

SOUTHWEST AIRLINES CO  
Form S-8  
May 20, 2010

As filed with the Securities and Exchange Commission on May 20, 2010

Registration No. 333-\_\_\_\_\_

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8**  
**Registration Statement**

*Under*

*The Securities Act of 1933*

**SOUTHWEST AIRLINES CO.**

(Exact name of registrant as specified in its charter)

Texas  
(State or other jurisdiction of  
incorporation or organization)

75-1563240  
(I.R.S. Employer  
Identification No.)

**P.O. Box 36611, Dallas, Texas**  
(Address of Principal Executive Offices)

**75235**  
(Zip Code)

**Southwest Airlines Co.**

**Amended and Restated 2007 Equity Incentive Plan**

(Full title of the plan)

**Laura Wright**

**Senior Vice President Finance & Chief Financial Officer**

**Southwest Airlines Co.**

**P.O. Box 36611**

**Dallas, Texas 75235**

**214-792-4000**

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

*Copy to:*

**Madeleine Johnson**

**Vice President & General Counsel**

**Southwest Airlines Co.**

**P.O. Box 36611**

**Dallas, Texas 75235**

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  (Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Share(2)</b>	<b>Proposed Maximum Aggregate Offering Price(2)</b>	<b>Amount of Registration Fee(2)</b>
Common Stock, \$1.00 par value per share	12,000,000 shares	\$12.785	\$153,420,000	\$10,939

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional shares of common stock, par value \$1.00 per share, of Southwest Airlines Co. that may be offered or issued to prevent dilution resulting from stock splits, stock dividends, or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and 457(h) under the Securities Act of 1933, as amended. The offering price and registration fee are based on a price of \$12.785 per share, which price is the average of the high and low prices for the common stock, as reported on the New York Stock Exchange on May 17, 2010.

**REGISTRATION OF ADDITIONAL SECURITIES**

This registration statement covers an additional 12,000,000 shares of common stock, par value \$1.00 per share, of Southwest Airlines Co. (the Company ) for offer and issuance pursuant to awards granted under the Company's Amended and Restated 2007 Equity Incentive Plan (the Plan ). The Plan is an amendment and restatement of the Southwest Airlines Co. 2007 Equity Incentive Plan, with respect to which the Company has previously filed a registration statement on Form S-8. Accordingly, pursuant to General Instruction E to Form S-8, the contents of the earlier registration statement on Form S-8 (Registration Number 333-146891) are incorporated herein by reference.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents, which have been filed with the Securities and Exchange Commission (the Commission ), are incorporated by reference into this registration statement:

- (i) the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2009;
- (ii) the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2010;
- (iii) the Company's Current Report on Form 8-K filed with the Commission on February 3, 2010; and
- (iv) the description of the Company's common stock contained in its registration statement on Form 8-A filed with the Commission on October 6, 1975, including any amendments or reports filed for the purpose of updating such description.

In addition and except to the extent that information is deemed furnished and not filed pursuant to securities laws and regulations, all documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment to this registration statement that indicates that all securities offered hereby have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Any statement contained herein or 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 other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such earlier 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.**

The validity of the common stock registered hereunder has been passed upon for the Company by Madeleine Johnson, Vice President & General Counsel of the Company. Ms. Johnson has been granted awards under the Plan and is eligible to receive additional awards under the Plan.

**Item 6. Indemnification of Directors and Officers.**

Article VIII, Section 1 of the Company's Bylaws provides as follows:

*Right to Indemnification:* Subject to the limitations and conditions as provided in this Article VIII, each person who was or is made a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter called a proceeding), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he (or a person of whom he is the legal representative) is or was a director or officer of the corporation (or while a director or officer of the corporation is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, Employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, trust, Employee benefit plan, or other enterprise) shall be indemnified by the corporation to the fullest extent permitted by the Texas Business Corporation Act [which has been superseded by the Texas Business Organizations Code], as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, court costs and attorneys' fees) actually incurred by such person in connection with such proceeding, appeal, inquiry or investigation, and indemnification under this Article VIII shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder; provided, however, that in no case shall the corporation indemnify any such person (or the legal representative of any such person) otherwise than for his reasonable expenses, in respect of any proceeding (i) in which such person shall have been finally adjudged by a court of competent jurisdiction (after exhaustion of all appeals therefrom) to be liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in such person's official capacity, or (ii) in which such person shall have been found liable to the corporation; and provided, further, that the corporation shall not indemnify any such person for his reasonable expenses actually incurred in connection with any proceeding in which he shall have been found liable for willful or intentional misconduct in the performance of his duty to the corporation. The rights granted pursuant to this Article VIII shall be deemed contract rights, and no amendment, modification or repeal of this Article VIII shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article VIII could involve indemnification for negligence or under theories of strict liability.

