

MUELLER INDUSTRIES INC
Form S-8
July 24, 2014

As filed with the Securities and Exchange Commission on July 24, 2014
Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

MUELLER INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

Delaware 25-0790410
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification Number)

8285 Tournament Drive, Suite 150
Memphis, Tennessee 38125
(901) 753-3200

(Address, including zip code, and telephone number, including area code, of principal executive offices)

Mueller Industries, Inc. 2014 Incentive Plan

(Full title of the plan)

Gary C. Wilkerson, Esq.
Vice President, General Counsel and Secretary
Mueller Industries, Inc.

8285 Tournament Drive, Suite 150
Memphis, Tennessee 38125
(901) 753-3200

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

Copies to:

Serge Benchetrit, Esq.
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

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 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 Smaller reporting company
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

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Title 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
Common Stock, par value \$0.01 per share	1,500,000	\$28.36	\$42,540,000	\$5,479.15

(1) Represents 1,500,000 shares of Common Stock issuable pursuant to the Mueller Industries, Inc. 2014 Incentive Plan (the "Plan"). In addition, this Registration Statement covers an indeterminable number of additional shares as may hereafter be offered or issued, pursuant to the Plan, to prevent dilution resulting from stock splits, stock dividends or similar transactions effected without receipt of consideration.

(2) Estimated solely for calculating the amount of the registration fee, pursuant to paragraphs (c) and (h) of Rule 457 under the Securities Act of 1933, as amended.

EXPLANATORY NOTE

(Not Part of the Prospectus)

This Registration Statement on Form S-8 (this “Registration Statement”) is filed by Mueller Industries, Inc. (the “Company”) to register 1,500,000 shares of the Company’s common stock, par value \$0.01 per share (“Common Stock”), which may be issued under the Company’s 2014 Incentive Plan.

SELECTED FINANCIAL DATA

On February 21, 2014, the Company’s Board of Directors announced a two-for-one stock split of its common stock effected in the form of a stock dividend of one share for each outstanding share. The record date for the stock split was March 14, 2014, and the additional shares were distributed on March 28, 2014. Accordingly, all references to share and per share amounts presented in the following selected financial data have been adjusted retroactively to reflect the stock split.

(In thousands, except per share data)	2013	2012	2011	2010	2009
For the fiscal year: (1)					
Net sales	\$2,158,541	\$2,189,938	\$2,417,797	\$2,059,797	\$1,547,225
Operating income	270,937 (2)	126,705 (3)	139,802 (4)	136,147 (5)	32,220 (6)
Net income attributable to Mueller Industries, Inc.	172,600	82,395	86,321	86,171	4,675
Adjusted weighted average shares for diluted earnings per share	56,484	71,492 (7)	76,392	75,538	74,848
Diluted earnings per share	3.06	1.15 (7)	1.13	1.14	0.06
Cash dividends per share	0.25	0.2125	0.20	0.20	0.20
At year-end:					
Total assets	1,247,767	1,104,155	1,347,604	1,258,996	1,180,141
Long-term debt	206,250	207,300	156,476	158,226	158,226

Includes activity of acquired businesses from the following purchase dates: Howell Metal Company, October 17, (1) 2013, Westermeyer Industries, Inc., August 16, 2012, Tube Forming L.P., December 28, 2010, and Linesets, Inc., August 6, 2010.

Includes \$106.3 million pre-tax gain from settlement of insurance claims, \$39.8 million pre-tax gain from the sale of the Company’s Schedule 40 pressure plastic fittings business along with the sale of certain other plastic fittings manufacturing assets, and pre-tax impairment charges of \$4.3 million primarily related to real property associated with the aforementioned plastics sale transaction. (2)

Includes deferred recognition of \$8.0 million gain from liquidation of LIFO inventory layers, \$4.1 million net gain from settlement of litigation, \$1.5 million gain from settlement of insurance claims, and severance charges of \$3.4 million.

(3) Includes \$10.5 million gain from settlement of litigation.

(4) Includes \$22.7 million gain from settlement of insurance claims.

(5) Includes impairment charges of \$29.8 million, primarily related to goodwill.

(6) Includes the impact of 20.8 million

shares
repurchased
from
Leucadia
National
Corporation
in
September
2012.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of this Registration Statement have been or will be sent or given to participating employees as specified in Rule 428(b)(1) of the Securities Act of 1933, as amended (the “Securities Act”), in accordance with the rules and regulations of the United States Securities and Exchange Commission (the “Commission”). Such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference into 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 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents, filed with the Commission by the Company, are incorporated by reference into the Registration Statement:

- (a) the Company’s Annual Report on Form 10-K for the fiscal year ended December 28, 2013, filed on February 26, 2014 pursuant to the Securities Exchange Act of 1934 (the “Exchange Act”);
 - (b) the Company’s Quarterly Report on Form 10-Q for the quarter ended March 29, 2014, filed on April 25, 2014, pursuant to the Exchange Act;
 - (c) the Company’s Current Reports on Form 8-K, filed on May 2, 2014 and February 21, 2014, respectively, pursuant to the Exchange Act; and
 - (d) the description of the Company’s Common Stock, which is contained in the Company’s Registration Statement on Form 8-A, File No. 1-6770, dated January 22, 1991, filed pursuant to the Exchange Act, as amended by the Company’s Form 8, dated February 12, 1991.
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In addition, all documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all the securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents with the Commission. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein (or in any other subsequently filed document which also is incorporated by reference herein) modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed to constitute a part hereof except as so modified or superseded.

