

Sally Beauty Holdings, Inc.
Form S-8
January 27, 2010

As filed with the Securities and Exchange Commission on January 27, 2010.

File No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Sally Beauty Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

36-2257936

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(IRS Employer Identification No.)

3001 Colorado Boulevard
Denton, Texas
(Address of Principal Executive Offices)

76210
(Zip Code)

Sally Beauty Holdings, Inc. 2010 Omnibus Incentive Plan

(Full title of the plan)

Raal H. Roos

Senior Vice President, General Counsel and Secretary

Sally Beauty Holdings, Inc.

3001 Colorado Boulevard

Denton, Texas 76210

(940) 898-7500

Copy to:

Laura G. Thatcher

Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3424
(404) 881-7546

(Name, address and 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

Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee |
|---|--------------------------------|--|--|-----------------------------------|
| Common Stock, par value \$0.01 per share (Common Stock) | 29,838,524 Shares(1) | \$ 8.69(2) | \$ 259,296,773.56(2) | \$ 18,487.86 |

(1) Amount to be registered consists of an aggregate of 29,838,524 shares of Common Stock to be issued pursuant to the grant or exercise of awards under the Sally Beauty Holdings, Inc. 2010 Omnibus Incentive Plan (the Plan), including additional shares that may become issuable in accordance with the adjustment and anti-dilution provisions of the Plan.

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(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act of 1933, as amended (the Securities Act), and based upon the average of the high and low sales prices of the Common Stock as reported on The New York Stock Exchange on January 25, 2010.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

(a) The documents constituting Part I of this registration statement will be delivered to the grantees as specified by Rule 428(b)(1) under the Securities Act. These 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.

(b) Upon written or oral request, Sally Beauty Holdings, Inc. (the Company) will provide, without charge, the documents incorporated by reference in Item 3 of Part II of this registration statement. The documents are incorporated by reference in the Section 10(a) prospectus. The Company will also provide, without charge, upon written or oral request, other documents required to be delivered to employees pursuant to Rule 428(b). Requests for the above-mentioned information should be directed to Matt Haltom, Vice President & Deputy General Counsel, at the address and telephone number on the cover of this registration statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, filed by the Company with the Securities and Exchange Commission (the Commission) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated herein by reference and deemed to be a part hereof:

- (a) The Company's Annual Report on Form 10-K for the year ended September 30, 2009;
- (b) All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Exchange Act, since September 30, 2009;
- (c) The description of the Common Stock, set forth under the caption "Description of New Sally Capital Stock" in the Company's prospectus which forms a part of the Company's registration statement on Form S-4 filed with the Commission on August 2, 2006, as thereafter amended; and
- (d) All other documents subsequently filed by the Company pursuant to Section 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 that remain unsold.

Any statement contained in a document incorporated or deemed incorporated herein by reference shall be deemed to be modified or superseded for the purpose 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 herein by reference 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.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Delaware General Corporation Law

Subsection (a) of Section 145 of the Delaware General Corporation Law (the "DGCL"), empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to 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 the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of 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 by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 or her conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a present or former director or officer of a corporation has been successful on the merits or otherwise in the defense of any such action, suit or proceeding referred to in subsections (a) and (b) of Section 145 or in the defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith; that the indemnification provided for by Section 145 shall not be deemed exclusive of any other rights which the indemnified party may be entitled; that indemnification provided by Section 145 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 such person's heirs, executors and administrators; and that a corporation may purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against him or her and incurred by 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 liabilities under Section 145.

Amended and Restated Certificate of Incorporation

The Company's Amended and Restated Certificate of Incorporation provides that each of its directors shall be indemnified to the fullest extent permitted by Delaware law, provided that the Company shall not be obligated to indemnify or advance expenses to a director in respect of an action, suit or proceeding (or part thereof) instituted by such director, unless such action, suit or proceeding (or part thereof) has been authorized by the Company's board of directors.

Third Amended and Restated By-Laws

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The Company's third amended and restated by-laws provide that each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a

director or an officer of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving at the request of the Company, as a director, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that, with respect to proceedings to enforce rights to indemnification, the Company shall indemnify any such indemnitee in connection with a proceeding initiated by such indemnitee only if such proceeding was authorized by the Company's board of directors, subject to certain exceptions. The Company's third amended and restated by-laws also provide that any person entitled to such indemnification shall have the right to be paid by the Company expenses incurred in defending such proceeding in advance of its final disposition.

