

KAR Auction Services, Inc.  
Form S-8  
August 04, 2010

As filed with the Securities and Exchange Commission on August 4, 2010

Registration No. 333-\_\_\_\_\_

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

**KAR AUCTION SERVICES, INC.**

(Exact name of registrant as specified in its charter)

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

**20-8744739**  
(I.R.S. Employer  
Identification Number)

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13085 Hamilton Crossing Boulevard

Carmel, Indiana  
(Address of Principal Executive Offices)

46032  
(Zip Code)

KAR Auction Services, Inc. Directors Deferred Compensation Plan

(Full title of the plan)

Rebecca C. Polak, Esq.

Executive Vice President and General Counsel

KAR Auction Services, Inc.

13085 Hamilton Crossing Boulevard

Carmel, Indiana 46032

(Name and address of agent for service)

(317) 815-9135

(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

| Title of Securities to Be Registered | Amount Registered (1) | Proposed                            | Proposed                         | Amount of Registration Fee |
|--------------------------------------|-----------------------|-------------------------------------|----------------------------------|----------------------------|
|                                      |                       | Maximum Offering Price Per Unit (2) | Maximum Aggregate Offering Price |                            |
|                                      |                       |                                     |                                  |                            |

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|                                       |             |      |             |          |
|---------------------------------------|-------------|------|-------------|----------|
| Deferred Compensation Obligations (1) | \$2,000,000 | 100% | \$2,000,000 | \$142.60 |
|---------------------------------------|-------------|------|-------------|----------|

- (1) The Deferred Compensation Obligations are unsecured general obligations of KAR Auction Services, Inc. to pay deferred compensation in accordance with the terms of the KAR Auction Services, Inc. Directors Deferred Compensation Plan.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act.

**PART I.**

**INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

The document(s) containing the information specified in Part I will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). Such documents are not being filed with the Securities and Exchange Commission (the SEC) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**PART II.**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 1. Incorporation of Documents by Reference.**

The following documents previously filed with the SEC are incorporated by reference in this registration statement:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2009; and
- (b) The Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010 and June 30, 2010.
- (c) The Company's Current Reports on Form 8-K filed with the Commission on January 6, 2010, January 29, 2010, February 12, 2010, February 16, 2010, February 25, 2010, March 26, 2010, April 19, 2010, May 5, 2010 and August 3, 2010 (in each case, other than any portion of such filings that are furnished under applicable SEC rules rather than filed).

In addition, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this registration statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of filing of such documents with the SEC.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this registration statement shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in this registration statement, or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this registration statement, modifies or supersedes such prior statement. Any statement contained in this registration statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document that is or is deemed to be incorporated by reference in this registration statement modifies or supersedes such prior statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Under no circumstances will any information furnished under Items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

**Item 2. Description of Securities.**

**General.** This registration statement registers deferred compensation obligations (the Obligations) pursuant to the KAR Auction Services, Inc. Directors Deferred Compensation Plan (the Plan), which represent obligations of the Company to pay deferred compensation in the future in accordance with the terms of the plan, which is incorporated by reference as an exhibit to this registration statement. Under this Plan, each non-employee

director may elect to defer the receipt of his cash director fees into a deemed investment in stock equivalent units of Company stock and/or the investment alternatives available under the Company's qualified 401(k) plan for employees. Directors may also choose to receive all or a portion of their annual stock retainer in the form of a deferred share account.

The Obligations are general unsecured obligations of the Company to pay deferred compensation in the future from the general assets of the Company in accordance with the terms of the Plan. All payments made under the Plan shall be made directly by the Company from its general assets subject to the claims of any creditors and no deferred compensation under the Plan shall be segregated or earmarked or held in trust, except as set forth in the Plan. The participants shall be unsecured creditors of the Company with respect to all Obligations owed to them under the Plan.

**Distributions.** The Obligations of the Company under the Plan will be payable thirty (30) days after the month of the director's departure from the Board of Directors and, in accordance with such director's advance notice election, will be made in either a single lump sum distribution or in annual installments ranging from two (2) years to ten (10) years. Distributions of Obligations will be made upon death, the occurrence of an unforeseeable emergency or termination from service within two years immediately following a change in control (as defined in the Plan).

**Vesting.** A director is always one hundred percent (100%) vested in his account.

**Assignment.** The right to receive payment of the Obligations under the Plan may not be assigned, sold, transferred, pledged or encumbered, except to such extent as may be required by law or as set forth in the Plan.

**Amendment.** The Board of Directors shall have the right, at any time, to amend the Plan or discontinue deferrals under the Plan in whole or in part; provided that such amendment or termination complies with Code Section 409A and does not adversely affect the right of any participant or beneficiary to a benefit or payment due under the Plan.

The foregoing summary of the Plan is qualified in its entirety by reference to the terms and conditions of the Plan.

**Item 3. Interests of Named Experts and Counsel.**

Not Applicable.

