

GNC HOLDINGS, INC.  
Form S-8  
July 26, 2018

As filed with the Securities and Exchange Commission on July 26, 2018  
UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

GNC Holdings, Inc.

(Exact name of registrant as specified in its charter)

|   |   |
|---|---|
| Delaware  | 20-8536244                              |
| (State or other jurisdiction of<br>Incorporation or organization) | (I.R.S. Employer<br>Identification No.) |

|                          |            |
|--------------------------|------------|
| 300 Sixth Avenue         | 15222      |
| Pittsburgh, Pennsylvania | (Zip Code) |

(Address of principal executive offices)

GNC Holdings, Inc.

2018 Stock and Incentive Plan

(Full title of the plan)

Kevin G. Nowe

Senior Vice President, Chief Legal Officer and Secretary

300 Sixth Avenue

Pittsburgh, Pennsylvania 15222

(412) 288-4600

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

Copy to:

Jeffrey G. Aromatorio, Esq.

Reed Smith LLP

225 Fifth Avenue

Pittsburgh, Pennsylvania 15222-2716

Telephone: (412) 288-3364

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

|  |   |  |   |   |
|--|---|--|---|---|
| <input checked="" type="checkbox"/> Large<br>accelerated filer | <input type="checkbox"/> Accelerated<br>filer | <input type="checkbox"/> Non-accelerated filer<br>(Do not check if a smaller<br>reporting company) | <input type="checkbox"/> Smaller reporting<br>company | <input type="checkbox"/> Emerging growth<br>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

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| Title of securities<br>to be registered | Amount<br>to be<br>registered <sup>(1)(2)</sup> | Proposed maximum<br>offering price<br>per share | Proposed maximum<br>aggregate<br>offering price <sup>(3)</sup> | Amount of<br>registration<br>fee |
|---|---|---|--|----------------------------------|
| Common Stock, \$.001 par value          | 8,720,000                                       | \$3.22  | \$28,078,400   | \$3,495.76                       |

(1) This Registration Statement covers shares of Common Stock of the GNC Holdings, Inc. (the “Registrant”) offered or to be offered under the 2018 Stock and Incentive Plan (the “Plan”), approved by the Board of Directors of the Registrant on March 30, 2018, and by Registrant’s stockholders on May 22, 2018.

(2) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), any additional shares of Common Stock that become issuable under the Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant’s receipt of consideration which results in an increase in the number of the outstanding shares of the Registrant’s Common Stock.

(3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) and Rule 457(c) under the Securities Act. The offering price per share of Common Stock of \$3.22 per share and aggregate offering price are based upon the average of the high and low price of the Registrant’s Class A Common Stock as reported on the New York Stock Exchange on July 24, 2018.

## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of this registration statement on Form S-8 will be sent or delivered to the participants of the Plan covered by this Registration Statement as specified in Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not being, filed by the Registrant 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 under the Securities Act. Such documents, together with the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement on Form S-8, 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, which have been previously filed with the Commission, are hereby incorporated by reference in this Registration Statement:

- (1) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2017, filed with the Commission on March 1, 2018;
- (2) The Registrant's Quarterly Reports on Form 10-Q for the period ended March 31, 2018, filed with the Commission on April 26, 2018, and for the period ended June 30, 2018, filed with the Commission on July 26, 2018;  
The Registrant's Current Reports on Form 8-K filed with the Commission on January 18, 2018, February 13, 2018 (three reports), February 14, 2018, February 23, 2018, February 28, 2018 (two reports), March 21, 2018, April 25, 2018, April 26, 2018, May 2, 2018, May 9, 2018, May 17, 2018, May 22, 2018, June 6, 2018, and July 26, 2018 (except in each case for information furnished under Item 2.02 or Item 7.01 and any exhibits furnished therewith); and

- The description of the Class A common stock set forth in the Registrant's registration statement on Form 8-A/A filed with the Commission on March 29, 2011 pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as declared effective on March 31, 2011, including any amendments filed for the purposes of updating such description.
- (4)

All reports and definitive proxy or information statements filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the effectiveness of this Registration Statement and prior to the filing of a post-effective amendment 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. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which 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.

In no event, however, will any information that the Registrant discloses under Item 2.02 or Item 7.01 of any Current Report on Form 8-K that the Registrant may from time to time furnish to the Commission be incorporated by reference into, or otherwise become a part of, this Registration Statement. Any statement contained in a document that is deemed to be incorporated by reference or deemed to be part of this Registration Statement after the most recent effective date may modify or replace existing statements contained in this Registration Statement.

#### Item 4. Description of Securities.

Not applicable.

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

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law (the “DGCL”) permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for any breach of the director’s duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions, or for any transaction from which the director derived an improper personal benefit.

Section 145 of the DGCL provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys’ fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending, or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee, or agent to the corporation. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise.

Our amended and restated certificate of incorporation and amended and restated bylaws include provisions to (1) eliminate the personal liability of our directors for monetary damages resulting from breaches of their fiduciary duty to the extent permitted by Section 102(b)(7) of the DGCL and (2) require us to indemnify our directors, officers, and employees and other persons serving at our request as a director, officer, employee, or agent of another entity to the fullest extent permitted by Section 145 of the DGCL, including circumstances in which indemnification is otherwise discretionary. Pursuant to Section 145 of the DGCL, a corporation generally has the power to indemnify its present and former directors, officers, employees and agents against expenses incurred by them in connection with any suit to which they are, or are threatened to be made, a party by reason of their serving in such positions so long as they acted in good faith and in a manner they reasonably believed to be in or not opposed to, the best interests of the corporation and, with respect to any criminal action, they had no reasonable cause to believe their conduct was unlawful. We believe that these provisions are necessary to attract and retain qualified persons as directors and officers. Each director will continue to be subject to liability for breach of the director’s duty of loyalty to us or our stockholders, for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for acts or omissions that the director believes to be contrary to our best interests or the best interests of our stockholders, for any transaction from which the director derived an improper personal benefit, for acts or omissions involving a reckless disregard for the director’s duty to us or our stockholders when the director was aware or should have been aware of a risk of serious injury to us or our stockholders, for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director’s duty to us or our stockholders, for improper transactions between the director and us, and for improper distributions to stockholders and loans to directors and officers. The provision also does not affect a director’s responsibilities under any other law, such as the federal securities law or state or federal environmental laws.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling us pursuant to the foregoing, we have been informed that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

