

NACCO INDUSTRIES INC
Form S-8
May 11, 2017

As filed with the Securities and Exchange Commission on May 11, 2017.

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

NACCO INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

5875 Landerbrook Drive, Suite 220, Cleveland, Ohio 44124-4069

34-1505819
(I.R.S. Employer
Identification No.)

(Address of Principal Executive Offices, Including Zip Code)

NACCO Industries, Inc. Non-Employee Directors Equity Compensation Plan (Amended and Restated

Effective May 9, 2017)

(Full title of the plan)

John D. Neumann, Esq.

Vice President, General Counsel and Secretary

NACCO Industries, Inc.

5875 Landerbrook Drive, Suite 220

Cleveland, Ohio 44124-4069

(440) 229-5151

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth 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

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

| Title of securities | Amount | Proposed | Proposed | Amount of |
|----------------------------|---------------|-----------------|-----------------|------------------|
|----------------------------|---------------|-----------------|-----------------|------------------|

| to be registered | to be registered(1)(2) | maximum offering price per share(3) | maximum aggregate offering price (3) | registration fee |
|--|---------------------------|---|--|------------------|
| Class A Common Stock, par value \$1.00 per share | 100,000 | \$69.93 | \$6,993,000.00 | \$810.49 |

- (1) Represents the maximum number of shares of Class A Common Stock, par value \$1.00 per share (*Class A Common Stock*), of NACCO Industries, Inc. (the *Registrant*) issuable pursuant to the NACCO Industries, Inc. Non-Employee Directors Equity Compensation Plan (Amended and Restated Effective May 9, 2017) (the *Plan*), being registered hereon.
- (2) Pursuant to Rule 416 of the Securities Act of 1933 (the *Securities Act*), this Registration Statement also covers such additional shares of Class A Common Stock as may become issuable pursuant to the anti-dilution provisions of the Plan.
- (3) Estimated solely for calculating the amount of the registration fee, pursuant to paragraphs (c) and (h) of Rule 457 of the General Rules and Regulations under the Securities Act, on the basis of the average of the high and low sale prices of such securities on the New York Stock Exchange on May 8, 2017, within five business days prior to filing.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the *Exchange Act*), and, in accordance therewith, files reports, proxy statements and other information with the Securities and Exchange Commission (the *Commission*). The following documents filed with Commission by the Registrant pursuant to the Exchange Act are hereby incorporated by reference into this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the Commission on March 1, 2017;
- (b) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, filed with the Commission on May 2, 2017;
- (c) The Registrant's Current Reports on Form 8-K, filed with the Commission on February 14, 2017, May 10, 2017 and May 10, 2017; and

(d) The description of the Registrant's Class A Common Stock contained in the registration statement on Form 8-B filed June 6, 1986, including any subsequently filed amendments and reports updating such description. All documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the effective date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, will be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in any document incorporated or deemed to be incorporated by reference herein will 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 which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded will not be deemed, except as 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.

The Registrant's Amended and Restated Bylaws provide in Article VI that the Registrant will indemnify its directors, officers and employees and each person who is or was serving at the request of the Company as a director, officer or employee or agent, or as an administrator or fiduciary with respect to any employee benefit plan, of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted by statute.

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware, which we refer to as 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 the person 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 the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person 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 such person's conduct was unlawful.

Subsection (b) of Section 145 of 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 or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted under standards similar to those set forth in the paragraph above, except that no indemnification may be made in respect of 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 of the State of Delaware 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 be indemnified for such expenses which the court shall deem proper.

