

USA TRUCK INC
Form S-3/A
May 05, 2015

As filed with the Securities and Exchange Commission on May 5, 2015

Registration No. 333-202601

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 1
to
FORM S-3

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

USA TRUCK, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or
organization)

71-0556971
(I.R.S. Employer
Identification No.)

3200 Industrial Park Road, Van Buren, Arkansas 72956
(479) 471-2500
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

John M. Simone
President and Chief Executive Officer
USA Truck, Inc.
3200 Industrial Park Road
Van Buren, Arkansas 72956
(479) 471-2500
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies requested to:
Mark A. Scudder, Esq.
Heidi Hornung-Scherr, Esq.
Scudder Law Firm, P.C., L.L.O.
411 South 13th Street, Suite 200
Lincoln, Nebraska 68508

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: ☐

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please 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(c) 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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box: ☐

If this Form is a post-effective amendment to a registration statement pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box: ☐

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 ☐ Smaller Reporting Company ☐

(Do not check if a Smaller Reporting Company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities To Be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(1)
Primary Offering				
Common stock, par value \$0.01 per share	(2)(3)	(2)	\$100,000,000	\$11,620 (4)
Secondary Offering				
Common stock, par value \$0.01 per share	1,400,000 (3)	\$28.875 (5)	\$40,425,000 (5)	\$4,697.39

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Common stock, par value \$0.01 per share	600,000 (3)	\$28.875 (5)	\$17,325,000 (5)	\$2,013.17
Total			\$157,750,000	\$18,330.56

- (1) Previously paid in connection with the original filing of this Registration Statement No. 333-202601.
- (2) With respect to the primary offering, this Registration Statement registers an indeterminate number of shares of common stock as may be issued by the registrant from time to time or at one time and at such prices and in such amounts as determined by the registrant. The aggregate maximum offering price of all shares issued pursuant to the primary offering shall not exceed \$100,000,000.
- (3) Pursuant to Rule 416(b) under the Securities Act of 1933, as amended (the "Securities Act"), the shares being registered hereunder include such indeterminate number of shares of common stock as may be issuable with respect to the registered shares as a result of stock splits, stock dividends, recapitalizations, or similar transactions.
- (4) Calculated in accordance with Rule 457(o) under the Securities Act.
- (5) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) under the Securities Act to be equal to \$28.875 per share, the average of the high and low prices of our common stock as reported on the NASDAQ Global Select Market on March 5, 2015.

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.

EXPLANATORY NOTE

This pre-effective Amendment No. 1 to the Registration Statement on Form S-3 (File No. 333-202601) (the “Registration Statement”) is filed solely to amend Part II of the Registration Statement as follows: (i) to provide an updated consent of independent registered public accounting firm as Exhibit 23.2, and (ii) to amend the footnote to Item 14, “Other Expenses of Issuance and Distribution.” Accordingly, this pre-effective Amendment No. 1 consists only of the facing page, this explanatory note, and Part II of the Registration Statement. This pre-effective Amendment No. 1 does not modify any provision of the prospectus that forms a part of the Registration Statement and accordingly, such prospectus has not been included herein.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following sets forth the expenses in connection with the offering:

Securities and Exchange Commission registration fee	\$ 18,330.56
NASDAQ listing fee	*
Accounting fees and expenses	*
Legal fees	*
Printing and engraving	*
Miscellaneous	*
Total	\$*

*Estimated fees and expenses are not presently known. The foregoing sets forth the general categories of fees and expenses (other than underwriting discounts and commissions) that we anticipate we will incur in connection with the offering of shares under this registration statement. An estimate of the aggregate fees and expenses in connection with the issuance and distribution of the shares being offered, and any allocation of such fees and expenses among us and the selling stockholders, will be included in any prospectus supplement. Discounts and commissions with respect to the shares offered by the selling stockholders and certain of the expenses in connection with the offering will be payable by the selling stockholders.

