FEDERATED DEPARTMENT STORES INC /DE/ Form S-4/A May 10, 2005

# As filed with the Securities and Exchange Commission on May 10, 2005

Registration No. 333-123667

# SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

Amendment No. 1
to
Form S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

# FEDERATED DEPARTMENT STORES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware531113-3324058(State or Other Jurisdiction of(Primary Standard Industrial(I.R.S. Employer

(State or Other Jurisaiction of Incorporation or Organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer
Identification Number)

7 West Seventh Street Cincinnati, Ohio 45202 (513) 579-7000 and 151 West 34<sup>th</sup> Street New York, New York 10001 (212) 494-1602

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Dennis J. Broderick, Esq.
Senior Vice President, General Counsel and Secretary
Federated Department Stores, Inc.
7 West Seventh Street
Cincinnati, Ohio 45202
(513) 579-7000

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

### Copies to:

Lyle G. Ganske, Esq. Christopher J. Hewitt, Esq. Jones Day 901 Lakeside Avenue Cleveland, Ohio 44114-1190 (216) 586-3939 Alan E. Charlson, Esq.
Senior Vice President and
General Counsel
The May Department Stores
Company
611 Olive Street

J. Michael Schell, Esq.
Neil P. Stronski, Esq.
Skadden, Arps, Slate, Meagher &
Flom LLP
Four Times Square
New York, New York 10036

St. Louis, Missouri 63101 (314) 342-6300

(212) 735-3000

Approximate date of commencement of proposed sale to public: As soon as practicable following the effective date of this registration statement and the date on which all other conditions to the merger of The May Department Stores Company with and into Milan Acquisition LLC pursuant to the merger agreement described in the enclosed document have been satisfied or waived.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. o

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this joint proxy statement/ prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This joint proxy statement/ prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

# **SUBJECT TO COMPLETION, DATED MAY 10, 2005**

# PRELIMINARY COPY

# TO THE STOCKHOLDERS OF FEDERATED DEPARTMENT STORES, INC. AND THE MAY DEPARTMENT STORES COMPANY

Federated Department Stores, Inc., which is referred to as Federated, and The May Department Stores Company, which is referred to as May, have entered into an agreement and plan of merger whereby Federated will acquire May. In the merger, May stockholders will receive 0.3115 shares of Federated common stock and \$17.75 in cash for each share of May common stock they own. Upon completion of the merger, we estimate that May s former stockholders will own approximately 97 million, or approximately 36%, of the then-outstanding shares of Federated common stock. Federated s stockholders will continue to own their existing shares, which will not be affected by the merger. Shares of Federated common stock are listed on the New York Stock Exchange under the symbol FD. Upon completion of the merger, May common stock, which is listed on the New York Stock Exchange under the symbol MAY, will be delisted.

We are each holding our annual meeting of stockholders in order to obtain those approvals necessary to consummate the merger and to approve certain other matters as described in this joint proxy statement/ prospectus. Information about these meetings, the merger and other business to be considered by Federated and May stockholders is contained in this joint proxy statement/ prospectus. We urge you to read this joint proxy statement/ prospectus, and the documents incorporated by reference into this joint proxy statement/ prospectus, carefully and in their entirety, in particular, see Risk Factors beginning on page 28.

We are very excited about the opportunities the proposed merger brings to both May and Federated stockholders, and we thank you for your consideration and continued support.

Terry J. Lundgren Chairman, President and Chief Executive Officer Federated Department Stores, Inc. John L. Dunham
Chairman, President and
Chief Executive Officer
The May Department Stores Company

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this joint proxy statement/prospectus. Any representation to the contrary is a criminal offense.

This joint proxy statement/ prospectus is dated May  $\,$  , 2005, and is first being mailed to May and Federated stockholders on or about May  $\,$  , 2005.

