

MARINEMAX INC
Form S-8 POS
March 20, 2015

As filed with the Securities and Exchange Commission on March 20, 2015

Registration Nos. 333-63307, 333-83332, 333-141657, 333-156358 and 333-177019

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1

TO

FORM S-8

REGISTRATION STATEMENT

Under

The Securities Act of 1933

MARINEMAX, INC.

(Exact name of Registrant as specified in its charter)

Florida
(State or other jurisdiction)

of incorporation or organization)

2600 McCormick Drive, Suite 200, Clearwater, Florida 33759

59-3496957
(I.R.S. Employer

Identification Number)

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(Address of principal executive offices) (Zip code)

2011 Stock-Based Compensation Plan

MarineMax 2008 Employee Stock Purchase Plan

2007 Incentive Compensation Plan

Director Fee Share Purchase Program

1998 Incentive Stock Plan

(Full title of the plan)

William H. McGill Jr.

Chairman, President and Chief Executive Officer

2600 McCormick Drive, Suite 200

Clearwater, Florida 33759

(Name and address of agent for service)

(727) 531-1700

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

Copy to:

Robert J. Grammig, Esq.

Holland & Knight LLP

100 North Tampa Street, Suite 4100

Tampa, Florida 33602

(813) 227-8500

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

x

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	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (1)
Common Stock \$0.001 par value	N/A	N/A	N/A	N/A

(1) The Registrant is not registering additional securities. Registration fees were originally paid by the Registrant's predecessor-in-interest upon filing of the original registration statements on Form S-8 (File Nos. 333-63307, 333-83332, 333-141657, 333-156358 and 333-177019). Consequently, no additional registration fees are required with respect to the filing of this Post-Effective Amendment No. 1.

This Post-Effective Amendment No. 1 shall become effective upon filing in accordance with Rule 462 under the Securities Act.

EXPLANATORY NOTE

On March 20, 2015, following approval by the requisite vote of stockholders at the company's 2015 Annual Meeting of Stockholders, MarineMax, Inc. changed its state of incorporation from Delaware to Florida. This reincorporation was effectuated on March 20, 2015 by merging MarineMax, Inc., a Delaware corporation (MarineMax Delaware) with and into MarineMax Reincorporation, Inc., a Florida corporation and wholly-owned subsidiary of MarineMax Delaware (MarineMax Florida, the Company or the Registrant), established for such purpose, with the Company as the surviving entity under the name MarineMax, Inc. The Company is deemed to be the successor issuer of MarineMax Delaware under the Securities Exchange Act of 1934, as amended (the Exchange Act).

In connection with the reincorporation, each outstanding share of common stock of MarineMax Delaware was automatically converted into one share of common stock of the Registrant.

The Company as the successor issuer of MarineMax Delaware is filing this Post-Effective Amendment No. 1 to registration statements on Form S-8, File Nos. 333-63307, 333-83332, 333-141657, 333-156358 and 333-177019

(the Registration Statements), pursuant to Rule 414 promulgated under the Securities Act of 1933, as amended (the Securities Act), solely to update the Registration Statements as a result of the Registrant's reincorporation in the State of Florida from the State of Delaware (the Reincorporation).

In connection with the Reincorporation, the Company assumed the 1998 Incentive Stock Plan, the Director Fee Share Purchase Program, the 2007 Incentive Compensation Plan, the MarineMax 2008 Employee Stock Purchase Plan and the 2011 Stock-Based Compensation Plan (collectively, the Plans) and all of the outstanding options and equity awards under the Plans. At the effective time of the Reincorporation, each outstanding option to purchase shares of MarineMax Delaware common stock was converted into an option to purchase the same number of shares of the Registrant's common stock, with no changes in the option exercise price or other terms and conditions of such options.

In accordance with Rule 414 of the Securities Act, except as modified by this Post-Effective Amendment No. 1, the Company, as successor issuer to MarineMax Delaware, expressly adopts the Registration Statements as its own registration statements for all purposes of the Securities Act and the Exchange Act, as updated by subsequent filings under the Exchange Act. The applicable registration fees were paid at the time of the original filings of the Registration Statements.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission are incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the year ended September 30, 2014 filed on December 11, 2014;
- (b) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) since the end of the fiscal year covered by the annual report referred to in (a) above (other than the portions of these documents not deemed to be filed); and
- (c) The descriptions of the Registrant's Common Stock which are contained in the Registrant's registration statements filed under Section 12 of the Exchange Act, including any amendments or reports filed for the purpose of updating such descriptions.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 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 have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated herein by reference 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 subsequently filed document pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act which also is incorporated or is deemed to be incorporated herein by reference 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.