Article Ten of the Company's Articles of Incorporation (as amended) provides that a director of the corporation shall not be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, subject to certain limitations.

Section 8.101 of the Texas Business Organizations Code provides that, subject to certain limitations, a corporation may indemnify a governing person, former governing person, or delegate who was, is, or is threatened to be made a respondent in a proceeding to the extent that it is determined that:

- (1) the person:
  - (A) acted in good faith;
  - (B) reasonably believed:
    - (i) in the case of conduct in the person's official capacity, that the person's conduct was in the corporation's best interests; and
    - (ii) in any other case, that the person's conduct was not opposed to the corporation's best interests; and
  - (C) in the case of a criminal proceeding, did not have a reasonable cause to believe the person's conduct was unlawful.
- (2) with respect to expenses, the amount of expenses other than a judgment is reasonable; and

(3) indemnification should be paid.

The Company enters into indemnification agreements with the members of its Board of Directors (each an Indemnitee ). Each indemnification agreement requires the Company to indemnify each Indemnitee to the fullest extent permitted by the Texas Business Organizations Code and any successor statute thereto when such successor statute becomes applicable to the Company. The Company will also make the Indemnitee whole for taxes imposed on the indemnification payments and for costs in any action to establish Indemnitee s right to indemnification, whether or not wholly successful.

The Company also maintains directors and officers liability insurance.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

- 4.1 Restated Articles of Incorporation of the Company effective February 3, 1994; Articles of Amendment to the Articles of Incorporation of the Company effective May 31, 1996; Articles of Amendment to the Articles of Incorporation of the Company effective July 2, 1998; Articles of Amendment to the Articles of Incorporation of the Company effective June 2, 1999; Articles of Amendment to the Articles of Incorporation of the Company effective May 24, 2001; Articles of Amendment to the Articles of Incorporation of the Company effective June 5, 2007 (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009 (File No. 1-7259)).
- 4.2 Amended and Restated Bylaws of the Company, effective November 19, 2009 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated November 19, 2009 (File No. 1-7259)).
- 4.3 Specimen certificate representing common stock of the Company (incorporated by reference to Exhibit 4.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 1994 (File No. 1-7259)).
- 5 Opinion of Madeleine Johnson, Vice President & General Counsel of the Company.
- 23.1 Consent of Ernst & Young LLP, independent auditors.
- 23.2 Consent of Madeleine Johnson, Vice President & General Counsel of the Company (included in the opinion filed as Exhibit 5).
- 24 Power of Attorney (included on the signature page to this registration statement).
- 99 Southwest Airlines Co. Amended and Restated 2007 Equity Incentive Plan.

**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;

(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;

(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) above 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 that are incorporated by reference in 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 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 an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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.

B. 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 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 Act and will be governed by the final adjudication of such issue.



**POWER OF ATTORNEY**

Each person whose signature appears below hereby constitutes and appoints Gary C. Kelly, Laura H. Wright, and Ron Ricks, and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, 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 and all amendments (including post-effective amendments) and supplements to this registration statement, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants to such attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might and could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

**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 Dallas, State of Texas on May 19, 2010.

**SOUTHWEST AIRLINES CO.**

By: /s/ Laura H. Wright  
Laura H. Wright  
*Senior Vice President Finance &*

*Chief 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 indicated on May 19, 2010.

<b>Signature</b>	<b>Title</b>
/s/ Gary C. Kelly Gary C. Kelly	Chairman of the Board, President, & Chief Executive Officer <i>(Principal Executive Officer)</i>
/s/ Laura H. Wright Laura H. Wright	Senior Vice President Finance & Chief Financial Officer <i>(Principal Financial &amp; Accounting Officer)</i>
/s/ David W. Biegler David W. Biegler	Director
/s/ Douglas H. Brooks Douglas H. Brooks	Director
/s/ William H. Cunningham William H. Cunningham	Director
/s/ John G. Denison John G. Denison	Director
/s/ Travis C. Johnson Travis C. Johnson	Director
/s/ Nancy B. Loeffler Nancy B. Loeffler	Director

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/s/ John T. Montford  
John T. Montford

Director

/s/ Daniel D. Villanueva  
Daniel D. Villanueva

Director

**Index to Exhibits**

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