### REFERENCES TO ADDITIONAL INFORMATION

Except where we indicate otherwise, as used in this joint proxy statement/ prospectus, Federated refers to Federated and its consolidated subsidiaries and May refers to May and its consolidated subsidiaries. This joint proxy statement/ prospectus incorporates important business and financial information about Federated and May from documents that each company has filed with the Securities and Exchange Commission, referred to as the SEC, but that have not been included in or delivered with this joint proxy statement/ prospectus. This joint proxy statement/ prospectus incorporates the annual report on Form 10-K of Federated for the fiscal year ended January 29, 2005, and the annual report on Form 10-K/A of May for the fiscal year ended January 29, 2005. If you are a May stockholder, the May annual report is delivered with this joint proxy statement/ prospectus. If you are a Federated stockholder, the Federated annual report is delivered with this joint proxy statement/ prospectus. For a list of documents incorporated by reference into this joint proxy statement/ prospectus and how you may obtain them, see Where You Can Find More Information beginning on page 187.

This information is available to you without charge upon your written or oral request. You can obtain the documents incorporated by reference into this joint proxy statement/ prospectus by accessing the SEC s website maintained at www.sec.gov.

In addition, Federated s SEC filings are available to the public on Federated s website, www.fds.com/corporategovernance, and May s filings with the SEC are available to the public on May s website, www.mayco.com. Information contained on Federated s website, May s website or the website of any other person is not incorporated by reference into this joint proxy statement/ prospectus, and you should not consider information contained on those websites as part of this joint proxy statement/ prospectus.

Federated will provide you with copies of this information relating to Federated, without charge, if you request them in writing or by telephone from:

Federated Department Stores, Inc. 7 West Seventh Street Cincinnati, Ohio 45202 Attention: Investor Relations (513) 579-7780

May will provide you with copies of this information relating to May, without charge, if you request them in writing or by telephone from:

The May Department Stores Company 611 Olive Street St. Louis, Missouri 63101 Attention: Investor Relations (314) 342-6300

If you would like to request documents, please do so by [ ], 2005, in order to receive them before the annual meetings.

Federated has supplied all information contained in or incorporated by reference in this joint proxy statement/ prospectus relating to Federated, and May has supplied all information contained in or incorporated by reference in this joint proxy statement/ prospectus relating to May.

# THE MAY DEPARTMENT STORES COMPANY 611 Olive Street St. Louis, Missouri 63101 NOTICE OF ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON [ ], 2005

	1	
The May Department Stores Co.	mpany:	
We will hold our 2005 annua	al meeting of stockholders at 10:00 a.r	n., Eastern Daylight Savings Time, on
[ ], 2005, at [	], New York, New York [	], unless postponed or adjourned to a late
date. The May annual meeting v	vill be held for the following purposes	:

- 1. To approve and adopt the Agreement and Plan of Merger, dated as of February 27, 2005, by and among May, Federated Department Stores, Inc. and Milan Acquisition LLC, a wholly owned subsidiary of Federated, and the transactions contemplated by the merger agreement, including the merger, pursuant to which May will merge with Milan Acquisition LLC, on the terms and subject to the conditions contained in the merger agreement, and each outstanding share of May common stock would be converted into the right to receive \$17.75 in cash and 0.3115 shares of Federated common stock. A copy of the merger agreement is attached as <u>Annex A</u> to the accompanying joint proxy statement/ prospectus;
  - 2. To elect four members of May s board of directors;

To our fellow Stockholders and Holders of ESOP preference shares of

- 3. To adopt an amendment to May s amended and restated certificate of incorporation to provide for the annual election of directors;
- 4. To ratify the appointment of Deloitte & Touche LLP as May s independent registered public accounting firm for the fiscal year ending January 28, 2006;
- 5. To approve adjournments or postponements of the May annual meeting, if necessary, to permit further solicitation of proxies if there are not sufficient votes at the time of the May annual meeting to approve the above proposals; and
- 6. To consider and take action upon any other business that may properly come before the May annual meeting or any reconvened meeting following an adjournment or postponement of the May annual meeting.

These items of business are described in the accompanying joint proxy statement/ prospectus. Only stockholders of record at the close of business on May , 2005, are entitled to notice of the May annual meeting and to vote at the May annual meeting and any adjournments or postponements of the May annual meeting.