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 is a Florida corporation. The Florida Business Corporation Act, as amended (the "FBCA"), provides that, in general, a business corporation may indemnify any person who is or was a party to any proceeding (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 or officer of the corporation, against liability incurred in connection with such proceeding, including any appeal thereof, provided certain standards are met, including that such officer or director acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and provided further that, with respect to any criminal action or proceeding, the officer or director had no reasonable cause to believe his or her conduct was unlawful. In the case of proceedings by or in the right of the corporation, the FBCA provides that, in general, a corporation may indemnify any person who was or is a party to any such proceeding by reason of the fact that he or she is or was a director or officer of the corporation against expenses and amounts paid in settlement actually and reasonably incurred in connection with the defense or settlement of such proceedings, including any appeal thereof, provided that 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 the corporation, except that no indemnification shall be made in respect of any claim as to which such person is adjudged liable unless a court of competent jurisdiction determines upon application that such person is fairly and reasonably entitled to indemnity. To the extent that any officers or directors are successful on the merits or otherwise in the defense of any of the proceedings described above, the FBCA provides that the corporation is required to indemnify such officers or directors against expenses actually and reasonably incurred in connection therewith. However, the FBCA further provides that, in general, indemnification or advancement of expenses shall not be made to or on behalf of any officer or director if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of the action so adjudicated and constitute: (i) a violation of the criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe it was unlawful; (ii) a transaction from which the director or officer derived an improper personal benefit; (iii) in the case of a director, a circumstance under which the director has voted for or assented to a distribution made in violation of the FBCA or the corporation's articles of incorporation; or (iv) willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

Article VII of our bylaws provides that we shall indemnify and hold harmless any director, officer, employee or agent or any former director, officer, employee or agent to the fullest extent permitted by Florida law, and advance his or her expenses incurred in defending any proceeding in advance of its final disposition to the fullest extent permitted by Florida law. The Registrant has purchased insurance with respect to, among other things, any liabilities that may arise under the statutory provisions referred to above.

We have entered into separate employment agreements with certain of our officers. These agreements require us to, among other things, indemnify such officers against certain liabilities that may arise by reason of their status or service as officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit	Description
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No.

- 4.1 Articles of Incorporation of MarineMax, Inc., a Florida corporation (1)
- 4.2 Bylaws of MarineMax, Inc., a Florida corporation (2)
- 5.1 Opinion of Holland & Knight LLP

Exhibit

No.	Description
23.1	Consent of KPMG LLP
23.2	Consent of Ernst & Young LLP
23.3	Consent of Holland & Knight LLP (contained in Exhibit 5.1)
24.1	Power of Attorney (contained on signature page)

- (1) Incorporated by reference to Exhibit 3.1 to Registrant's Form 8-K dated March 20, 2015, as filed with the Commission on March 20, 2015.
- (2) Incorporated by reference to Exhibit 3.2 to Registrant's Form 8-K dated March 20, 2015, as filed with the Commission on March 20, 2015.

Item 9. Undertakings.

(a) The 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 the 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 a 20% 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 (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 the periodic 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 into this 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.

(b) The 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 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.

(c) 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 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 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, 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 Clearwater, State of Florida, on this 20th day of March, 2015.

MARINEMAX, INC.

By: /s/ William H. McGill Jr.
William H. McGill Jr.
Chairman of the Board and Chief

Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT that each individual whose signature appears below constitutes and appoints William H. McGill Jr. and Michael H. McLamb, and each of them, acting individually, as his or her true and lawful agent, proxy and attorneys-in-fact, with full power of substitution, for him or her in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting 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 connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 1 to the Registration Statements on Form S-8 has been signed by the following persons in the capacities and on the date indicated.

Signature

Position

Date

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/s/ William H. McGill Jr.
William H. McGill Jr.

Chairman of the Board, President and March 20, 2015
Chief Executive Officer

(Principal Executive Officer)

Signature	Position	Date
/s/ Michael H. McLamb Michael H. McLamb	Executive Vice President, Chief Financial Officer, Secretary, and Director (Principal Accounting and Financial Officer)	March 20, 2015
/s/ Frances L. Allen Frances L. Allen	Director	March 20, 2015
/s/ Hilliard M. Eure III Hilliard M. Eure III	Director	March 20, 2015
/s/ Clint Moore Clint Moore	Director	March 20, 2015
/s/ Charles R. Oglesby Charles R. Oglesby	Director	March 20, 2015
/s/ Joseph A. Watters Joseph A. Watters	Director	March 20, 2015
/s/ Dean S. Woodman Dean S. Woodman	Director	March 20, 2015

EXHIBIT INDEX
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As required by Rule 13a-15(d) under the Exchange Act, our management, including our Chief Executive Officer and Chief Financial Officer, has evaluated our internal controls over financial reporting to determine whether any changes occurred during the quarter covered by this Quarterly Report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Based on that evaluation, there has been no such change during the quarter covered by this Quarterly Report.