Section 145 further provides that, to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith; that any indemnification under subsections (a) and (b) of Section 145 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145; that expenses (including attorney's fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding 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 the corporation; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled; and that a corporation is empowered to purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit Number | Description |
|-----------------------|---|
| 4.1 | Restated Certificate of Incorporation of the Registrant is incorporated herein by reference to Exhibit 3(i) to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1992, Commission File Number 1-9172. |
| 4.2 | Amended and Restated Bylaws of the Registrant are incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, filed on December 18, 2014, Commission File Number 1-9172. |
| 4.3 | Amended and Restated Stockholders' Agreement, dated as of September 28, 2012, amongst the signatories thereto, NACCO Industries, Inc., as depository, and NACCO Industries, Inc. is incorporated herein by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K, filed on October 4, 2012, Commission File Number 1-9172. |
| 4.4 | First Amendment to the Amended and Restated Stockholders' Agreement, dated as of February 16, 2016, among the signatories thereto, the New Participating Stockholders (as defined therein), NACCO Industries, Inc., as depository, and NACCO Industries, Inc., is incorporated herein by reference to Exhibit 4.4 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2015, Commission File Number 1-9172. |
| 4.5 | Second Amendment to the Amended and Restated Stockholders' Agreement, dated as of February 14, 2017, among the signatories thereto, the New Participating Stockholders (as defined therein), NACCO Industries, Inc., as depository, and NACCO Industries, Inc., is incorporated herein by reference to Exhibit 4.6 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, Commission File Number 1-9172. |
| 4.6 | NACCO Industries, Inc. Non-Employee Directors' Compensation Plan, as amended and restated, effective as of May 9, 2017, is incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed on May 10, 2017, Commission File Number 1-9172. |
| 23.1 | Consent of Ernst & Young LLP. |
| 24.1 | Power of Attorney. |

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 a 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:

A. 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 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.

(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 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.

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.

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 Cleveland, State of Ohio, on May 11, 2017.

NACCO INDUSTRIES, INC.

By: /s/ John D. Neumann
John D. Neumann, Esq.

Vice President, General Counsel and
Secretary

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 date indicated.

Dated: May 11, 2017

*

Alfred M. Rankin, Jr.
Chairman, President, Chief Executive Officer and
Director (Principal Executive Officer)

Dated: May 11, 2017

*

Elizabeth I. Loveman
Vice President and Controller
(Principal Financial and Accounting Officer)

Dated: May 11, 2017

*

John P. Jumper
Director

Dated: May 11, 2017

*

Dennis W. LaBarre
Director

Dated: May 11, 2017

*

Michael S. Miller
Director

Dated: May 11, 2017

Richard de J. Osborne

Director

*

Dated: May 11, 2017

James A. Ratner

Director

*

Dated: May 11, 2017

Britton T. Taplin

Director

*

Dated: May 11, 2017

David F. Taplin

*

Director

Dated: May 11, 2017

David B.H. Williams

*

Director

* This registration statement has been signed on behalf of the above officers and directors by John D. Neumann, as attorney-in-fact, pursuant to a power of attorney filed as Exhibit 24.1 to this registration statement.

DATED: May 11, 2017

By: /s/ John D. Neumann
John D. Neumann, Esq.

Attorney-in-fact

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|---|
| 4.1 | Restated Certificate of Incorporation of the Registrant is incorporated herein by reference to Exhibit 3(i) to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1992, Commission File Number 1-9172. |
| 4.2 | Amended and Restated Bylaws of the Registrant are incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, filed on December 18, 2014, Commission File Number 1-9172. |
| 4.3 | Amended and Restated Stockholders' Agreement, dated as of September 28, 2012, amongst the signatories thereto, NACCO Industries, Inc., as depository, and NACCO Industries, Inc. is incorporated herein by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K, filed on October 4, 2012, Commission File Number 1-9172. |
| 4.4 | First Amendment to the Amended and Restated Stockholders' Agreement, dated as of February 16, 2016, among the signatories thereto, the New Participating Stockholders (as defined therein), NACCO Industries, Inc., as depository, and NACCO Industries, Inc., is incorporated herein by reference to Exhibit 4.4 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2015, Commission File Number 1-9172. |
| 4.5 | Second Amendment to the Amended and Restated Stockholders' Agreement, dated as of February 14, 2017, among the signatories thereto, the New Participating Stockholders (as defined therein), NACCO Industries, Inc., as depository, and NACCO Industries, Inc., is incorporated herein by reference to Exhibit 4.6 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, Commission File Number 1-9172. |
| 4.6 | NACCO Industries, Inc. Non-Employee Directors' Compensation Plan, as amended and restated, effective as of May 9, 2017, is incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed on May 10, 2017, Commission File Number 1-9172. |
| 23.1 | Consent of Ernst & Young LLP. |
| 24.1 | Power of Attorney. |