

RITE AID CORP
Form S-8
June 19, 2014

As filed with the Securities and Exchange Commission on June 19, 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

RITE AID CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

23-1614034
(I.R.S. Employer
Identification No.)

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30 Hunter Lane

Camp Hill, Pennsylvania 17011

(717) 761-2633

(Address of Principal Executive Offices)

**Rite Aid Corporation
2014 Omnibus Equity Plan**

(Full Title of the Plan)

Marc A. Strassler, Esq.

Executive Vice President, General Counsel and Secretary

Rite Aid Corporation

30 Hunter Lane

Camp Hill, Pennsylvania 17011

(717) 761-2633

(717) 760-7867 (facsimile)

(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 x

Accelerated filer o

Non-accelerated filer o

Smaller reporting company o

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

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| 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 (3) |
|--|--------------------------------|---|---|-----------------------------------|
| Common Stock, par value \$1.00 per share: shares available for issuance pursuant to employee benefit plan | 69,022,664 | \$ 7.07 | \$ 487,990,234 | \$ 62,853 |
| (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers such additional shares of Common Stock, par value \$1.00 per share (the Common Stock), of Rite Aid Corporation (the Registrant) that may become issuable under the Rite Aid Corporation 2014 Omnibus Equity Plan by reason of certain corporate transactions or events, including any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of the Registrant s outstanding shares of Common Stock. | | | | |
| (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(h) and (c) under the Securities Act. The maximum offering price per share is based on the average of the high and low prices of the Common Stock as reported on the NYSE on June 16, 2014. | | | | |
| (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act. Calculated in accordance with Section 6 of the Securities Act and Rule 457 under the Securities Act by multiplying 0.0001288 and the proposed maximum aggregate offering price. | | | | |

EXPLANATORY NOTE

Rite Aid Corporation has prepared this registration statement in accordance with the requirements of Form S-8 under the Securities Act, to register shares of its Common Stock, par value \$1.00 per share, issuable pursuant to the Rite Aid Corporation 2014 Omnibus Equity Plan (the 2014 Equity Plan). As of the effective date of the 2014 Equity Plan, no further grants may be made under the 2010 Omnibus Equity Plan (the 2010 Equity Plan) and the 2012 Omnibus Equity Plan (the 2012 Equity Plan) and together with the 2010 Equity Plan, the Former Equity Plans) and shares that were available for issuance under the Former Equity Plans and not subject to outstanding awards became available for issuance (in addition to newly authorized shares) under the 2014 Equity Plan. Accordingly, upon stockholder approval of the 2014 Equity Plan at the Annual Meeting of Stockholders on June 19, 2014, a total of 69,022,664 shares became available for delivery under the 2014 Equity Plan, including (i) 58,000,000 newly authorized shares; (ii) 5,835,208 shares previously registered pursuant to Registration Statement No. 333-167720 that were available for issuance under the 2010 Plan; and (iii) 5,187,456 shares previously registered pursuant to Registration Statement No. 333-182320 that were available for issuance under the 2012 Plan. In addition, in accordance with the 2014 Equity Plan, shares that are subject to outstanding awards under the Former Equity Plans that subsequently are cancelled, forfeited, lapsed or are otherwise terminated or settled without a distribution of shares under the terms of the Former Equity Plans again become available for issuance under the 2014 Equity Plan.

With respect to each such agreement, instrument or other document filed as an exhibit to the registration statement, we refer you to the exhibit for a more complete description of the matter involved, and each such statement shall be deemed qualified in its entirety by this reference.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. Such documents need not be filed with the Securities and Exchange Commission (SEC) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of 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.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

We are incorporating by reference certain information that we have filed with the SEC under the informational requirements of the Exchange Act. The information contained in the documents that we are incorporating by reference is considered to be part of this registration statement,

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and the information that we later file with the SEC will automatically update and supersede the information contained or incorporated by reference into this registration statement. We are incorporating by reference:

- our annual report on Form 10-K for the fiscal year ended March 1, 2014, which we filed with the SEC on April 23, 2014;
 - our definitive proxy statement on Schedule 14A, which we filed with the SEC on May 19, 2014;
 - our current reports on Form 8-K, which we filed with the SEC on March 19, 2014 and April 24, 2014; and
 - the description of our Common Stock contained in our Registration Statement on Form 8-A, dated July 18, 1991, filed to register such securities under the Exchange Act, including all amendments and reports filed for the purpose of updating such description.
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All documents that we subsequently file pursuant to Section 13(a), 13(c), 14 and 15(d) of 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 into this registration statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference in this registration statement shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in this registration statement, or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this registration statement, modifies or supersedes such prior statement. Any statement contained in this registration statement shall be deemed to be modified or superseded to the extent that a statement contained in a subsequently filed document that is or is deemed to be incorporated by reference in this registration statement modifies or supersedes such prior 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.