Amended and Restated Director and Officer Indemnification Agreements

Each member of the Company's board of directors, including Gary G. Winterhalter, the Company's President and Chief Executive Officer, is a party to an indemnification agreement with the Company which provides, among other things, that subject to the procedures set forth therein, the Company will, to the fullest extent permitted by applicable law, indemnify the indemnitee if, by reason of such indemnitee's status as a director of the Company or, in the case of Mr. Winterhalter, his status as a director or officer of the Company or any of its subsidiaries or, at the Company's request, of another entity, such indemnitee incurs any losses, liabilities, judgments, fines, penalties or amounts paid in settlement in connection with any threatened, pending or completed proceeding, whether of a civil, criminal, administrative or investigative nature. In addition, each indemnification agreement provides for the advancement of expenses incurred by the indemnitee, subject to certain exceptions, in connection with any proceeding covered by the indemnification agreement. Each indemnification agreement also requires that the Company cover the indemnitee under liability insurance available to any of the Company's directors, officers or employees, and that the Company's indemnification obligations under these agreements will be primary for all claims made against the indemnitee.

Insurance

The Company has obtained a directors' and officers' liability insurance policy insuring the directors and officers of the Company against certain losses resulting from wrongful acts committed by them as directors and officers of the Company, including liabilities arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See the Exhibit Index, which is incorporated herein by reference.

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;

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(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) of this section do not apply if the registration statement is on Form S-8, 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 Company pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement; and

(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 Company 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 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 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 on following page)

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Denton, state of Texas, on this 27th day of January, 2010.

SALLY BEAUTY HOLDINGS, INC.

By: */s/Gary G. Winterhalter*
 Gary G. Winterhalter
 President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below under the heading *Signature* constitutes and appoints Matt Haltom as his or her true and lawful attorney-in-fact 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 post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact 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 for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact, or his or her substitute, acting alone, may lawfully do or cause to be done by virtue hereof.

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

| SIGNATURE | TITLE | DATE |
|---|--|------------------|
| <i>/s/ Gary G. Winterhalter</i> Gary G. Winterhalter | President, Chief Executive Officer and Director (Principal Executive Officer) | January 27, 2010 |
| <i>/s/ Mark J. Flaherty</i> Mark J. Flaherty | Senior Vice President and Chief Financial Officer (Principal Financial Officer) | January 27, 2010 |
| <i>/s/ Janna S. Minton</i> Janna S. Minton | Vice President, Chief Accounting Officer and Controller | January 27, 2010 |
| <i>/s/ James G. Berges</i> James G. Berges | Chairman of the Board and Director | January 27, 2010 |
| <i>/s/ Kathleen J. Affeldt</i> Kathleen J. Affeldt | Director | January 27, 2010 |
| <i>/s/ Marshall E. Eisenberg</i> Marshall E. Eisenberg | Director | January 27, 2010 |

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| | | |
|--|----------|------------------|
| /s/ Kenneth A. Giuriceo Kenneth A. Giuriceo | Director | January 27, 2010 |
| /s/ Robert R. McMaster Robert R. McMaster | Director | January 27, 2010 |
| /s/ Walter Metcalfe Walter Metcalfe | Director | January 27, 2010 |
| /s/ John A. Miller John A. Miller | Director | January 27, 2010 |
| /s/ Martha Miller de Lombera Martha Miller de Lombera | Director | January 27, 2010 |
| /s/ Edward W. Rabin Edward W. Rabin | Director | January 27, 2010 |
| /s/ Richard J. Schnall Richard J. Schnall | Director | January 27, 2010 |

EXHIBIT INDEX

TO

FORM S-8

- 4.1 Amended and Restated Certificate of Incorporation of Sally Beauty Holdings, Inc., dated November 16, 2006, which is incorporated herein by reference from Exhibit 4.1 to the Company's Registration Statement on Form S-8 filed on November 20, 2006.
- 4.2 Third Amended and Restated Bylaws of Sally Beauty Holdings, Inc., dated October 23, 2008, which is incorporated herein by reference from Exhibit 3.1 to the Company's Current Report on Form 8-K filed on October 23, 2008.
- 5.1 Opinion of Alston & Bird LLP, counsel to the Company.
- 23.1 Consent of Alston & Bird LLP (included in Exhibit 5.1).
- 23.2 Consent of KPMG, Independent Registered Public Accounting Firm.
- 24.1 Powers of Attorney (included on signature page of this registration statement).
- 99.1 Sally Beauty Holdings, Inc. 2010 Omnibus Incentive Plan, which is incorporated herein by reference from Appendix A to the Company's Definitive Proxy Statement on Schedule 14A filed on December 11, 2009.