

PATRICK INDUSTRIES INC
Form S-8
August 22, 2014

As filed with the Securities and Exchange Commission on August 22, 2014

Registration No. 333-

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

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

PATRICK INDUSTRIES, INC.
(Exact name of Registrant as specified in its charter)

Indiana
35-1057796
(State or other jurisdiction of
(I.R.S. Employer Identification No.)
incorporation or organization)

107 West Franklin Street, P.O. Box 638
Elkhart, IN 46515
(574) 294-7511
(Address, including zip code, and telephone number,
including area code, of Registrant's principal executive offices)

PATRICK INDUSTRIES, INC. 2009 OMNIBUS INCENTIVE PLAN
(Full title of the Plan)

Andy L. Nemeth
Executive Vice President-Finance and Chief Financial Officer
107 West Franklin Street, P.O. Box 638
Elkhart, IN 46515
Telephone: (574) 294-7511

(Name, address, including zip code, and telephone number,
including area code, of Registrant's agent for service)

Copy to:

Robert A. Schreck, Jr., P.C.
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, IL 60606
Telephone: (312) 372-2000

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 (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
Common Stock, without par value, including Preferred Share Purchase Rights (3)	925,000	\$43.40	\$40,145,000	\$5,171

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of Common Stock which may become issuable pursuant to the anti-dilution provision of the 2009 Omnibus Incentive Plan.

(2) Estimated solely for purposes of computing the registration fee pursuant to Rule 457(c) and (h) under the Securities Act on the basis of the average of the high and low sales prices of the Common Stock reported on The Nasdaq Global Market on August 19, 2014.

(3) Represents additional shares that are available for issuance or distribution under the Registrant’s 2009 Omnibus Incentive Plan, as amended, as approved by the registrant’s stockholders at the registrant’s Annual Meeting of Stockholders held on May 22, 2014. Prior to the occurrence of certain events, the Preferred Share Purchase Rights will not be evidenced separately from the Common Stock.

REGISTRATION OF ADDITIONAL SECURITIES

INCORPORATION OF EARLIER REGISTRATION STATEMENT BY REFERENCE

Patrick Industries, Inc. (the “Company”) is registering an additional 925,000 shares of its common stock for issuance or distribution under the Patrick Industries, Inc. 2009 Omnibus Incentive Plan, as amended (the “Plan”), with the filing of this Registration Statement on Form S-8. The Company’s stockholders approved the addition of these shares to the Plan at the Company’s Annual Meeting of Stockholders held on May 22, 2014.

Pursuant to General Instruction E to Form S-8, the Company hereby incorporates by reference into this Registration Statement the contents of the Form S-8 Registration Statement filed with respect to the Plan on March 30, 2010 (File No. 333-165788) except to the extent otherwise updated or modified by this Registration Statement.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended, and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the SEC:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, filed with the SEC on March 14, 2014;
- (b) Quarterly Reports on Form 10-Q for the quarters ended March 30, 2014 and June 29, 2014, filed with the SEC on May 8, 2014 and August 8, 2014, respectively.
- (c) The Registrant's current reports on Form 8-K filed with the SEC on May 23, 2014, June 13, 2014, and July 3, 2014; and

The description of the Registrant's Common Stock and the Preferred Share Purchase Rights contained in a (d) Registration Statement on Form 8-A filed with the SEC on April 3, 1996 pursuant to Section 12 of the Exchange Act.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference to this Registration Statement and to be a part hereof from the date of filing such documents.

Any statement contained 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 which is also deemed to be incorporated by reference herein 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.

The Registrant's Articles of Incorporation provide that it shall indemnify its directors and officers to the fullest extent permitted by the Indiana Business Corporation Law. The Registrant's By-laws require the company to indemnify its directors and officers and such provisions require it, among other things, (i) to indemnify officers and directors against certain liabilities that may arise by reason of their status or service as directors or officers provided such persons acted in good faith and in a manner reasonably believed to be in the best interests of the Registrant and, with respect to any criminal action, had no cause to believe their conduct was unlawful; (ii) to advance the expenses actually and reasonably incurred by its officers and directors as a result of any proceeding against them as to which they could be indemnified, and (iii) to obtain directors' and officers' insurance if available on reasonable terms. The Registrant maintains directors' and officers' liability insurance covering all directors and officers of the Registrant against claims arising from the performance of their duties. There is no action or proceeding pending or, to our knowledge, threatened which may result in a claim for indemnification by any director, officer, employee or agent.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

3.1 Articles of Incorporation of Patrick Industries, Inc. (filed as Exhibit 3.1 to the Company's Form 10-K filed on March 30, 2010 and incorporated herein by reference).