PART II. OTHER INFORMATION**ITEM 1. LEGAL PROCEEDINGS**

(\$ in thousands)

On June 24, 2009, a class action lawsuit, Shahrzad Tahvilian, et al. v. Steve Madden Retail, Inc. and Steve Madden, Ltd., Case No. BC 414217, was filed in the Superior Court of California, Los Angeles County, against the Company and its wholly-owned subsidiary alleging violations of California labor laws. The parties submitted the dispute to private mediation and, on August 31, 2010, reached a settlement on all claims. Based on the proposed settlement, the Company increased its reserve for this claim from \$1,000 to \$2,750 in the third quarter of 2010. In June of 2011, the court approved the final settlement for \$1,968. The payment of the final settlement did not have a material effect on the Company's financial position.

On August 10, 2005, following the conclusion of an audit of the Company conducted by auditors for U.S. Customs and Border Protection (“U.S. Customs”) during 2004 and 2005, U.S. Customs issued a report that asserts that certain commissions that the Company treated as “buying agents’ commissions” (which are non-dutiable) should be treated as “selling agents’ commissions” and hence are dutiable. Subsequently, U.S. Immigration and Customs Enforcement notified the Company’s legal counsel that a formal investigation of the Company’s importing practices had been commenced as a result of the audit. In September of 2007, U.S. Customs notified the Company that it had finalized its assessment of the underpaid duties at \$1,400. The Company, with the advice of legal counsel, evaluated the liability in the case, including additional duties, interest and penalties, and believed that it was not likely to exceed \$3,045, and accordingly, a reserve for this amount was recorded as of December 31, 2009. The Company contested the conclusions of the U.S. Customs audit and filed a request for review and issuance of rulings thereon by U.S. Customs Headquarters, Office of Regulations and Rulings, under internal advice procedures. On September 20, 2010, the Company was advised by legal counsel that U.S. Customs had issued a ruling in the matter, concluding that the commissions paid by the Company pursuant to buying agreements entered into by the Company and one of its two buying agents under review were bona fide buying-agent commissions and, therefore, were non-dutiable. With respect to the second buying agent, U.S. Customs also ruled that beginning in February of 2002, commissions paid by the Company were bona fide buying agent commissions and, therefore, were non-dutiable. However, U.S. Customs found that the Company’s pre-2002 buying agreements with the second agent were legally insufficient to substantiate a buyer-buyer’s agent relationship between the Company and the agent and that commissions paid to the second agent under such buying agreements, in fact, were dutiable. The Company is reviewing the ruling, its consequences and the Company’s options with its legal counsel. On the basis of the U.S. Customs ruling, the Company reevaluated the liability in the case and believes that it is not likely to exceed \$1,248 and the reserve was reduced from \$3,045 to such amount as of September 30, 2010.

U.S. Customs has not made a formal claim for collection of the duties allegedly owed and, as the statute of limitations for commencement of a collection claim is expiring, U.S. Customs has requested a waiver from the Company of the statute of limitations until December 5, 2013. The Company has submitted a proposed waiver of the statute of limitations to U.S. Customs in this regard the terms of which have not yet been agreed upon. If the Company and U.S. Customs do not reach agreement regarding the terms of the waiver, the statute of limitations for the commencement of a collection action will expire on December 5, 2011.

We have been named as a defendant in certain other lawsuits in the normal course of business. In the opinion of management, after consulting with legal counsel, the liabilities, if any, resulting from these matters should not have a material effect on our financial condition or results of operations. It is the policy of management to disclose the amount or range of reasonably possible losses in excess of recorded amounts.

Certain other legal proceedings in which we are involved are discussed in Note N to our Condensed Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 and in Part I Item 3 of that Annual Report. Unless otherwise indicated in this Quarterly Report, all proceedings discussed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 which are not indicated therein as having been dismissed or otherwise concluded remain outstanding.

ITEM 6. EXHIBITS

- 31.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101 The following materials from Steven Madden, Ltd.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, formatted in XBRL (Extensible Business Reporting Language): (i) the Condensed Consolidated Balance Sheets; (ii) the Condensed Consolidated Statements of Income; (iii) the Condensed Consolidated Statements of Cash Flows; and (iv) Notes to Condensed Consolidated Financial Statements, tagged as blocks of text.*

* This exhibit shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language in any filing, except to the extent the Company specifically incorporates it by reference.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized.

DATE: November 9, 2011

STEVEN MADDEN, LTD.

By: /s/ EDWARD R. ROSENFELD
Edward R. Rosenfeld
Chairman and Chief Executive Officer

By: /s/ ARVIND DHARIA
Arvind Dharia
Chief Financial Officer and Chief Accounting Officer

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