

BRINKER INTERNATIONAL INC

Form S-8

January 30, 2009

As Filed With The Securities And Exchange Commission on January 30, 2009

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

Brinker International, Inc.

(Exact name of issuer as specified in its charter)

Delaware

(State of incorporation)

75-1914582

(I.R.S. employer identification no.)

6820 LBJ Freeway

Dallas, Texas

(Address of principal executive office)

75240

(Zip code)

Stock Option and Incentive Plan

1999 Stock Option and Incentive Plan for Non-Employee

Directors and Consultants

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(Full title of the plans)

Roger F. Thomson

Executive Vice President and General Counsel

Brinker International, Inc.

6820 LBJ Freeway

Dallas, Texas 75240

(972) 980-9917

(Name, address and telephone number, including area code, of agent for service)

APPROXIMATE DATE OF PROPOSED COMMENCEMENT OF SALES PURSUANT TO THE PLAN: Sales to the purchasers of securities proposed to be registered hereunder will occur from time to time after the effective date of this Registration Statement.

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, \$0.10 par value	2,746,363(1)	\$11.57(2)	\$31,775,419.91(2)	\$1,248.77

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this Registration Statement also covers shares of common stock of the registrant issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Estimated in accordance with Rule 457(c) and (h) under the Securities Act of 1933, as amended, solely for purposes of calculating the registration fee, based on the average of the high and low prices of the registrant's common stock on January 26, 2009, as reported on the New York Stock Exchange.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified by Item 1 (Plan Information) and Item 2 (Registrant Information and Employee Plan Annual Information) of Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the 1933 Act), and the introductory Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The documents listed (i) through (iii) below are hereby incorporated by reference into this Registration Statement. All documents subsequently filed by the registrant pursuant to Section 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the 1934 Act) prior to 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 herein and to be a part hereof from the date of filing of such documents.

(i) The registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the 1934 Act or the latest prospectus filed pursuant to Rule 424(b) under the 1933 Act, which contains, either directly or by incorporation by reference, audited financial statements for the registrant's latest fiscal year for which such statements have been filed.

(ii) All other reports filed pursuant to Section 13(a) and 15(d) of the 1934 Act since the end of the fiscal year covered by the annual report or the prospectus referred to in (i) above.

(iii) The description of the registrant's Common Stock, \$.10 par value (Common Stock), which is contained in the Company's latest registration statement filed under the 1934 Act, including any amendments or reports filed for the purpose of updating such description.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Officers and Directors.

Section 145 of the Delaware General Corporation Law permits indemnification against expenses, fines, judgments and settlements incurred by any director, officer or employee of a company in the event of pending or threatened civil, criminal, administrative or investigative proceedings, if such person was, or was threatened to be made, a party by reason of the fact that he is or was a director, officer or employee of the company. Section 145 also provides that the indemnification provided for therein shall not be deemed exclusive of any other rights to which those seeking indemnification may otherwise be entitled.

Article Ninth of the registrant's Certificate of Incorporation provides that no director shall be liable to the registrant or its stockholders for monetary damages for breach of fiduciary duty, provided that the liability of a director is not eliminated or limited (i) for any breach of the director's duty of loyalty to the registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) any transaction from which such director derived an improper personal benefit.

Article VI, Section 2 of the registrant's bylaws provides, in general, that the registrant shall indemnify its directors and officers under the circumstances defined in Section 145. The registrant has obtained an insurance policy insuring the directors and officers of the registrant against certain liabilities, if any, that arise in connection with the performance of their duties on behalf of the registrant and its subsidiaries. The registrant has entered into agreements with its directors and officers indemnifying such directors and officers against certain liabilities arising out of their service as directors and officers of the registrant.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

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| 5 | Opinion of Hallett & Perrin, P.C. (1) |
| 23(a) | Consent of KPMG LLP. (1) |
| 23(b) | Consent of Hallett & Perrin, P.C. (included as part of Exhibit 5). |
| 24 | Power of Attorney (see signature page of this Registration Statement). |
| 99(a) | Registrant's Stock Option and Incentive Plan. (2) |
| 99(b) | Registrant's 1999 Stock Option and Incentive Plan for Non-Employee Directors and Consultants (3) |

(1) Filed herewith.

(2) Filed as Appendix A to the Proxy Statement of Registrant dated September 11, 2008, and incorporated by reference herein.

(3) Filed as an exhibit to quarterly report on 10-Q for the quarter ended December 28, 2005, and incorporated by reference herein.

Item 9. Undertakings.

(1) The undersigned registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement to:

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

(ii) 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 this registration statement;

(iii) Include any material information on the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that (i) and (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 by the registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference in this registration statement.

(b) That, for the purpose of determining any liability under the 1933 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 the time shall be deemed to be the initial bona fide offering thereof; and

(c) 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.

(2) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the 1934 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.

(3) Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the certificate of incorporation or bylaws of the registrant 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 1933 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 Dallas and the State of Texas, on the 29th day of January, 2009.

BRINKER INTERNATIONAL, INC.

By: /s/ Douglas H. Brooks
Douglas H. Brooks
Chairman of the Board, President
and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below hereby constitutes and appoints Douglas H. Brooks and Charles M. Sonsteby, and each of them, each with full power to act without the other, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments to this Registration Statement, and to file the same with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each of said attorneys-in-fact and agents 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 to all intents and purposes as he or she might or could do in person hereby ratifying and confirming that each of said attorneys-in-fact and agents or his substitutes may lawfully do or cause to be done by virtue hereof.

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Pursuant to the requirements of the 1933 Act, this registration statement has been signed below by the following persons in the capacities and on January 29, 2009.

Signature	Title
/s/Douglas H. Brooks Douglas H. Brooks	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)
/s/Charles M. Sonsteby Charles M. Sonsteby	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Harriet Edelman Harriet Edelman	Director
/s/ Marvin J. Girouard Marvin J. Girouard	Director
/s/ Ronald Kirk Ronald Kirk	Director
/s/ John W. Mims John W. Mims	Director
/s/ George R. Mrkonic George R. Mrkonic	Director
/s/ Erle Nye Erle Nye	Director
/s/James E. Oesterreicher James E. Oesterreicher	Director
/s/ Rosendo G. Parra Rosendo G. Parra	Director
/s/ Cece Smith Cece Smith	Director

INDEX TO EXHIBITS

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- * Filed herewith.