

Discover Financial Services  
Form S-8  
April 14, 2008

As filed with the Securities and Exchange Commission on April 14, 2008

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

**DISCOVER FINANCIAL SERVICES**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**2500 Lake Cook Road**  
**Riverwoods, Illinois 60015**

**36-2517428**  
(I.R.S. Employer  
Identification No.)

Edgar Filing: Discover Financial Services - Form S-8

(Address, including zip code, of principal executive offices)

**Discover Financial Services Employee Stock Purchase Plan**

(Full title of the plan)

**Kathryn McNamara Corley**

**Executive Vice President, General Counsel and Secretary**

**2500 Lake Cook Road**

**Riverwoods, Illinois 60015**

(Names and address of agent for service)

**(224) 405-0900**

(Telephone number, including area code, of agent for service)

*Copies to:*

**Elizabeth C. Kitslaar**

**Jones Day**

**77 West Wacker**

**Chicago, Illinois 60601**

**(312) 269-4114**

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   
Non-accelerated filer

Accelerated filer   
Smaller reporting company

## Edgar Filing: Discover Financial Services - Form S-8

(Do not check if a 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</b>
Common Stock, \$0.01 par value	3,000,000 shares	\$18.05	\$54,150,000	\$2,128.10

- (1) This registration statement also includes an additional and indeterminate number of shares of common stock that may become issuable because of the provisions of the Discover Financial Services Employee Stock Purchase Plan relating to adjustments made in the event of a stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off or other similar change in capitalization or event, or any distribution to holders of shares of common stock other than a regular cash dividend.
- (2) Estimated solely for purposes of calculation of the registration fee pursuant to Rule 457(c) and (h) under the Securities Act of 1933 based upon the average of the high and low prices of Discover Financial Services common stock reported on the New York Stock Exchange on April 9, 2008.

**PART I.**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

In accordance with Rule 428 under the Securities Act of 1933, as amended (the Securities Act), and the instructional note to Part I of Form S-8, the information specified in Part I of Form S-8 has been omitted from the filing of this registration statement. The documents containing the information specified in Part I of Form S-8 will be sent or given to participating employees as specified by Rule 428(b)(1) of the Securities Act. Such 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.**

The following documents previously filed with the Securities and Exchange Commission (the Commission) by Discover Financial Services (the Company), are incorporated by reference in this registration statement:

the Company's Annual Report on Form 10-K for the fiscal year ended November 30, 2007, filed with the Commission on February 27, 2008;

the Company's Current Reports on Form 8-K, filed with the SEC on December 3, 2007, December 20, 2007, January 29, 2008, February 7, 2008, February 26, 2008, March 19, 2008, March 20, 2008, March 31, 2008, April 2, 2008 and April 7, 2008; and

the description of the Company's common stock contained in the Company's Registration Statement on Form 10, as amended (File No. 001-33378), and any subsequent amendment report filed for the purpose of updating that description.

In addition, all documents subsequently filed with the Commission by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), after the date of this registration statement and prior to the filing of a post-effective amendment to this registration statement indicating that all securities offered by this registration statement have been sold or deregistering all securities then remaining unsold will be deemed to be incorporated by reference in this registration statement and to be a part of this registration statement from the respective dates of filing of such documents. In no event, however, will any of the information that the Company discloses only under Item 2.02 or Item 7.01 of any Current Report on Form 8-K that it may from time to time furnish to the Commission be incorporated or deemed to be incorporated by reference in, or otherwise be included in, this registration statement.

Any statement contained in this registration statement or in a document incorporated or deemed to be incorporated by reference in this registration statement will be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in any subsequently filed document that also is or is 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.**

Certain legal matters in connection with the common stock offered by this registration statement will be passed upon for the Company by Simon Halfin, an employee of the Company and Assistant Secretary of the Company. Mr. Halfin will be eligible to participate in the Company's Employee Stock Purchase Plan and will have the right to purchase and own shares of the Company's common stock pursuant to that plan.

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

The Company is a Delaware corporation. Section 145 of the General Corporation Law of the State of Delaware, as amended (the "DGCL"), provides that under certain circumstances, 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 such person is or was a director, officer, employee or agent of the corporation, or is or was serving at its request in such capacity in 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 if such person acted in good faith and in a manner such 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. The statute provides that indemnification pursuant to its provisions is not exclusive of other rights to which such person may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

The Company's amended and restated certificate of incorporation limits the liability of directors to the maximum extent permitted by the DGCL. Section 102(b)(7) of the DGCL provides that directors of a corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of their fiduciary duties as directors, except for liability:

for any breach of their duty of loyalty to the corporation or its stockholders;

for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

under Section 174 of the DGCL relating to unlawful payments of dividends or unlawful stock repurchases or redemptions; or

for any transaction from which the director derived an improper personal benefit.

