canceled, and the holder of the stock unit will be entitled to receive \$100.00 in cash, without interest and less applicable withholding taxes, for each share of common stock subject to the stock unit award.

Interests of the Company's Directors and Executive Officers in the Merger (Page 39)

Our directors and executive officers may have interests in the merger that are different from, or in addition to, yours, including the following:

our directors and executive officers will have their vested and unvested stock options, restricted stock and stock unit awards canceled and cashed out in connection with the merger, meaning that they will receive cash payments for each share of common stock subject to such option equal to the excess, if any, of \$100.00 per share over the exercise price per share of their options, without interest and less applicable withholding taxes, and they will receive \$100.00 per share for their restricted stock and stock unit awards, without interest and less applicable withholding taxes;

each of our current executive officers has a change of control termination protection agreement that provides certain severance payments and benefits in the case of his or her termination of employment under certain circumstances and, in addition, the agreements provide that in the event any benefit received by the executive officer gives rise to an excise tax for the executive officer, the executive officer is also entitled to a gross-up payment in an amount that would place the executive officer in the same after-tax position that he or she would have been in if no excise tax had applied (except for certain circumstances in which the agreements specify that the benefits payable to the executive will be reduced to eliminate the applicability of such excise taxes);

at the completion of the merger, the Company will terminate all its non-qualified deferred compensation plans, including the key employee bonus plan, key employee deferred compensation plan and deferred compensation plan for non-employee directors and any other non-qualified deferred compensation plans in which our executive officers or directors participate, and will cause all accounts thereunder to be paid out to participants in cash;

the merger agreement provides for indemnification arrangements for each of our current and former directors and officers that will continue for six years following the effective time of the merger as well as insurance coverage covering his or her service to the Company as a director or officer; and

although no agreements have been entered into as of the date of this proxy statement, the Sponsors have informed us that it is their intention to retain members of our existing management team with the surviving corporation after the merger is completed, and in that connection, members of management currently are engaged in discussions with representatives of Parent and we believe that these

Edgar Filing: NEIMAN MARCUS GROUP INC - Form PREM14A

persons are likely to enter into new arrangements with Parent, Merger Sub or their affiliates regarding employment with, and the right to purchase or participate in the equity of, the surviving corporation, although such matters are subject to further negotiation and discussion and no terms or conditions have been finalized.

Table of Contents

Material United States Federal Income Tax Consequences (Page 44)

If you are a U.S. holder of our common stock, the merger will be a taxable transaction to you. For U.S. federal income tax purposes, your receipt of cash in exchange for your shares of the Company's common stock generally will cause you to recognize a gain or loss measured by the difference, if any, between the cash you receive in the merger and your adjusted tax basis in your shares. If you are a non-U.S. holder of our common stock, the merger will generally not be a taxable transaction to you under U.S. federal income tax laws unless you have certain connections to the United States. You should consult your own tax advisor for a full understanding of how the merger will affect your taxes.

Regulatory Approvals (Page 46)

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the Hart-Scott-Rodino Act) provides that transactions such as the merger may not be completed until certain information has been submitted to the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice and certain waiting period requirements have been satisfied. On May 13, 2005 and on May 16, 2005, the Company and Newton Holding, LLC (an affiliate of TPG and Warburg Pincus), respectively, each filed a Notification and Report Form with the Antitrust Division and the Federal Trade Commission and requested an early termination of the waiting period. If the early termination is not granted and a request for additional information by the relevant antitrust authorities is not made, the waiting period will expire at 11:59 p.m. on June 15, 2005.

Except as noted above with respect to the required filings under the Hart-Scott-Rodino Act and the filing of a certificate of merger in Delaware at or before the effective date of the merger, we are unaware of any material federal, state or foreign regulatory requirements or approvals required for the execution of the merger agreement or completion of the merger.

Procedure for Receiving Merger Consideration (Page 50)

As soon as practicable after the effective time of the merger, a paying agent will mail a letter of transmittal and instructions to you and the other Neiman Marcus stockholders. The letter of transmittal and instructions will tell you how to surrender your stock certificates or book-entry shares in exchange for the merger consideration. **You should not return your stock certificates with the enclosed proxy card, and you should not forward your stock certificates to the paying agent without a letter of transmittal.**

No Solicitation of Transactions (Page 56)

The merger agreement restricts our ability to solicit or engage in discussions or negotiations with a third party regarding specified transactions involving the Company. Notwithstanding these restrictions, under certain limited circumstances required for our board of directors to comply with its fiduciary duties, our board of directors may respond to an unsolicited written bona fide proposal for an alternative acquisition or terminate the merger agreement and enter into an agreement with respect to a superior proposal after paying the termination fee specified in the merger agreement.

Conditions to Closing (Page 60)

Before we can complete the merger, a number of conditions must be satisfied. These include:

the receipt of Company stockholder approval;

the absence of governmental orders that have the effect of making the merger illegal or that otherwise prohibit the closing;

Table of Contents

the expiration or termination of the waiting period under the Hart-Scott-Rodino Act;

performance by each of the parties of its covenants under the merger agreement in all material respects; and

the accuracy of the Company's representations and warranties, except to the extent the failure of such representations and warranties to be true and correct would not constitute a material adverse effect.

Termination of the Merger Agreement (Page 61)

Neiman Marcus, Parent and Merger Sub may agree in writing to terminate the merger agreement at any time without completing the merger, even after the stockholders of Neiman Marcus have adopted the merger agreement. The merger agreement may also be terminated at any time prior to the effective time of the merger in certain other circumstances, including:

by either Parent or the Company if:

- o the closing has not occurred on or before November 1, 2005, provided that if the marketing period has not ended on or before August 15, 2005, then such date is extended to the earli