

MILLER INDUSTRIES INC /TN/
Form S-8
July 14, 2017

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON JULY 14, 2017 REGISTRATION NO. 333-_____

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON DC 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

MILLER INDUSTRIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

| | | |
|--|---|---|
| Tennessee | 8503 Hilltop Drive | 62-1566286 |
| (State or Other Jurisdiction of Incorporation or Organization) | Ooltewah, Tennessee 37363 | (I.R.S. Employer Identification number) |
| | (423) 238-4171 | |
| | (Address, including zip code, of Principal Executive Offices) | |

2016 STOCK INCENTIVE PLAN

(Full Title of the Plan)

Frank Madonia, Esq.

Executive Vice President, Secretary and General Counsel

8503 Hilltop Drive

Ooltewah, Tennessee 37363

(423) 238-4171

(Name, Address and Telephone Number of Agent for Service)

Copies To:

David A. Stockton, Esq.

Kilpatrick Townsend & Stockton LLP

1100 Peachtree Street NE, Suite 2800

Atlanta, Georgia 30309

(404) 815-6500

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “an emerging growth 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

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

| Title of Each Class Of Securities To Be Registered | Amount To Be Registered ⁽¹⁾ | Proposed Maximum Offering Price Per Share⁽²⁾ | Proposed Maximum Aggregate Offering Price⁽²⁾ | Amount Of Registration Fee⁽²⁾ |
|---|---|--|--|---|
| Common Stock, par value \$0.01 per share | 800,000 | \$24.85 | \$19,880,000.00 | \$2,304.09 |

Represents shares of common stock, par value \$0.01 per share (the “Common Stock”), of Miller Industries, Inc., a Tennessee corporation (the “Registrant”), reserved for issuance pursuant to the Registrant’s 2016 Stock Incentive (1)Plan. Pursuant to Rule 416 of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s Common Stock that become issuable under the 2016 Stock Incentive Plan by reason of any stock dividend, stock split, or other similar transaction.

Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(c) and Rule 457(h) of the Securities Act on the basis of the average of the high and low prices of the Registrant's
(2) Common Stock of \$25.04 and \$24.66, respectively, as reported on the New York Stock Exchange on July 10, 2017, a date within five business days prior to the filing of this Registration Statement.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be sent or given to participants in the Registrant's 2016 Stock Incentive Plan as specified by Rule 428(b)(1) of the Securities Act. Such documents are not being filed with the Securities and Exchange Commission (the "Commission") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, 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 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission are hereby incorporated by reference into this Registration Statement:

the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016, filed with the Commission on March 15, 2017;

the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, filed with the Commission on May 3, 2017;

the Registrant's Current Reports on Form 8-K, filed with the Commission on March 15, 2017, April 11, 2017 and June 2, 2017; and

the description of the Registrant's Common Stock set forth in the Registration Statement on Form 8-A (File No. 34-14124) filed with the Commission on December 7, 1995 pursuant to Section 12 of the Securities Exchange Act of

1934, as amended (the "Exchange Act"), including any amendments or reports filed for the purpose of updating such description.

All other reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part of this Registration Statement from the date of the filing of such reports and documents, except as to any portion of any future annual or quarterly report to shareholders or document or current report furnished under Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions.

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

You should rely only on the information provided or incorporated by reference in this Registration Statement or any related prospectus. The Registrant has not authorized anyone to provide you with different information. You should not assume that the information in this Registration Statement or any related prospectus is accurate as of any date other than the date on the front of the document.

You may contact the Registrant in writing or orally to request copies of the above-referenced filings, without charge (excluding exhibits to such documents unless such exhibits are specifically incorporated by reference into the information incorporated into this Registration Statement). Requests for such information should be directed to:

Miller Industries, Inc.

