

SEARS HOLDINGS CORP
Form POSASR
October 30, 2014

As filed with the Securities and Exchange Commission on October 30, 2014

Registration No. 333-199475

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

POST-EFFECTIVE AMENDMENT NO. 1

TO

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

SEARS HOLDINGS CORPORATION

(Exact name of Registrant as specified in charter)

Delaware
(State or other jurisdiction of

20-1920798
(IRS Employer

incorporation or organization)

Identification No.)

3333 Beverly Road

Hoffman Estates, IL 60179

(Address of Principal Executive Offices)

Kristin M. Coleman, Esq.

Senior Vice President, General Counsel and Secretary

Sears Holdings Corporation

3333 Beverly Road

Hoffman Estates, IL 60179

(Name and Address of Agent for Service)

(847) 286-2500

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

With Copy to:

David E. Shapiro, Esq.

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, NY 10019

(212) 403-1000

Fax: (212) 403-2000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

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If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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. (Check one):

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered ⁽¹⁾⁽²⁾	Amount to be Registered	Proposed Maximum Offering Price	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee

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	Per Security			
Common stock, \$.01 par value per share ⁽³⁾	(2)	(2)	(2)	(4)
Preferred stock, \$.01 par value per share	(2)	(2)	(2)	(4)
Depository shares representing preferred stock	(2)	(2)	(2)	(4)
Debt securities	(2)	(2)	(2)	(4)
Warrants	(2)	(2)	(2)	(4)
Stock purchase contracts	(2)	(2)	(2)	(4)
Units	(2)	(2)	(2)	(4)
Rights	(2)	(2)	(2)	(4)

- (1) Any securities registered hereunder may be sold separately or as units with other securities registered hereunder.
- (2) An indeterminate aggregate initial offering price and number or amount of the securities of each identified class is being registered as may from time to time be sold at indeterminate prices. Separate consideration may or may not be received for securities that are issuable upon conversion of, or in exchange for, or upon exercise of, convertible or exchangeable securities. In addition, the securities may be sold in either primary or secondary offerings.
- (3) The shares of common stock offered by this registration statement shall be deemed to cover such additional securities as may be issued as a result of stock splits, stock dividends or similar transactions.
- (4) In accordance with Rules 456(b) and 457(r), the registrant is deferring payment of all of the registration fee.

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 (this Post-Effective Amendment) to the Registration Statement on Form S-3 (Registration No. 333-199475), initially filed with the Securities Exchange Commission on October 20, 2014 (the Registration Statement), of Sears Holdings Corporation (the Company) is being filed to include additional exhibits with the Registration Statement, each of which relate to the Company s proposed rights offering (the Rights Offering), announced on October 20, 2014, pursuant to which the Company proposes to distribute to stockholders of record rights to purchase up to \$625 million in aggregate principal amount of 8% senior unsecured notes due 2019 and warrants to purchase shares of the Company s common stock. A prospectus supplement filed pursuant to this Registration Statement will set forth the specific terms of the Rights Offering.

We are also amending the description of Stock Warrants to provide that stock warrants may be exercised for cash or for other securities, as the case may be.

PART II.**INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. *Other Expenses of Issuance and Distribution.***

The following table sets forth estimated expenses relating to the issuance and distribution of the securities being registered, other than underwriting discounts and commissions, to be paid by the registrants.

	Amount To Be Paid
SEC registration fee	\$ *
Legal fees and expenses	**
Printing fees and expenses	**
Trustee and transfer agent fees and expenses	**
Blue sky fees and expenses	**
Accounting fees and expenses	**
Rating agency and listing fees	**
Miscellaneous expenses	**
Total	\$ **

* To be deferred pursuant to Rule 456(b) under the Securities Act of 1933, as amended (the Securities Act), and calculated in connection with an offering of securities under this registration statement pursuant to Rule 457(r) under the Securities Act.

** These fees cannot be estimated at this time, as they are calculated based on the securities offered and the number of issuances. An estimate of the aggregate expenses in connection with the sale and distribution of the securities being offered will be included in the applicable prospectus supplement.

Item 15. *Indemnification of Directors and Officers.*

Pursuant to the Delaware General Corporation Law (the DGCL), a corporation may indemnify any person who was or is a party to 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 a derivative action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or serving at the request of such corporation in such capacity for 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 in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to such corporation unless the Delaware Court of Chancery or

the court in which such action or suit was brought shall determine upon application that such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

To the extent a present or former director or officer is successful in the defense of such an action, suit or proceeding, the corporation is required by the DGCL to indemnify such person for actual and reasonable expenses incurred thereby. Expenses (including attorneys' 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 is ultimately determined that such person is not entitled to be so indemnified. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate. Article VII of our Charter requires us to indemnify and hold harmless any director or officer of the Company to the fullest extent permitted by Delaware law, against all expenses, liabilities and losses, including attorneys' fees, judgments, fines, excise taxes under the Employee Retirement Income Security Act of 1974, as amended, or penalties and amounts to be paid in settlement, reasonably incurred by those persons in connection with any action, suit or proceeding in which they were, are, or have been threatened to be involved by virtue of their service as a director or officer of the Company or their service at the request of the Company as a director, officer, employee or agent of, or in any other capacity with respect to, another corporation or a partnership, joint venture, trust or other entity or enterprise, including service with respect to employee benefit plans. In general, the Company will indemnify such a director or officer who initiates an action, suit or proceeding only if such action, suit or proceeding was authorized by the board of directors of the Company.