Item 4. DESCRIPTION OF SECURITIES

Inapplicable.

Item 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Inapplicable.

Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Pursuant to the Delaware General Corporation Law, a corporation may indemnify any person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than a derivative action by or in the right of such corporation) who is or was a director, officer, employee or agent of such corporation, or serving at the request of such corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The Delaware General Corporation Law also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to such corporation unless the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

To the extent a director, officer, employee or agent is successful in the defense of such an action, suit or proceeding, the corporation is required by the Delaware General Corporation Law to indemnify such person for actual and reasonable expenses incurred thereby. The Delaware General Corporation Law further provides that any indemnification shall be made by the corporation only as authorized in each specific case upon a determination that indemnification of such person is proper because he has met the applicable standard of conduct (i) by the stockholders, (ii) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (iii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iv) by independent legal counsel in a written opinion, if there are no such disinterested directors, or if such disinterested directors so direct. Expenses (including attorneys' fees) incurred by such persons in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that such person is not entitled to be so indemnified.

The Delaware General Corporation Law provides that the indemnification described above shall not be deemed exclusive of other indemnification that may be granted by a corporation pursuant to its by-laws, disinterested directors' vote, stockholders' vote, agreement or otherwise.

The Delaware General Corporation Law also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above.

The indemnification and advancement of expenses shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Company's restated certificate of incorporation and amended and restated by-laws permit the Company to indemnify any director or officer of the Company to the fullest extent permitted by Delaware law. The Company's restated certificate of incorporation provides that no director shall be personally liable to the Company or any stockholder for monetary damages for breach of fiduciary duty as a director, except that liability of a director shall not be eliminated for any breach of the director's duty of loyalty to the Company or its stockholders; acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; under Section 174 of the Delaware General Corporation Law; or for any transaction from which the director derived an improper personal benefit.

The foregoing is only a general summary of certain aspects of Delaware law and the Company's amended and restated certificate of incorporation and amended and restated by-laws dealing with indemnification of directors and officers and does not purport to be complete. It is qualified in its entirety by reference to the detailed provisions of the Delaware General Corporation Law and the amended and restated certificate of incorporation and amended and restated by-laws of the Company.

Item 7. EXEMPTION FROM REGISTRATION CLAIMED

Inapplicable.

Item 8. EXHIBITS

Exhibit No. Description of Exhibit

- | | |
|------|--|
| 5.1 | Opinion of Willkie Farr & Gallagher LLP as to the validity of shares to be issued. |
| 23.1 | Consent of Willkie Farr & Gallagher LLP (included in the opinion filed as Exhibit 5.1 hereto). |
| 23.2 | Consent of Ernst & Young LLP - Independent Registered Public Accounting Firm. |
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24.1 Power of Attorney (included on the signature page).

99.1 Mueller Industries, Inc. 2014 Incentive Plan (incorporated by reference from Appendix I to the Company's Definitive Proxy Statement, as filed with the Commission on March 19, 2014).

Item 9. UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post effective amendment to the 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% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

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

(b) 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.

(c) 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.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or 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.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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, 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 Memphis, State of Tennessee, on the 24 day of July, 2014.

MUELLER
INDUSTRIES, INC.

By: /s/ Gary C.
Wilkerson

Name: Gary C.
Wilkerson
Vice
President,
Title: General
Counsel
and
Secretary

POWER OF ATTORNEY

In accordance with the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates stated. Each person whose signature appears below constitutes and appoints Gregory L. Christopher, Gary S. Gladstein and Richard W. Corman, and each of them severally, as his true and lawful attorney-in-fact and agent, each acting along with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including pre- and post-effective amendments) and exhibits to this Registration Statement, and to any registration statement filed under Commission Rule 462, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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 and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Gregory L. Christopher</u>	Chief Executive Officer and Director	July 24,
Name: Gregory L. Christopher	(Principal Executive Officer)	2014

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/s/ Jeffrey A. Martin Chief Financial Officer and Treasurer July 24,
2014
Name: Jeffrey A. Martin (Principal Financial and Accounting Officer)

/s/ Gary S. Gladstein Non-Executive Chairman of the Board of Directors July 24,
2014
Name: Gary S. Gladstein

/s/ Paul J. Flaherty Director July 24,
2014
Name: Paul J. Flaherty

/s/ Gennaro J. Fulvio Director July 24, 2014
Name: Gennaro J. Fulvio

/s/ Scott J. Goldman Director July 24, 2014
Name: Scott J. Goldman

/s/ Terry Hermanson Director July 24, 2014
Name: Terry Hermanson

INDEX TO EXHIBITS

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