The Company maintains insurance policies under which the directors and officers of the Company are insured, within the limits and subject to the limitations of the policies, against certain expenses in connection with the defense of actions, suits or proceedings, and certain liabilities which might be imposed as a result of such actions, suits or proceedings, to which they are parties by reason of being or having been directors or officers, which could include liabilities under the Securities Act or the Exchange Act.

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

Not applicable.

**Item 8. Exhibits.**

The following documents are filed as exhibits to this registration statement:

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 4(a) to the Company's Registration Statement on Form S-8 (File No. 333-144184) filed on June 29, 2007, relating to the Discover Financial Services Omnibus Incentive Plan).
4.2	Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on June 19, 2007).
4.3	Discover Financial Services Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on June 19, 2007).
5.1	Opinion of Simon Halfin as to the legality of the securities being registered.
23.1	Consent of Deloitte & Touche LLP, independent registered public accounting firm.
23.2	Consent of Simon Halfin (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page of this registration statement).

**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;

(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 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) 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 Exchange Act 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, each filing of the registrant's annual report pursuant to Section 13(a) or 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 Commission 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 Village of Riverwoods, State of Illinois, on this 14th day of April, 2008.

**DISCOVER FINANCIAL SERVICES**

/s/ Kathryn McNamara Corley  
 By: Kathryn McNamara Corley  
 Its: Executive Vice President, General Counsel and  
 Secretary

Each person whose name and signature appears below constitutes and appoints Kathryn McNamara Corley and Roy A. Guthrie, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for and in his or her name, place and stead, in any and all capacities, to sign, execute and file with the Commission (or any other governmental or regulatory authority, as necessary) this Registration Statement on Form S-8 of Discover Financial Services (including all amendments, including post-effective amendments, to this Registration Statement), and any registration statement filed pursuant to Rule 462(b) of the Securities Act in connection with the securities registered under this Registration Statement, with all exhibits thereto, and other documents required to be filed in connection therewith, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing necessary or desirable to be done in and about the premises in order to effectuate the same as fully to all intents and purposes as he or she might or 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 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 and on the dates indicated.

Signature	Title	Date
/s/ David W. Nelms David W. Nelms	Chief Executive Officer and Director  (Principal Executive Officer)	April 14, 2008
/s/ Roy A. Guthrie Roy A. Guthrie	Executive Vice President, Chief  Financial Officer and Director  (Principal Financial Officer)	April 14, 2008
/s/ Kevin M. Killips Kevin M. Killips	Senior Vice President, Controller and  Chief Accounting Officer  (Principal Accounting Officer)	April 14, 2008
/s/ Dennis D. Dammermann Dennis D. Dammermann	Chairman of the Board	April 14, 2008
/s/ Jeffrey S. Aronin Jeffrey S. Aronin	Director	April 14, 2008
/s/ Mary K. Bush Mary K. Bush	Director	April 14, 2008



Edgar Filing: Discover Financial Services - Form S-8

---

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Gregory C. Case Gregory C. Case	Director	April 14, 2008
/s/ Robert M. Devlin Robert M. Devlin	Director	April 14, 2008
/s/ Philip A. Laskawy Philip A. Laskawy	Director	April 14, 2008
/s/ Michael H. Moskow Michael H. Moskow	Director	April 14, 2008
/s/ Michael I. Rankowitz Michael L. Rankowitz	Director	April 14, 2008
/s/ E. Follin Smith E. Follin Smith	Director	April 14, 2008
/s/ Lawrence A. Weinbach Lawrence A. Weinbach	Director	April 14, 2008

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended and Restated Certificate of Incorporation of the Company (incorporated by referenced to Exhibit 4(a) to the Company's Registration Statement on Form S-8 (File No. 333-144184) filed on June 29, 2007, relating to the Discover Financial Services Omnibus Incentive Plan).
4.2	Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on June 19, 2007).
4.3	Discover Financial Services Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on June 19, 2007).
5.1	Opinion of Simon Halfin as to the legality of the securities being registered.
23.1	Consent of Deloitte & Touche LLP, independent registered public accounting firm.
23.2	Consent of Simon Halfin (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page of this registration statement).