Item 15. Indemnification of Directors and Officers

The Delaware General Corporation Law (the “DGCL”) authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors’ fiduciary duties. Our Restated and Amended Certificate of Incorporation (“Certificate of Incorporation”) includes a provision that eliminates the personal liability of directors for monetary damages for actions taken as a director, except for liability:

- for breach of duty of loyalty;
- for acts or omissions not in good faith or involving intentional misconduct or knowing violation of law;
- under Section 174 of the DGCL (unlawful dividends); or
- transactions from which the director derived improper personal benefit.

Our Certificate of Incorporation and Amended and Restated Bylaws (“Bylaws”) provide that we must indemnify our directors and officers to the fullest extent authorized by the DGCL. We are also expressly required to advance certain expenses (including attorneys fees and disbursements and court costs) to our directors and officers upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by us. We are expressly authorized to carry directors’ and officers’ insurance providing insurance for our directors, officers and certain employees for some liabilities. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive

officers.

The limitation of liability and indemnification provisions in our Certificate of Incorporation and Bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Item 16. Exhibits

The Exhibit Index filed herewith and appearing immediately before the exhibits hereto is incorporated by reference in response to this Item.

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Item 17. 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;
- (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;
- (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), (a)(1)(ii), and (a)(1)(iii) do not apply if the registration statement is on Form S-3 and 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 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

- (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
- (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall

be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

- (5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of any employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 Securities Act of 1933 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 Securities Act of 1933 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-3 and has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Van Buren, State of Arkansas, on May 5, 2015.

USA TRUCK, INC.

By: /s/ Michael K.
Borrows
Michael K.
Borrows
Executive Vice
President and
Chief Financial
Officer
(Principal
Financial
Officer)

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.

Signature	Title	Date
John M. Simone*	President, Chief Executive Officer, and Director (Principal Executive Officer)	May 5, 2015
Joseph M. Kaiser*	Vice President and Corporate Controller (Principal Accounting Officer)	May 5, 2015
Robert A. Peiser*	Chairman of the Board	May 5, 2015
William H. Hanna*	Director	May 5, 2015
James D. Simpson, III*	Director	May 5, 2015
Richard B. Beauchamp*	Director	May 5, 2015
Robert E. Creager*	Director	May 5, 2015
Gary R. Enzor*	Director	May 5, 2015
Alexander D. Greene*	Director	May 5, 2015
Vadim Perelman*	Director	May 5, 2015

Thomas Glaser*

Director

May 5, 2015

/s/ Michael K. Borrows

* By Michael K. Borrows, as Attorney-in-Fact pursuant to powers of attorney previously filed

EXHIBIT INDEX

Exhibit

No. Exhibit Description

1.1*	Form of Underwriting Agreement.
4.1	Restated and Amended Certificate of Incorporation of the Company as currently in effect, including all Certificates of Amendment thereto (incorporated by reference to Exhibit 3.1 to the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2013).
4.2	Amended and Restated Bylaws of the Company as currently in effect (incorporated by reference to Exhibit 3.2 to the Company's quarterly report on Form 10-Q for the quarter ended June 30, 2011).
5.1	Opinion of Scudder Law Firm, P.C., L.L.O. (incorporated by reference to Exhibit 5.1 to the Company's Registration Statement on Form S-3, File No. 333-202601, filed with the Securities and Exchange Commission on March 6, 2015).
23.1	Consent of Scudder Law Firm, P.C., L.L.O. (included in the opinion filed as Exhibit 5.1 to the Company's Registration Statement on Form S-3, File No. 333-202601, filed with the Securities and Exchange Commission on March 6, 2015).
<u>23.2</u> **	Consent of Grant Thornton LLP, Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included on the signature pages to the Company's Registration Statement on Form S-3, File No. 333-202601, filed with the Securities and Exchange Commission on March 6, 2015).

*To be filed by amendment or as an exhibit to a Current Report on Form 8-K and incorporated by reference.

**Filed herewith.