

CIRCOR INTERNATIONAL INC
Form S-8
May 25, 2005

As filed with the Securities and Exchange Commission on May 25, 2005

Registration No. 333-_____

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT

UNDER
THE SECURITIES ACT OF 1933

CIRCOR INTERNATIONAL, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State of Incorporation)

04-3477276
(I.R.S. Employer Identification Number)

c/o Circor, Inc.
25 Corporate Drive, Suite 130
Burlington, MA 01803-4238
Telephone: (781) 270-1200

(Address of Principal Executive Offices)

CIRCOR INTERNATIONAL, INC.

AMENDED AND RESTATED 1999 STOCK OPTION AND INCENTIVE PLAN

(Full Title of the Plan)

David A. Bloss, Sr., Chairman, President

and Chief Executive Officer

c/o Circor, Inc.

25 Corporate Drive, Suite 130

Burlington, Massachusetts 01803-4238

(781) 270-1200

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

Copy to

David F. Dietz, P.C.

Goodwin Procter LLP

Exchange Place

Boston, Massachusetts 02109-2881

(617) 570-1000

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|--------------------------------|--|--|-----------------------------------|
| Common Stock, par value \$0.01 per share | 1,000,000 shares (1)(2) | \$25.25(3) | \$25,250,000(3) | \$2,971.93(3) |
| Deferred Compensation Obligations | | | \$ 5,728,000(4, 5) | \$674.19 |

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- (1) This registration statement also relates to such indeterminate number of additional shares of CIRCOR International, Inc. s (the Registrant or the Company) Common Stock, par value \$0.01 per share, of (the Common Stock) as may become issuable under the CIRCOR International, Inc. Amended and Restated 1999 Stock Option and Incentive Plan (the Option Plan) to prevent dilution resulting from any reorganization, recapitalization, reclassification, stock dividend, stock split, or other similar change.

- (2) This registration statement also relates to the rights to purchase Series A Junior Participating Cumulative Preferred Stock of the Company which are attached to all shares of Common Stock outstanding as of, and issued subsequent to, October 19, 1999, pursuant to the terms of the Company's Shareholder Rights Agreement dated as of September 16, 1999, as amended by the Agreement of Substitution and Amendment of Shareholder Rights Agent Agreement dated as of November 1, 2002. Until the occurrence of certain prescribed events, the rights are not exercisable, are evidenced by the certificates of Common Stock and will be transferred only with such stock.
 - (3) Calculated in accordance with Rule 457(c) and (h) under the Securities Act of 1933 solely for the purpose of determining the amount of the registration fee. The registration fee has been calculated based on the average of the high and low prices for the Common Stock, as reported on the New York Stock Exchange on May 24, 2005.
 - (4) This estimate is made pursuant to Rule 457(h) under the Securities Act of 1933, as amended, based on the estimated amount of compensation being deferred under the Plan. Estimated for purposes of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933.
 - (5) Pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement covers an indeterminate amount of obligations to be offered or sold pursuant to the deferred compensation program under the Option Plan described herein.
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NOTE

This registration statement is being filed solely for the purpose of registering 1,000,000 additional shares of common stock, par value \$0.01 per share (Common Stock), of CIRCOR International, Inc. (the Company) and certain deferred compensation obligations under the CIRCOR International, Inc. Amended and Restated 1999 Stock Option and Incentive Plan (the Plan), originally adopted in 1999. The total number of shares issuable under the Plan is 3,000,000 shares, of which 2,000,000 shares were previously registered on Form S-8 (Reg. No. 333-91229). Pursuant to General Instruction E of Form S-8, the contents of such registration statement are incorporated herein by reference, except as otherwise noted below.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents are hereby incorporated by reference in this Registration Statement:

- (a) The Annual Report on Form 10-K filed by the Company for the fiscal year ended December 31, 2004, as amended.
- (b) All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), since the end of the fiscal year covered by the annual report referred to in (a) above.
- (c) The description of the Company s Common Stock contained in the Company s Registration Statement filed under the Exchange Act on Form 10/A-2, dated October 6 1999, the description of the Company s Series A Junior Participating Cumulative Preferred Stock contained in the Company s Registration Statement filed under the Exchange Act on Form 8-A, dated October 21, 1999 and any amendment or report filed for the purpose of further updating such descriptions.

All documents subsequently filed by the Company 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 herein and to be a part hereof from the date of the filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES

Under the Plan, participants may be granted deferred stock awards of phantom stock units. In addition, selected participants may elect to defer all or a portion of their cash compensation, restricted stock awards or directors fees to deferred stock awards to be credited to phantom stock unit accounts maintained under the Plan. During the deferral period, phantom stock units may be credited with dividend equivalent rights. Deferred phantom units may be settled only in shares of Common Stock.

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The obligations to settle phantom stock units (the Obligations) are unsecured general obligations of the Company and rank pari passu with other unsecured and unsubordinated indebtedness of the Company. The Obligations may not be sold, assigned, hypothecated, alienated, encumbered or in any way transferred or conveyed in advance of settlement. Any attempt by any person to transfer or assign stock units under the Plan, other than a claim for benefits by a participant or his or her beneficiary(ies), will be null and void.