Nothing in this registration statement shall be deemed to incorporate any information provided in these documents that is described in paragraph (d)(1), (d)(2), (d)(3) or (e)(5) of Item 407 of Regulation S-K or Item 2.02 or Item 7.01 of Form 8-K or otherwise furnished under applicable SEC rules rather than filed and exhibits furnished in connection with such items.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Marc A. Strassler, our Executive Vice President, General Counsel and Secretary, owns shares of our common stock and holds options to purchase shares of our common stock.

Item 6. Indemnification of Directors and Officers.

Under Section 145 of the Delaware General Corporation Law ("DGCL"), a corporation may 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 such person in connection with such action, suit or proceeding (i) if such person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the corporation and (ii) with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe such conduct was unlawful. In actions brought by or in the right of the corporation, a corporation may indemnify such person against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which that 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 circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which the Court of Chancery or other such court shall deem proper. To the extent that such person has been successful on the merits or otherwise in defending any such action, suit or proceeding referred to above or any claim, issue or matter therein, he or she is entitled to

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indemnification for expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. The indemnification and advancement of expenses provided for or granted pursuant to Section 145 of the DGCL is not exclusive of any other rights of indemnification or advancement of expenses to which those seeking indemnification or advancement of expenses may be entitled, and a corporation may purchase and maintain insurance against liabilities asserted against any former or current, director, officer, employee or agent of the corporation, or a person who 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, whether or not the power to indemnify is provided by the statute.

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Article Ninth of our Restated Certificate of Incorporation and Article VIII of our Amended and Restated By-Laws provide for the indemnification of our directors and officers as authorized by Section 145 of the DGCL.

The directors and officers of us and our subsidiaries are insured (subject to certain exceptions and deductions) against liabilities which they may incur in their capacity as such, including liabilities under the Securities Act, under liability insurance policies carried by us.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit Numbers | Description | Incorporation by Reference to |
|-----------------|---|--|
| 4.1 | Rite Aid Corporation 2014 Omnibus Equity Plan | Appendix A to DEF 14A, filed on May 19, 2014 |
| 4.2 | Restated Certificate of Incorporation of Rite Aid Corporation | Exhibit 3.1 to Form 10-K, filed on April 23, 2014 |
| 4.3 | Amended and Restated By-Laws of Rite Aid Corporation | Exhibit 3.1 to Form 8-K, filed on January 27, 2010 |
| 5.1 | Opinion of Marc A. Strassler, Esq. | Filed herewith |
| 23.1 | Consent of Marc A. Strassler, Esq. (included as part of Exhibit 5.1 hereto) | Filed herewith |
| 23.2 | Consent of Deloitte & Touche LLP for Rite Aid Corporation | Filed herewith |
| 24.1 | Powers of Attorney (included on the signature page hereto) | Filed herewith |

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 the registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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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; 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) 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 Commission by the Registrant pursuant to Sections 13 or 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 Sections 13(a) or 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.

(c) 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 Camp Hill, State of Pennsylvania, on this 19th day of June, 2014.

RITE AID CORPORATION

By: /s/ Marc A. Strassler
 Name: Marc A. Strassler
 Title: Executive Vice President, General Counsel and Secretary

KNOWN ALL MEN BY THESE PRESENTS that each person whose signature to this registration statement appears below hereby constitutes and appoints Marc A. Strassler and Frank G. Vitrano, or either of them, as such person's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments to the registration statement, including post-effective amendments, and registration statements filed pursuant to Rule 462 under the Securities Act, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and does hereby grant unto each said attorney-in-fact and agent 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 to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or any substitute therefor, 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 and on the dates indicated.

| Signature | Title | Date |
|--|--|---------------|
| /s/ John T. Standley John T. Standley | Chairman of the Board and Chief Executive Officer (Principal Executive Officer) | June 19, 2014 |
| /s/ Frank G. Vitrano Frank G. Vitrano | Senior Executive Vice President, Chief Financial Officer and Chief Administrative Officer (Principal Financial Officer) | June 19, 2014 |
| /s/ Douglas E. Donley Douglas E. Donley | Senior Vice President and Chief Accounting Officer (Principal Accounting Officer) | June 19, 2014 |
| /s/ Joseph B. Anderson, Jr. Joseph B. Anderson, Jr. | Director | June 19, 2014 |
| /s/ Bruce G. Bodaken Bruce G. Bodaken | Director | June 19, 2014 |
| /s/ David R. Jessick | Director | June 19, 2014 |

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David R. Jessick

/s/ Kevin E. Lofton
Kevin E. Lofton

Director

June 19, 2014

/s/ Myrtle S. Potter
Myrtle S. Potter

Director

June 19, 2014

/s/ Michael N. Regan
Michael N. Regan

Director

June 19, 2014

/s/ Marcy Syms
Marcy Syms

Director

June 19, 2014

EXHIBIT INDEX

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