May s board of directors approved the merger agreement and the transactions contemplated by the merger agreement, including the merger, on February 27, 2005, and determined that the transactions contemplated by the merger agreement are advisable and fair to, and in the best interests of, May and its stockholders. May s board of directors recommends that you vote FOR the adoption of the merger agreement and the transactions contemplated by the merger agreement, including the merger.

May s board of directors also recommends that you vote FOR the other May annual meeting proposals, all of which are described in detail in the accompanying joint proxy statement/ prospectus. Approval of the other May annual meeting proposals is not a condition to the merger.

Under Delaware law, appraisal rights will be available to May stockholders of record who vote against approval and adoption of the merger agreement. To exercise your appraisal rights, you must strictly follow the procedures prescribed by Delaware law. These procedures are summarized in the accompanying joint proxy statement/ prospectus.

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Your vote is very important. Whether or not you plan to attend the May annual meeting in person, please complete, sign and date the enclosed proxy card(s) or voting instruction card(s) as soon as possible and return it in the postage-prepaid envelope provided, or vote your shares by telephone or over the Internet as described in the accompanying joint proxy statement/ prospectus. Completing a proxy now will not prevent you from being able to vote at the annual meeting by attending in person and casting a vote. However, if you do not return or submit the proxy or vote in person at the annual meeting, the effect will be the same as a vote against the proposal to approve and adopt the merger agreement and the transactions contemplated by the merger agreement, including the merger.

By order of the board of directors,

Richard A. Brickson Secretary and Senior Counsel

Please vote your shares promptly. You can find instructions for voting on the enclosed proxy card or voting instruction card.

If you have questions, contact:
The May Department Stores Company
611 Olive Street
St. Louis, Missouri 63101
Attention: Investor Relations
(314) 342-6300

St. Louis, Missouri, May , 2005

Your vote is important. Please complete, date, sign and return your proxy card(s) or voting instruction card(s), or, if available, vote your shares by telephone or over the Internet at your earliest convenience so that your shares are represented at the meeting.

# FEDERATED DEPARTMENT STORES, INC.

7 West Seventh Street
Cincinnati, Ohio 45202
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON [ ], 2005

To our fellow	Stockholders	of Federated I	Department	Stores	Inc
10 our remow	Diockholacis	or rederated r	Department	Diores,	IIIC.

The annual meeting of stockholders of Federated Department Stores, Inc. (Federated) will be held at [ ] a.m., Eastern Daylight Savings Time, on [ ], 2005, at Federated s corporate offices located at 7 West Seventh Street, Cincinnati, Ohio 45202, unless postponed or adjourned to a later date. The Federated annual meeting will be held for the following purposes:

- 1. To authorize the issuance of Federated common stock pursuant to the terms of the Agreement and Plan of Merger, dated as of February 27, 2005, by and among The May Department Stores Company, Federated and Milan Acquisition LLC, a wholly owned subsidiary of Federated, pursuant to which May will merge with Milan Acquisition LLC on the terms and subject to the conditions contained in the merger agreement. A copy of the merger agreement is attached as <u>Annex A</u> to the accompanying joint proxy statement/ prospectus;
  - 2. To elect three Class II members of Federated s board of directors;
- 3. To adopt an amendment to Federated s certificate of incorporation to provide for the annual election of directors;
- 4. To ratify the appointment of KPMG LLP as Federated s independent registered public accounting firm for the fiscal year ending January 28, 2006;
- 5. To approve adjournments or postponements of the Federated annual meeting, if necessary, to permit further solicitation of proxies if there are not sufficient votes at the time of the Federated annual meeting to approve the above proposals; and
- 6. To consider and take action upon any other business that may properly come before the Federated annual meeting or any reconvened meeting following an adjournment or postponement of the Federated annual meeting. These items of business are described in the accompanying joint proxy statement/ prospectus. Only stockholders of record at the close of business on May , 2005, are entitled to notice of the Federated annual meeting and to vote at the Federated annual meeting and any adjournments or postponements of the Federated annual meeting.

Federated s board of directors approved the merger agreement and the transactions contemplated by the merger agreement, including the merger, on February 27, 2005, and determined that the transactions contemplated by the merger agreement are advisable and fair to, and in the best interests of, Federated and its stockholders. Federated s board of directors recommends that you vote FOR the issuance of Federated common stock pursuant to the merger agreement.