We have entered into indemnification agreements with our directors and senior officers. The indemnification agreements provide indemnification to our directors and senior officers under certain circumstances for acts or omissions that may not be covered by directors’ and officers’ liability insurance, and, may in some cases, be broader than the specific indemnification provisions contained under Delaware law.

At present, there is no pending litigation or proceeding involving any of our directors or officers as to which indemnification is being sought nor are we aware of any threatened litigation that may result in claims for indemnification by any officer or director.

We have an insurance policy covering our officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act or otherwise.



Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit No. | Description   |
|-------------|---|
| 4.1         | Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect. (Incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-35113), filed August 1, 2013.) |
| 4.2         | Fifth Amended and Restated Bylaws of the Registrant, as currently in effect. (Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-35113), filed October 23, 2012.)                  |
| 4.3         | Specimen of Class A Common Stock Certificate. (Incorporated by reference to Exhibit 4.8 to Registrant's Pre-Effective Amendment No. 3 to its Registration Statement on Form S-1 (File No. 333-169618), filed February 25, 2011.)      |
| 4.4         | GNC Holdings, Inc. 2018 Stock and Incentive Plan. (Incorporated herein by reference to Exhibit A of the Registrant's Proxy Statement filed April 10, 2018.)   |
| 5.1         | Opinion of Reed Smith LLP.*   |
| 23.1        | Consent of Reed Smith LLP* (included in Exhibit 5.1).   |
| 23.2        | Consent of PricewaterhouseCoopers LLP.*   |
| 24.1        | Power of Attorney (included on the signature page of this Registration Statement).  |

\* Filed herewith.

Item 9. 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 of 1933 (the "1933 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 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 Securities Exchange Act of 1934 (the "1934 Act") that are incorporated by reference in the registration statement;

(2) That, for the purpose of determining any liability under the 1933 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; and

(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 1933 Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 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 1933 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 1933 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 1933 Act and will be governed by the final adjudication of such issue.

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## 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 Pittsburgh, Commonwealth of Pennsylvania, on July 26, 2018.

GNC HOLDINGS, INC.

By: /s/ KENNETH A. MARTINDALE

Kenneth A. Martindale  
Director, Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints Kenneth A. Martindale, Tricia K. Tolivar and Kevin G. Nowe and each of them individually, with full power of substitution, his or her true and lawful attorney-in-fact and agent, with full powers to each of them to sign for us, in our names and in the capacities indicated below, the Registration Statement on Form S-8 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and any and all amendments to said Registration Statement (including post-effective amendments), granting unto said attorneys, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as each of them might or could do in person, and hereby ratifying and confirming all that said attorneys, and each of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue of this power of attorney. This power of attorney may be executed in counterparts and all capacities to sign any and all amendments.

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 on July 26, 2018.

| Signature                 | Title   |
|---------------------------|---|
| /s/ KENNETH A. MARTINDALE | Director and Chief Executive Officer (Principal Executive Officer)                                |
| Kenneth A. Martindale     |   |
| /s/ TRICIA K. TOLIVAR     | Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) |
| Tricia K. Tolivar         |   |
| /s/ ROBERT F. MORAN       | Director  |
| Robert F. Moran           |   |
| /s/ JEFFREY P. BERGER     | Director  |
| Jeffrey P. Berger         |   |
| /s/ MICHAEL F. HINES      | Director  |
| Michael F. Hines          |   |
| /s/ ALAN D. FELDMAN       | Director  |
| Alan D. Feldman           |   |
| /s/ AMY B. LANE           | Director  |
| Amy B. Lane               |   |
| /s/ PHILIP E. MALLOTT     | Director  |
| Philip E. Mallott         |   |
| /s/ RICHARD J. WALLACE    | Director  |



Richard J. Wallace

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Kevin G. Nowe, by signing his name hereto, does sign this document on behalf of the above-noted individuals,  
\*pursuant to the power of attorney duly executed by such individuals, which has been filed as an exhibit to this  
registration statement.

By: /s/ KEVIN G. NOWE

Kevin G. Nowe  
Attorney-in-Fact

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# EXHIBIT INDEX

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|-------------|--|
| 4.1         | <u>Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect. (Incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q (File No. 001-35113), filed August 1, 2013.)</u> |
| 4.2         | <u>Fifth Amended and Restated Bylaws of the Registrant, as currently in effect. (Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-35113), filed October 23, 2012.)</u>                  |
| 4.3         | <u>Specimen of Class A Common Stock Certificate. (Incorporated by reference to Exhibit 4.8 to Registrant's Pre-Effective Amendment No. 3 to its Registration Statement on Form S-1 (File No. 333-169618), filed February 25, 2011.)</u>      |
| 4.4         | <u>GNC Holdings, Inc. 2018 Stock and Incentive Plan. (Incorporated herein by reference to Exhibit A of the Registrant's Proxy Statement filed April 10, 2018.)</u>   |
| 5.1         | <u>Opinion of Reed Smith LLP.*</u>   |
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