

INTERFACE INC
Form S-8
November 29, 2004

As filed with the Securities and Exchange Commission on November 29,
2004.

File No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

INTERFACE, INC.

(Exact Name of Issuer as Specified in its Charter)

Georgia

(State or Other Jurisdiction of
Incorporation or Organization)

58-1451243

(I.R.S. Employer
Identification Number)

Suite 2000

**2859 Paces Ferry Road
Atlanta, Georgia 30339**

(Address and Zip Code of Principal Executive Offices)

INTERFACE, INC. NONQUALIFIED SAVINGS PLAN II

(Full Title of the Plan)

Raymond S. Willoch, Esquire

**Senior Vice President-Administration, General Counsel and Secretary
INTERFACE, INC.**

Suite 2000

**2859 Paces Ferry Road
Atlanta, Georgia 30339**

(770) 437-6800

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

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Unit | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|----------------------------|---|---|-------------------------------|
| Deferred Compensation Obligations (1) | \$15,000,000 (2) | 100% | \$15,000,000 (2) | \$1,900.50 |

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(1) The Deferred Compensation Obligations are unsecured obligations of Interface, Inc. to pay deferred compensation in the future in accordance with the terms of the Interface, Inc. Nonqualified Savings Plan II.

(2) Pursuant to Rule 416(c) promulgated under the Securities Act of 1933, as amended, this registration statement covers an indeterminate amount of Deferred Compensation Obligations to be created and offered or sold pursuant to the employee benefit plan described herein. The maximum aggregate offering price is based upon an estimate, solely for the purpose of computing the registration fee.

PART I. INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

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) promulgated under the Securities Act of 1933, as amended. Such documents and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended.

PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed by Interface, Inc. (the "Company" or the "Registrant") are incorporated by reference into this Registration Statement and are deemed to be a part hereof from the date of the filing of such documents:

- (1) The Registrant's Annual Report on Form 10-K for its fiscal year ended December 28, 2003.
- (2) All other reports of the Registrant filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, since the end of the fiscal year covered by the Registrant's Annual Report on Form 10-K for its fiscal year ended December 28, 2003.
- (3) All other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities that remain unsold.

ITEM 4. DESCRIPTION OF SECURITIES

Under the Interface, Inc. Nonqualified Savings Plan II (the "Plan"), the Company will provide eligible employees the opportunity to enter into agreements for the deferral of a specified percentage of their compensation, as defined in the Plan ("Compensation"). The obligations of the Company under such agreements to pay the deferred compensation in the future in accordance with the terms of the Plan (the "Obligations") will be unsecured general obligations of the Company. The Plan is unfunded, and Participants have no right, interest or claim in the assets of the Company, except as unsecured general creditors. The Company has established a so-called "Rabbi Trust" (domestic) to hold, invest and reinvest deferrals and contributions under the Plan. If a change of control of the Company occurs, as defined in the Plan, the Company will contribute an amount to the Rabbi Trust equal to the Obligations owed to each Participant. However, the Rabbi Trust assets will remain subject to the claims of the Company's creditors in the event of the Company's insolvency.

The description of the terms and conditions of the Obligations in this Item 4 is qualified by reference to the Plan, which is filed as Exhibit 4 to this Registration Statement and incorporated herein by reference.

The amount of compensation to be deferred by each participating employee (a "Participant") will be determined in accordance with the Plan based on elections by the Participant. The Company will make a 50% matching contribution with respect to deferrals under the Plan. The maximum matching contribution any Participant may receive is 2% of the Participant's Compensation, reduced by the maximum matching contribution the Participant could receive under the Company's 401(k) plan. Each Obligation will be payable upon termination of a Participant's employment with the Company, a specific date selected by the Participant, or the Participant's death, in accordance with the terms of the Plan. In addition, a Participant may request a withdrawal of his interest in the Obligation prior to such dates on account of a hardship (as defined by the Plan). The amount of the Company's Obligation to each Participant will be adjusted to reflect the investment experience of the investment funds in which the Participant's interest in the Obligations is deemed to be invested. The investment funds are selected by the Plan's Administrative Committee after receiving recommendations made by a professional investment advisor. Each Participant may elect among these investments funds those in which his interest in the Obligations will be deemed to be invested. The Obligations will be denominated and payable in United States dollars.

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Neither a Participant nor any other person may assign, alienate, sell, seize, sequester, transfer, pledge, or encumber his or her interest in the Obligations prior to actual payment of deferred compensation, except by will or by the laws of descent and distribution and only to the extent permitted under the Plan.

The Company reserves the right in its sole discretion to amend, suspend or terminate the Plan at any time, except that no such action shall reduce the amount already credited in a Participant's Account without the consent of the person affected.