Federated s board of directors also recommends that you vote FOR the other Federated annual meeting proposals, all of which are described in detail in the accompanying joint proxy statement/ prospectus. Approval of the other Federated annual meeting proposals is not a condition to the merger.

Your vote is very important. Whether or not you plan to attend the Federated annual meeting in person, please complete, sign and date the enclosed proxy card(s) or voting instruction card(s) as soon as possible and return it in the postage-prepaid envelope provided, or vote your shares by telephone or over the Internet as described in the accompanying joint proxy statement/ prospectus. Completing a proxy now will not prevent you from being able to vote at the annual meeting by attending in person and casting a vote. **However, if you** 

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do not return or submit the proxy or vote in person at the annual meeting you could negatively effect the outcome of the proposal to approve the issuance of Federated common stock in the merger.

By order of the board of directors,

Dennis J. Broderick Senior Vice President, General Counsel and Secretary

Please vote your shares promptly. You can find instructions for voting on the enclosed proxy card or voting instruction card.

If you have questions, contact:
Federated Department Stores, Inc.
7 West Seventh Street
Cincinnati, Ohio 45202
Attention: Investor Relations
(513) 579-7780
Call Toll-Free: (800) 261-5385

Cincinnati, Ohio, May , 2005

Your vote is important. Please complete, date, sign and return your proxy card(s) or voting instruction card(s) or, if available, vote your shares by telephone or over the Internet at your earliest convenience so that your shares are represented at the meeting.

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# QUESTIONS AND ANSWERS ABOUT THE ANNUAL MEETINGS AND THE MERGER

The following questions and answers briefly address some commonly asked questions about the annual meetings and the merger. They may not include all the information that is important to you. Federated and May urge you to read carefully this entire joint proxy statement/ prospectus, including the annexes and the other documents to which we have referred you. We have included page references in certain parts of this summary to direct you to a more detailed description of each topic presented elsewhere in this joint proxy statement/ prospectus.

# The Merger

# Q: Why am I receiving this joint proxy statement/ prospectus?

A: May and Federated have agreed to the acquisition of May by Federated under the terms of a merger agreement that is described in this joint proxy statement/ prospectus. A copy of the merger agreement is attached to this joint proxy statement/ prospectus as <u>Annex A.</u>

In order to complete the merger, Federated stockholders must vote to approve the issuance of shares of Federated common stock in the merger and May stockholders must approve and adopt the merger agreement and the transactions contemplated by the merger agreement, including the merger. May and Federated will hold separate meetings of their respective stockholders to obtain these approvals, as well as to consider various other proposals unrelated to the transaction.

This joint proxy statement/ prospectus contains important information about the merger, the merger agreement and the annual meetings of the respective stockholders of May and Federated, which you should read carefully. The enclosed voting materials allow you to vote your shares without attending your respective company s annual meeting.

Your vote is very important. We encourage you to vote as soon as possible.

# Q: What is the proposed transaction for which I am being asked to vote?

A: May stockholders are being asked to approve and adopt the merger agreement and the transactions contemplated by the merger agreement, including the merger. The approval of this proposal by May stockholders is a condition to the effectiveness of the merger. See The Merger Agreement Conditions to Completion of the Merger beginning on page 113 and Summary Conditions to Completion of the Merger beginning on page 14.

Federated stockholders are being asked to authorize the issuance of Federated common stock pursuant to the terms of the merger agreement at the Federated annual meeting. The approval of this proposal by the Federated stockholders is a condition to the effectiveness of the merger. See The Merger Agreement Conditions to Completion of the Merger beginning on page 113 and Summary Conditions to Completion of the Merger beginning on page 14.

