

MARKEL CORP
Form S-8
October 20, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

MARKEL CORPORATION

(Exact name of registrant as specified in charter)

Virginia
(State or other jurisdiction of
incorporation or organization)

4521 Highwoods Parkway, Glen Allen, Virginia 23060-6148

54-1959284
(I.R.S. Employer

Identification No.)

(804) 747-0136

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

Aspen Holdings, Inc. 2008 Stock Option Plan

Aspen Holdings, Inc. 2008 Stock Option Plan for Non-Employee

Directors

(Full Title of the Plans)

D. Michael Jones

General Counsel and Secretary

Markel Corporation

4521 Highwoods Parkway, Glen Allen, Virginia 23060-6148

(Name and address of agent for service)

(804) 747-0136

(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 Each Class of | Amount | Proposed | Proposed | Amount of |
|------------------------------------|---------------|-----------------|------------------|-------------------------|
| Securities to be Registered | to be | Maximum | Maximum | Registration Fee |
| | | | Aggregate | |

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| | Registered(1) | Offering Price per Share (2) | Offering Price | Offering Price |
|----------------------------|---------------|---------------------------------|-----------------|----------------|
| Common Stock, no par value | 58,116 | \$225.94 | \$13,130,729.04 | \$936.22 |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also registers such number of additional securities that may be offered pursuant to the terms of the Aspen Holdings, Inc. 2008 Stock Option Plan and the Aspen Holdings, Inc. 2008 Stock Option Plan for Non-Employee Directors, which provide for a change in the amount or type of securities being offered or issued to prevent dilution as a result of stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act. Based on the average of the price at which the options may be exercised; see Explanatory Note for additional detail.

Proposed sale to take place as soon as after the effective date of the registration statement as awards under the Plan are exercised.

EXPLANATORY NOTE

On July 12, 2010, Markel Corporation (the Registrant) and Markel Aspen, Inc. (Markel Aspen), a wholly owned subsidiary of the Registrant entered into an Agreement and Plan of Merger with Aspen Holdings, Inc. (Aspen Holdings) providing for Markel Aspen to merge with and into Aspen Holdings (the Merger), with Aspen Holdings becoming a wholly-owned subsidiary of the Registrant. On October 15, 2010, the Merger was completed. In connection with the Merger, outstanding options to acquire Aspen Holdings common stock (the Aspen Options) granted under the Aspen Holdings, Inc. 2008 Stock Option Plan and the Aspen Holdings, Inc. 2008 Stock Option Plan for Non-Employee Directors, became fully vested and were assumed by Registrant and converted into options to purchase shares of common stock, no par value, of the Registrant.

Part I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the SEC, or the Commission). The documents containing the information called for in Part I of Form S-8, along with the information incorporated by reference under Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus for the Registration Statement.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents of the Registrant heretofore filed with the Securities and Exchange Commission (the Commission) are hereby incorporated in this Registration Statement by reference:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2009;
- (2) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010 and June 30, 2010;
- (3) The Registrant's Current Reports on Form 8-K filed May 14, 2010 and July 14, 2010; and
- (4) The description of the Registrant's capital stock contained in its Form 8-A filed on April 7, 2000 under Section 12(b) of the Exchange Act.

All reports and other documents filed by the Registrant pursuant to Sections 13(a) and (c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), after the date of this Registration Statement but prior to the filing of a post-effective amendment which indicates that all securities offered hereunder have been sold or which deregisters all such 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 filing of such reports and 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

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superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such earlier statement. Any 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.

Virginia law provides that, unless limited by its articles of incorporation, a corporation must indemnify a director or officer who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director or officer of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Virginia law permits a corporation to indemnify, after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the following standard of conduct, an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

he conducted himself in good faith;

he believed in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests and in all other cases that his conduct was at least not opposed to its best interests; and

in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

A Virginia corporation, however, may not indemnify a director in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation or in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

In addition, Virginia law permits a corporation to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director or officer that may be authorized by the article of incorporation or any bylaw made by the shareholders or any resolution adopted by the shareholders, except an indemnity against his willful misconduct or a knowing violation of the criminal law.