The Obligations are not convertible into any other security of the Company. No trustee has been appointed to take action with respect to the Obligations and each participant will be responsible for enforcing his or her own rights with respect to the Obligations.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

The validity of the Common Stock offered hereby will be passed upon for the Company by Goodwin Procter LLP, Boston, Massachusetts. Mr. David F. Dietz, a director of the Company, is a partner of Goodwin Procter LLP. Mr. Dietz owns 10,765 shares of Common Stock and options for the purchase of an additional 22,000 shares of Common Stock.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Subsection (a) of Section 145 of the Delaware General Corporation Law (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 the 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 right of the corporation to procure a judgment in its favor by reason of the fact that such 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 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 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 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 indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Subsection (d) of Section 145 of the DGCL provides 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 the person has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by the majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

Section 145 of the DGCL further provides that to the extent a present or former director or officer of a corporation has been successful on the merits or otherwise in the 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 and that such expenses 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 as authorized in Section 145 of the DGCL; that any indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; that indemnification provided by, or granted pursuant to, Section 145 shall, unless otherwise provided when authorized and ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person's heirs, executors and administrators; and empowers the corporation to purchase and maintain insurance on behalf of any person who 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 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 liabilities under Section 145.

Section 2 of Article V of the Company's Amended and Restated By-Laws provides that the Company shall indemnify its directors and officers to the fullest extent permitted by the DGCL. The Company has also obtained officers' and directors' liability insurance which insures against liabilities that officers and directors of the Company, in such capacities, may incur. The Company's Amended and Restated By-Laws require the advancement of expenses incurred by directors in relation to any action, suit or proceeding and permit such advancement of expenses incurred by officers provided the advancement of expenses is accompanied by an undertaking by the applicable director or officer to repay any expenses so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified against such expenses. The Company has also entered into indemnification agreements with each of its directors and executive officers reflecting the foregoing.

Section 102(b)(7) of the DGCL provides that a certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. Article VII of the Company's Amended and Restated Certificate of Incorporation limits the liability of directors to the fullest extent permitted by Section 102(b)(7).

ITEM 8. EXHIBITS.

| <u>Exhibit</u> | <u>Description</u> |
|----------------|---|
| 4.1 | Amended and Restated Certificate of Incorporation of CIRCOR International, Inc., incorporated herein by reference to Exhibit 3.1 to Amendment No. 2 to CIRCOR International, Inc.'s Registration Statement on Form 10, File No. 000-26961 (Form 10), filed with the Securities and Exchange Commission on October 6, 1999. |
| 4.2 | Amended and Restated By-Laws of CIRCOR International, Inc., incorporated herein by reference to Exhibit 3.2 to the Form 10. |
| 4.3 | Certificate of Designations, Preferences and Rights of a Series of Preferred Stock of CIRCOR International, Inc. classifying and designating the Series A Junior Participating Cumulative Preferred Stock, incorporated herein by reference to Exhibit 3.1 to CIRCOR International, Inc.'s Registration Statement on Form 8-A, File No. 001-14962, filed with the Securities and Exchange Commission on October 21, 1999. |
| 4.4* | CIRCOR International, Inc. Amended and Restated 1999 Stock Option and Incentive Plan. |
| 5.1* | Opinion of Goodwin Procter LLP. |
| 23.1 | Consent of Goodwin Procter LLP (included in Exhibit 5.1). |
| 23.2 * | Consent of KPMG LLP. |
| 24.1 | Power of Attorney (included in signature pages to this Registration Statement). |

* 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 this registration statement:

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

(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 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 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 Securities and Exchange Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, 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 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.

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(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 Burlington, the Commonwealth of Massachusetts on this 25th day of May, 2005.

CIRCOR INTERNATIONAL, INC.

By: /s/ DAVID A. BLOSS, SR.
David A. Bloss, Sr.

Chairman, President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints David A. Bloss and Kenneth W. Smith his true and lawful attorneys-in-fact and agents, each acting alone, with full powers of substitution and resubstitution, for him or in his name, place and stead, in any and all capacities to sign any and all amendments or post-effective amendments to this registration statement (or any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), 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, each acting alone, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, each acting alone, 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 and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|--------------|
| /s/ DAVID A. BLOSS, SR. <hr/> David A. Bloss, Sr. | Chairman, President and Chief Executive Officer (Principal Executive Officer) | May 25, 2005 |
| /s/ KENNETH W. SMITH <hr/> Kenneth W. Smith | Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer) | May 25, 2005 |
| /s/ STEPHEN J. CARRIERE <hr/> Stephen J. Carriere | Vice President, Corporate Controller and Assistant Treasurer (Principal Accounting Officer) | May 25, 2005 |
| /s/ DAVID A. BLOSS, SR. <hr/> David A. Bloss, Sr. | Director | May 25, 2005 |

/s/ JEROME D. BRADY

Director

May 25, 2005

Jerome D. Brady

/s/ THOMAS E. CALLAHAN

Director

May 25, 2005

Thomas E. Callahan

/s/ DEWAIN K. CROSS

Director

May 25, 2005

Dewain K. Cross

/s/ DAVID F. DIETZ

Director

May 25, 2005

David F. Dietz

/s/ DOUGLAS M. HAYES

Director

May 25, 2005

Douglas M. Hayes

/s/ THOMAS E. NAUGLE

Director

May 25, 2005

Thomas E. Naugle

EXHIBIT INDEX

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