# Q: What are the positions of the May and Federated boards of directors regarding the merger?

A: Both boards of directors have approved the merger agreement and the transactions contemplated by the merger agreement, including the merger, and determined that the transactions contemplated by the merger agreement are advisable and fair to, and in the best interests of, their respective company and stockholders. The May board of directors recommends that the May stockholders vote FOR the proposal to adopt the merger agreement and the transactions contemplated by the merger agreement, including the merger, at the May annual meeting. The Federated board of directors recommends that the Federated stockholders vote FOR the proposal to authorize the issuance of Federated common stock pursuant to the terms of the merger agreement at the Federated annual meeting. See The Merger Federated s Reasons for the Merger and Recommendation of Federated s Board of

Directors beginning on page 58 and The Merger May s Reasons for the Merger and Recommendation of May s Board of Directors beginning on page 54.

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- Q: What vote is needed by May stockholders to approve and adopt the merger agreement and the transactions contemplated by the merger agreement, including the merger, at the May annual meeting?
- A: The approval and adoption of the merger agreement and the transactions contemplated by the merger agreement, including the merger, requires the approval of a majority of the outstanding shares of May common stock and May Employee Stock Ownership Plan preference stock, which are referred to as ESOP preference shares, entitled to vote, voting together as one class. If a May stockholder does not vote, it will have the same effect as a vote against the approval and adoption of the merger agreement and the transactions contemplated by the merger agreement, including the merger. See The May Annual Meeting Quorum and Voting Rights beginning on page 35.
- Q: What vote is needed by Federated stockholders to authorize the issuance of Federated common stock pursuant to the terms of the merger agreement at the Federated annual meeting?
- A: The authorization of the issuance of Federated common stock pursuant to the terms of the merger agreement requires the affirmative vote of at least a majority of the votes cast by the holders of outstanding shares of Federated common stock present (in person or by proxy) at the Federated annual meeting, where the holders of at least a majority of all outstanding shares of Federated common stock vote on the proposal. If a Federated stockholder does not vote, it will not have the same effect as a vote against the merger agreement. However, it can negatively affect the vote on such proposal if their failure to be counted results in less than a majority in interest of all outstanding shares of Federated common stock being voted on such proposal. See The Federated Annual Meeting Quorum and Voting Rights beginning on page 42.
- **Q:** Where does Federated common stock trade?
- A: Shares of Federated common stock trade on the New York Stock Exchange under the symbol FD.
- Q: When do you expect to complete the merger?
- A: If the merger agreement and the transactions contemplated by the merger agreement, including the merger, are approved and adopted at the May annual meeting and the issuance of Federated common stock is authorized at the Federated annual meeting, we expect to complete the merger as soon as possible after the satisfaction of the other conditions to the merger. There may be a substantial period of time between the approval of the proposals by stockholders at the annual meetings of May s and Federated s stockholders and the effectiveness of the merger. We currently anticipate that the merger will be completed in the third quarter of 2005. See The Merger Agreement The Merger; Closing on page 99.
- Q: Should I send in my stock certificates now?
- A: No. If the merger is completed, Federated will send May stockholders written instructions for sending in their stock certificates. See The May Annual Meeting Proxy Solicitations on page 40 and The Merger Agreement Exchange of Shares on page 101. Federated stockholders will not need to send in their stock certificates.
- Q: Who can answer my questions about the merger?
- A: If you have any questions about the merger or your annual meeting, need assistance in voting your shares, or need additional copies of this joint proxy statement/ prospectus or the enclosed proxy card(s) or voting instructions, you should contact:

Federated Department Stores, Inc.

7 West Seventh Street Cincinnati, Ohio 45202 Attention: Investor Relations Telephone: (513) 579-7780

or

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The May Department Stores Company 611 Olive Street St. Louis, Missouri 63101

Attention: Investor Relations Telephone: (314) 342-6300

# **Other Federated Annual Meeting Proposals**

Q: On what other proposals am I being asked to vote at the Federated annual meeting?

A: At Federated s annual meeting, in addition to voting upon the issuance of Federated stock pursuant to the merger agreement, Federated stockholders will be asked:

To elect three Class II members of Federated s board of directors;

To adopt an amendment to Federated s Certificate of Incorporation to provide for the annual election of directors;

To ratify the appointment of KPMG LLP as Federated s independent registered public accounting firm for the fiscal year ending January 28, 2006;

To approve adjournments or