8503 Hilltop Drive

Ooltewah, Tennessee 37363

(423) 238-4171

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Tennessee Business Corporation Act (“TBCA”) provides that a corporation may indemnify any of its directors and officers against liability incurred in connection with a proceeding if: (a) such person acted in good faith; (b) in the case of conduct in an official capacity with the corporation, the person reasonably believed such conduct was in the corporation’s best interests; (c) in all other cases, the person reasonably believed that the person’s conduct was at least not opposed to the best interests of the corporation; and (d) in connection with any criminal proceeding, such person had no reasonable cause to believe the person’s conduct was unlawful. In actions brought by or in the right of the corporation, however, the TBCA provides that no indemnification may be made if the director or officer was adjudged to be liable to the corporation. The TBCA also provides that in connection with any proceeding charging improper personal benefit to an officer or director, no indemnification may be made if such officer or director is adjudged liable on the basis that such personal benefit was improperly received. In cases where the director or officer is wholly successful, on the merits or otherwise, in the defense of any proceeding instigated because of his or her status as a director or officer of a corporation, the TBCA mandates that the corporation indemnify the director or officer against reasonable expenses incurred in the proceeding. Notwithstanding the foregoing, the TBCA provides that a court of competent jurisdiction, upon application, may order that a director or officer be indemnified for reasonable expense if, in consideration of all relevant circumstances, the court determines that such individual is fairly and reasonably entitled to indemnification, whether or not the standard of conduct set forth above was met. The TBCA also permits a corporation to purchase and maintain insurance on behalf of any director or officer regarding liability asserted against or incurred by the director or officer in his or her capacity as a director or officer whether or not the corporation would have the ability to indemnify the officer or director from the same liability under the TBCA.

The Registrant’s charter, as amended, contains a provision stating that, to the fullest extent permitted by the TBCA in effect from time to time, directors shall not be personally liable for monetary damages to the Registrant or its shareholders for any breach of fiduciary duty as a director. In addition, the charter, as amended, allows the Registrant to indemnify the Registrant’s directors and officers to the fullest extent authorized by the TBCA in effect from time to time.

Pursuant to the Registrant's amended and restated bylaws, the Registrant will indemnify any director or officer made or threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such director or officer is or was a director, officer or employee of the Registrant or serves or served at the Registrant's request as a director, officer or employee of any other entity to the fullest extent authorized by the TBCA. The amended and restated bylaws further provide that expenses incurred by a director or officer will be paid or reimbursed upon delivery to the Registrant of an undertaking to repay such expenses if it is ultimately determined that such director or officer is not entitled to be indemnified by the Registrant.

The Company carries standard directors' and officers' liability insurance covering its directors and officers.

Item 7.

Exemption from Registration Claimed.

Not applicable.

Item 8.

Exhibits.

| Exhibit No. | Description |
|--------------------|---|
| 4.1 | Charter, as amended, of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K, filed with the Commission on April 22, 2002) |
| 4.2 | Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Quarterly Report on Form 10-Q, filed with the Commission on November 8, 2007) |
| 5.1 | Opinion and Consent of Kilpatrick Townsend & Stockton LLP* |
| 23.1 | Consent of Elliott Davis Decosimo, LLC* |
| 23.2 | Consent of Kilpatrick Stockton LLP (included in Exhibit 5.1)* |
| 24.1 | Power of Attorney (see signature page)* |
| 99.1 | Miller Industries, Inc. 2016 Stock Incentive Plan (incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Commission on April 19, 2017) |

*Filed herewith.

Item 9.

Undertakings.

(a) The 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 a 20 percent 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 the Registration Statement.

That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment (2) 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.

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 (b) that is incorporated by reference in this 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.

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 Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (c) (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 Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Atlanta, State of Georgia, on this July 14, 2017.

MILLER INDUSTRIES, INC.

By: /s/ Jeffrey I. Badgley
 Jeffrey I. Badgley, President,
 Co-Chief Executive Officer

Know all men by these presents, that each person whose signature appears below constitutes and appoints Jeffrey I. Badgley, William G. Miller, II and Frank Madonia, and each or any one of them, as attorney-in-fact and agent, with full power of substitution, for him or her in any and all capacities, to sign any amendments (including post-effective amendments) to this Registration Statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|------------------|
| /s/ William G. Miller William G. Miller | Chairman of the Board of Directors | July 14, 2017 |
| /s/ Jeffrey I. Badgley Jeffrey I. Badgley | Co-Chief Executive Officer | July 14, 2017 |
| /s/ William G. Miller, II William G. Miller, II | President, Co-Chief Executive Officer and Director | July 14, 2017 |

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| | | |
|---------------------------------|---|------------------|
| /s/ Deborah L. Whitmire | Executive Vice President, Treasurer and Chief Financial Officer (Principal Financial and Accounting Officer) | July 14, 2017 |
| Deborah L. Whitmire | | |
| /s/ Theodore H. Ashford, III | Director | July 14, 2017 |
| Theodore H. Ashford, III | | |
| /s/ A. Russell Chandler, III | Director | July 14, 2017 |
| A. Russell Chandler, III | | |
| /s/ Richard H. Roberts | Director | July 14, 2017 |
| Richard H. Roberts | | |