The Obligations are not convertible into another security of the Company. The Obligations will not have the benefit of a negative pledge or any other affirmative or negative covenant on the part of the Company.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Certain legal matters with respect to the validity of the obligations being registered hereby will be passed on for the Company by Kilpatrick Stockton LLP. Certain partners of Kilpatrick Stockton LLP own shares of the common stock of the Company.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

As provided under Georgia law, the Registrant's Articles of Incorporation, as amended, provide that a director shall not be personally liable to the Registrant or its shareholders for monetary damages for breach of duty of care or any other duty owed to the Registrant as a director, except that such provision shall not eliminate or limit the liability of a director (1) for any appropriation, in violation of his duties, of any business opportunity of the Registrant, (2) for acts or omissions which involve intentional misconduct or a knowing violation of law, (3) for unlawful corporate distributions, or (4) for any transaction from which the director received an improper benefit.

Under Article VII of the Registrant's Bylaws, as amended, the Registrant is authorized to indemnify its officers and directors for any liability and expense incurred by them in connection with or resulting from any threatened, pending or completed legal action or other proceeding or investigation by reason of his being or having been an officer or director. An officer or director may only be indemnified if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Registrant, and, with respect to a criminal matter, he did not have reasonable cause to believe that his conduct was unlawful. No officer or director who has been adjudged liable for the improper receipt of a personal benefit is entitled to indemnification.

Any officer or director who has been wholly successful on the merits or otherwise in an action or proceeding in his official capacity is entitled to indemnification as to expenses by the Registrant. All other determinations in respect of indemnification shall be made by either: (1) a majority vote of a quorum of disinterested directors; (2) independent legal counsel selected in accordance with the Bylaws and at the request of the Board; or (3) the holders of a majority of the Registrant's stock who at such time are entitled to vote for the election of directors.

The provisions of the Registrant's Bylaws on indemnification are consistent in all material respects with the laws of the State of Georgia, which authorize indemnification of corporate officers and directors.

The Registrant's directors and officers are insured against losses arising from any claim against them as such for wrongful acts or omissions, subject to certain limitations.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

The exhibits included as part of this Registration Statement are as follows:

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|---|
| 4 | Interface, Inc. Nonqualified Savings Plan II |
| 5 | Opinion of Kilpatrick Stockton LLP |
| 23.1 | Consent of BDO Seidman, LLP |
| 23.2 | Consent of Kilpatrick Stockton LLP (included in Exhibit 5) |
| 24 | Power of Attorney (included on 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 of 1933, as amended (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 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 (1)(i) and (1)(ii) do not apply if the Registration Statement is on Form S-3, Form S-8 or Form F-3, and 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 15(d) of the Securities Exchange Act of 1934, as amended (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, 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.

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(c) The undersigned Registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information..

(d) 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 provisions of the Articles of Incorporation or Bylaws 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.

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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 Atlanta, State of Georgia, on November 29, 2004.

| | |
|--|---|
| | <p>INTERFACE, INC.</p> <p>By: <u>/s/ Daniel T. Hendrix</u> Daniel T. Hendrix President and Chief Executive Officer</p> |
|--|---|

Each person whose signature appears below hereby constitutes and appoints Daniel T. Hendrix and Patrick C. Lynch, and either of them, his/her true and lawful attorneys-in-fact with full power of substitution and resubstitution, for him/her and in his/her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to cause the same to be filed, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby granting to said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing whatsoever requisite and desirable to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all acts and things that said attorneys-in-fact and agents, or their substitutes or substitute, 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 indicated, on November 29, 2004.

| <u>Signature</u> | <u>Title</u> |
|---|--|
| <u>/s/ Daniel T. Hendrix</u> Daniel T. Hendrix | President, Chief Executive Officer and Director (Principal Executive Officer) |
| <u>/s/ Patrick C. Lynch</u> Patrick C. Lynch | Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) |
| <u>/s/ Ray C. Anderson</u> Ray C. Anderson | Chairman of the Board |
| <u>Edward C. Callaway</u> | Director |

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|--|----------|
| <hr/> | Director |
| Dianne Dillon-Ridgley | |
| <hr/> | Director |
| /s/ Carl I. Gable Carl I. Gable | |
| <hr/> | Director |
| June M. Henton | |
| <hr/> | Director |
| Christopher G. Kennedy | |
| <hr/> | Director |
| /s/ J. Smith Lanier, II J. Smith Lanier, II | |
| <hr/> | Director |
| /s/ James B. Miller, Jr. James B. Miller, Jr. | |
| <hr/> | Director |
| Thomas R. Oliver | |
| <hr/> | Director |
| /s/ Clarinus C. Th. Van Andel Clarinus C. Th. Van Andel | |

EXHIBIT INDEX

TO

REGISTRATION STATEMENT ON FORM S-8

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