In addition, under our Charter, we will pay in advance of the disposition of any action, suit or proceeding, any reasonable expenses incurred by such a director or officer subject to such person, if the DGCL requires, agreeing to repay any such amounts if it is judicially determined that such person is not entitled to be indemnified for such expenses. The indemnification rights conferred by us are not exclusive of any other right to which persons seeking indemnification may be entitled under any statute, our Charter or By-Laws, any agreement, vote of stockholders or disinterested directors or otherwise.

Item 16. Exhibits.

- 3.1 Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Registrant's Current Report on Form 8-K, dated March 24, 2005, filed on March 24, 2005 (File No. 000-51217)).
- 3.2 Amended and Restated By-Laws (incorporated by reference to Exhibit 3.2 to Registrant's Current Report on Form 8-K, dated January 22, 2014, filed on January 24, 2014 (File No. 000-51217)).
- 4.1 Form of Rights Certificate.
- 4.2 Form of Indenture between Sears Holdings Corporation and Computershare Trust Company, N.A., as trustee.
- 4.3 Form of Supplemental Indenture between Sears Holdings Corporation and Computershare Trust Company, N.A., as trustee (including form of note).
- 4.4 Form of Warrant Agreement between Sears Holdings Corporation and Computershare Inc. and Computershare Trust Company, N.A., as warrant agent (including form of warrant certificate).
- 4.5 Form of Instructions for Subscription Rights Certificate.
- 4.6 Letter to Nominee Holders Whose Clients Are Beneficial Owners.
- 4.7 Letter to Clients of Nominee Holders.
- 4.8 Letter to Stockholders Who Are Record Holders.
- 4.9 Beneficial Holder Election Form.
- 4.10 Nominee Holder Certification.

- 5 Opinion of Wachtell, Lipton, Rosen & Katz (previously filed).
- 12 Computation of Ratios of Income to Combined Fixed Charges (previously filed).

- 23.1 Consent of Deloitte & Touche LLP.
- 23.2 Consent of Wachtell, Lipton, Rosen & Katz (see Exhibit 5) (previously filed).
- 24 Power of Attorney (included on the signature page of the Registration Statement) (previously filed).
- 25 Statement of Eligibility on Form T-1 of Computershare Trust Company, N.A., as Trustee under the Form of Indenture related to debt securities of the Registrant.

Item 17. 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 prospectus filed with the Securities and Exchange 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), (a)(1)(ii) and (a)(1)(iii) 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 Securities and Exchange Commission by the registrants pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (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, 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.

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) Each prospectus filed by the registrants pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of

providing the information required by section 10(a) of the Securities Act

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shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrants under the Securities Act to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrants pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrants will be sellers to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrants relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrants or used or referred to by the undersigned registrants;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrants or their securities provided by or on behalf of the undersigned registrants; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrants to the purchaser.

(b) The undersigned registrants hereby undertake 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrants pursuant to the foregoing provisions, or otherwise, the registrants have been advised that in the opinion of the Securities and Exchange 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 registrants of expenses incurred or paid by a director, officer or controlling person of the registrants 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 registrants 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 of 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.

(d) The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent

reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post-Effective Amendment to be signed on its behalf by the undersigned, thereunto duly authorized, in the Village of Hoffman Estates, State of Illinois, on October 30, 2014.

SEARS HOLDINGS CORPORATION

By: /s/ Robert A. Riecker
 Robert A. Riecker
 Vice President, Controller and Chief
 Accounting Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Post-Effective Amendment has been signed below by the following persons in the capacities and on the dates indicated.

Signatures	Title	Date
* Edward S. Lampert	Director, Chairman of the Board and Chief Executive Officer; (Principal Executive Officer)	October 30, 2014
* Robert A. Schriesheim	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	October 30, 2014
* Robert A. Riecker	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)	October 30, 2014
* Cesar L. Alvarez	Director	October 30, 2014
* Paul G. DePodesta	Director	October 30, 2014
* William C. Kunkler, III	Director	October 30, 2014
* 	Director	October 30, 2014

Steven T. Mnuchin

*

Director

October 30, 2014

Ann N. Reese

*

Director

October 30, 2014

Thomas J. Tisch

*By: /s/ Robert A. Riecker
Robert A. Riecker

Attorney-in-Fact

October 30, 2014

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