The Registrant's articles of incorporation provide mandatory indemnification of officers and directors to the full extent permitted by Virginia law and for permissive indemnification of employees and agents to the same extent.

The Registrant maintains directors' and officers' liability insurance which may provide indemnification, including indemnification against liabilities under the Securities Act of 1933, to our officers and directors in certain circumstances.

Limitations on Director Liability

Virginia law provides that a director is not liable to the corporation, its shareholders, or any person asserting rights on behalf of the corporation or its shareholders for liabilities arising from a breach of, or failure to perform, any duty resulting solely from his

status as director, unless the person asserting liability proves that the breach or failure to perform was in violation of the director's duty to discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation, provided, that the director, unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

one or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

a committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

In addition, Virginia law provides that in any proceeding brought by or in the right of a corporation or brought by or on behalf of shareholders of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

the monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the shareholders, in the bylaws; or

the greater of \$100,000 or the amount of cash compensation received by the officer or director from the corporation during the twelve months immediately preceding the act or omission for which liability was imposed.

The Registrant's articles of incorporation provide for the elimination of liability of officers and directors in every instance permitted under Virginia law. The liability of an officer or director is not limited if the officer or director engaged in willful misconduct or a knowing violation of the criminal law or of any federal or state securities law, including any claim of unlawful insider trading or manipulation of the market for any security.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

See Exhibit Index following signatures.

Item 9. Undertakings.

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:

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- (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% 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 (1)(i), (1)(ii) and (1)(iii) 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, 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 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.
- (5) 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, Markel Corporation 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 County of Henrico, State of Virginia, on October 20, 2010.

MARKEL CORPORATION

By: */s/ Anne G. Waleski*
Anne G. Waleski

Title: **Vice President, Chief Financial Officer and Treasurer**

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 October 20, 2010.

| Signature | Title |
|---|--|
| <i>/s/ ALAN I. KIRSHNER*</i> Alan I. Kirshner | Director, Chairman and Chief Executive Officer (Principal Executive Officer) |
| <i>/s/ ANTHONY F. MARKEL*</i> Anthony F. Markel | Director |
| <i>/s/ STEVEN A. MARKEL*</i> Steven A. Markel | Director |
| <i>/s/ ANNE G. WALESKI</i> Anne G. Waleski | Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer) |
| <i>/s/ NORA N. CROUCH</i> Nora N. Crouch | Controller and Chief Accounting Officer (Principal Accounting Officer) |
| <i>/s/ J. ALFRED BROADDUS*</i> J. Alfred Broaddus | Director |
| <i>/s/ DOUGLAS C. EBY*</i> Douglas C. Eby | Director |

/s/ Stewart M. Kasen*
Stewart M. Kasen Director

/s/ Lemuel E. Lewis*
Lemuel E. Lewis Director

/s/ Darrell D. Martin*
Darrell D. Martin Director

/s/ JAY M. WEINBERG*
Jay M. Weinberg Director

/s/ Debora J. Wilson*
Debora J. Wilson Director

*By: /s/ D. Michael Jones
D. Michael Jones
Attorney-in-fact

EXHIBIT INDEX

Exhibit

| Number | Description |
|---------------|--|
| 3.1 | Amended and Restated Articles of Incorporation of Markel Corporation (incorporated by reference to Exhibit 3(i) of the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2000). |
| 3.2 | Bylaws of Markel Corporation (incorporated by reference to the Exhibit to the Company's Current Report on Form 8-K dated May 14, 2010). |
| 5.1 | Opinion of D. Michael Jones, counsel to the Issuer with respect to the Offered Securities, filed herewith. |
| 23.1 | Consent of KPMG LLP, filed herewith. |
| 23.2 | Consent of D. Michael Jones (contained in Exhibit 5.1). |
| 24.1 | Powers of Attorney from officers and directors, filed herewith. |
| 99.1 | Aspen Holdings, Inc. Amended and Restated 2008 Stock Option Plan, filed herewith |
| 99.2 | Aspen Holdings, Inc. Amended and Restated 2008 Stock Option Plan for Non-Employee Directors, filed herewith |