3.2 Amended and Restated By-laws (filed as Exhibit 3.1 to the Company's Form 8-K on January 21, 2009 and incorporated herein by reference).

4.1 Rights Agreement, dated March 21, 2006, between Patrick Industries, Inc. and National City Bank, as Rights Agent (filed as Exhibit 10.1 to the Company's Form 8-K filed on March 23, 2006 and incorporated herein by reference).

4.2 Amendment No. 1 to Rights Agreement, dated May 18, 2007, between Patrick Industries, Inc. and National City Bank, as Rights Agent (filed as Exhibit 10.5 to the Company's Form 8-K filed on May 24, 2007 and incorporated herein by reference).

4.3 Amendment No. 2 to Rights Agreement, dated March 12, 2008, between Patrick Industries, Inc. and National City Bank, as Rights Agent (filed as Exhibit 10.3 to the Company's Form 8-K filed on March 13, 2008 and incorporated herein by reference).

4.4 Second Amended and Restated Registration Rights Agreement, dated as of December 11, 2008, by and among Patrick Industries, Inc., Tontine Capital Partners, L.P., Tontine Capital Overseas Master Fund, L.P. and the lenders party thereto (filed as Exhibit 10.3 to the Company's Form 8-K filed on December 15, 2008 and incorporated herein by reference).

4.5 Amendment No. 1 dated as of March 31, 2011, to the Second Amended and Restated Registration Rights Agreement, by and among Patrick Industries, Inc., Tontine Capital Partners, L.P., Tontine Capital Overseas Master Fund, L.P. and the lenders party thereto (filed as Exhibit 10.9 to the Company's Form 8-K filed on April 5, 2011 and incorporated herein by reference).

4.6 Amendment No. 2 dated as of September 16, 2011, to the Second Amended and Restated Registration Rights Agreement, between Patrick Industries, Inc. and Tontine Capital Overseas Master Fund II, L.P., Northcreek Mezzanine Fund I, L.P., and Stinger Northcreek PATK LLC (filed as Exhibit 10.7 to the Company's Form 8-K filed on September 22, 2011 and incorporated herein by reference).

5.1 Opinion of McDermott Will & Emery LLP.

23.1 Consent of Crowe Horwath LLP.

23.2 Consent of McDermott Will & Emery LLP (included in Exhibit 5.1).

24.1 Power of Attorney (filed as part of signature page).

Item 9. Undertakings

(a) The undersigned 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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 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 (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act 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.

(b) The undersigned hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act 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 SEC 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 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 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 Elkhart, State of Indiana, on August 22, 2014.

PATRICK INDUSTRIES, INC.

By: /s/ Andy L. Nemeth
Andy L. Nemeth
Executive Vice President – Finance and Chief Financial Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Todd M. Cleveland and Andy L. Nemeth, and each of them (each with full power to act alone), his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement (in each case including, without limitation, any post-effective amendments), and to file the same, with all exhibits thereto, and other documents in connection therewith with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them full power and authority to do and to perform each and every act and thing requisite and necessary to be done in and about the premises, as full and to all intents and purposes as he might or would do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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 the 22nd day of August, 2014.

Signature	Title
<u>/s/ Paul E. Hassler</u> Paul E. Hassler	Chairman of the Board
<u>/s/ Todd M. Cleveland</u> Todd M. Cleveland	President and Chief Executive Officer and Director (Principal Executive Officer)

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/s/ Andy L. Nemeth Executive Vice President-Finance and Chief Financial Officer and Director (Principal Financial and Accounting Officer)
Andy L. Nemeth

/s/ Terrence D. Brennan Director
Terrence D. Brennan

/s/ Joseph M. Cerulli Director
Joseph M. Cerulli

/s/ John A. Forbes Director
John A. Forbes

/s/ Michael A. Kitson Director
Michael A. Kitson

/s/ Larry D. Renbarger Director
Larry D. Renbarger

/s/ Walter E. Wells Director
Walter E. Wells