**Item 4. Indemnification of Directors and Officers.**

The following summary is qualified in its entirety by reference to the complete copy of the General Corporation Law of the State of Delaware, or DGCL, and the Company's amended and restated certificate of incorporation and amended and restated bylaws.

Section 145 of the Delaware General Corporation Law, or the DGCL, grants each corporation organized thereunder the power to indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of being or having been in any such capacity, if he acted in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders of monetary damages for violations of the directors' fiduciary duty of care, except (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 that involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

Our amended and restated bylaws provide for indemnification of the directors and officers, so long as such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action, had no reason to believe his or her conduct was unlawful. The corporation may also indemnify its other employees and agents to the same extent that it indemnifies its officers and directors, unless otherwise determined by its board of directors. The corporation must advance expenses (including attorneys' fees), as incurred, to its directors and officers in connection with a legal proceeding so as long as the directors or officers undertake to repay the funds if they are ultimately determined not to be entitled to indemnification. Our amended and restated certificate of incorporation includes a provision that eliminates the personal liability of the directors for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may be hereafter amended.

The Company believes these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. The Company also maintains directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in the Company's amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit the Company and its stockholders. A stockholder's investment may be harmed to the extent the Company pays the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to the Company's directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, the Company has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable.

**Item 5. Exemption From Registration Claimed.**

Not Applicable.

**Item 6. Exhibits.**

**Exhibit**

| <b>Number</b> | <b>Description</b>   |
|---------------|--|
| 4.1           | Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to Amendment No. 5 to the Registration Statement on Form S-1, filed with the SEC on December 10, 2009). |
| 4.2           | Amended and Restated By-Laws of the Company (incorporated by reference to Exhibit 3.2 to Amendment No. 5 to the Registration Statement on Form S-1, filed with the SEC on December 10, 2009).                      |
| 5.1           | Opinion of Rebecca C. Polak, Executive Vice President, General Counsel and Secretary of the Registrant.  |
| 10.1          | KAR Auction Services, Inc. Directors Deferred Compensation Plan (incorporated by reference to Exhibit 10.62 to the Company's Quarterly Report on Form 10-Q, filed with the SEC on August 4, 2010).                 |
| 23.1          | Consent of KPMG LLP, independent registered public accounting firm.  |
| 23.2          | Consent of Rebecca C. Polak, Executive Vice President, General Counsel and Secretary of the Registrant (included in Exhibit 5.1).  |
| 24.1          | Power of Attorney (included on the signature page hereto).   |

**Item 7. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes, that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**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 the City of Carmel, State of Indiana, on this 4th day of August, 2010.

KAR AUCTION SERVICES, INC.

By: /s/ ERIC M. LOUGHMILLER  
 Name: **Eric M. Loughmiller**  
 Title: **Executive Vice President and Chief Financial Officer**

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Eric M. Loughmiller, his true and lawful attorney-in-fact and agents with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including 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 attorneys-in-fact and agents, and each of them, 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 attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof. This power of attorney may be executed in counterparts.

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 indicated and on the dates indicated.

| Signature   | Title   | Date           |
|---|---|----------------|
| /s/ JAMES P. HALLETT<br><b>James P. Hallett</b>       | Chief Executive Officer and Director (Principal Executive Officer)                                | August 4, 2010 |
| /s/ ERIC M. LOUGHMILLER<br><b>Eric M. Loughmiller</b> | Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) | August 4, 2010 |
| /s/ DAVID J. AMENT<br><b>David J. Ament</b>           | Director  | August 4, 2010 |
| /s/ THOMAS J. CARELLA<br><b>Thomas J. Carella</b>     | Director  | August 4, 2010 |
| /s/ BRIAN T. CLINGEN<br><b>Brian T. Clingen</b>       | Chairman of the Board and Director  | August 4, 2010 |



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| Signature   | Title    | Date           |
|---|----------|----------------|
| /s/ ROBERT M. FINLAYSON<br><b>Robert M. Finlayson</b> | Director | August 4, 2010 |
| /s/ PETER R. FORMANEK<br><b>Peter R. Formanek</b>     | Director | August 4, 2010 |
| /s/ MICHAEL B. GOLDBERG<br><b>Michael B. Goldberg</b> | Director | August 4, 2010 |
| /s/ PETER H. KAMIN<br><b>Peter H. Kamin</b>           | Director | August 4, 2010 |
| /s/ SANJEEV MEHRA<br><b>Sanjeev Mehra</b>             | Director | August 4, 2010 |
| /s/ CHURCH M. MOORE<br><b>Sanjeev Mehra</b>           | Director | August 4, 2010 |
| /s/ THOMAS C. O BRIEN<br><b>Thomas C. O Brien</b>     | Director | August 4, 2010 |
| /s/ GREGORY P. SPIVY<br><b>Gregory P. Spivy</b>       | Director | August 4, 2010 |
| /s/ JONATHAN P. WARD<br><b>Jonathan P. Ward</b>       | Director | August 4, 2010 |

**INDEX OF EXHIBITS**

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