

MILLER INDUSTRIES INC /TN/
Form S-8
August 12, 2005

AS FILED WITH THE SECURITIES AND EXCHANGE
COMMISSION ON AUGUST 12, 2005

REGISTRATION NO.
333-_____

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON DC 20549**

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

MILLER INDUSTRIES, INC.
(Exact Name of Registrant as Specified in Its Charter)

Tennessee
(State or Other Jurisdiction of
Incorporation or Organization)

**8503 Hilltop Drive
Ooltewah, Tennessee 37363
(678) 987-1700**
(Address of Principal Executive Offices)

62-1566286
(I.R.S. Employer
Identification number)

2005 EQUITY INCENTIVE PLAN
(Full Title of the Plan)

Frank Madonia, Esq.
Vice President, Secretary and General Counsel
**8503 Hilltop Drive
Ooltewah, Tennessee 37363
(423) 238-4171**
(Name, Address and Telephone Number of Agent for Service)

Copies To:

David A. Stockton, Esq.
Kilpatrick Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
(404) 815-6500

CALCULATION OF REGISTRATION FEE

Title of Each Class Of Securities To Be Registered	Amount To Be Registered⁽¹⁾	Proposed Maximum Offering Price Per Share⁽²⁾	Proposed Maximum Aggregate Offering Price⁽²⁾	Amount of Registration Fee⁽²⁾
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Common Stock	1,800,000	\$14.00	\$25,200,000	\$2,966.04
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- (1) The number of shares of Common Stock available for grant under the Registrant's 2005 Equity Incentive Plan is equal to 1,100,000 shares plus the number of shares subject to grants under the Registrant's 1994 Stock Option Plan that were outstanding on the effective date of the 2005 Equity Incentive Plan, and that expire, are forfeited or otherwise terminate without delivery of shares; provided, however, that the maximum number of shares of Common Stock that may at any time be subject to grants under the 2005 Equity Incentive Plan is the lesser of 1,800,000 shares and 15% of the aggregate number of shares of the Registrant's Common Stock that are issued and outstanding. In addition, pursuant to Rule 416 of the Securities Act of 1933, this Registration Statement also relates to such indeterminate number of additional shares of Common Stock of the Registrant as may be issuable in the event of a stock split, stock dividend or similar transaction.
- (2) Determined in accordance with Rule 457(h) of the Securities Act of 1933 based on the average of the high and low prices per share of the Common Stock on the NYSE on August 9, 2005.
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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 participants in the Registrant's 2005 Equity Incentive Plan as specified by Rule 428(b)(1) promulgated under the Securities Act of 1933, as amended (the "Securities Act"). 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 reports have been filed with the Securities and Exchange Commission (the "Commission") by the Registrant and are incorporated herein by reference, to the extent not superseded by reports or other information subsequently filed or furnished:

- the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004, filed with the Commission on March 14, 2005;
- Amendment No. 1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2004, filed with the Commission on May 2, 2005;
- the Registrant's Quarterly Reports on Form 10-Q for the for the quarterly periods ended March 31, 2005 and June 30, 2005, filed with the Commission on May 10, 2005 and August 9, 2005, respectively;
- all other reports filed with the Commission by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since December 31, 2004; and
- the description of the Registrant's Common Stock set forth in its Registration Statement filed under Section 12 of the Securities Exchange Act on Form 8-A, file number 34-14124, including any amendment or report filed with the Commission for the purpose of updating such description.

In addition, all of the Registrant's reports filed with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement and prior to filing 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 in this Registration Statement and to be part hereof from the date of filing of such reports.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein 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 which also is or deemed to be incorporated by reference herein modifies or supersedes such 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.

None.

Item 6. Indemnification of Directors and Officers.

The Tennessee Business Corporation Act (the "TBCA") authorizes corporations to limit or eliminate the personal liability of directors to corporations and their shareholders for monetary damages for breaches of certain of the directors' fiduciary duties. In general, the duty of care requires that a director exercise his judgment in good faith on an informed basis, and in a manner he reasonably believes to be in the best interests of the corporation. Absent the limitations now authorized by the TBCA, directors are accountable to corporations and their shareholders for monetary damages only for conduct constituting gross negligence in the exercise of their duty of care. Although the statute does not change the directors' duty of care, it enables corporations to limit available relief to equitable remedies such as injunction or rescission.

The Registrant's charter limits the liability of the Registrant's directors (in their capacity as directors but not in their capacity as officers) to the Registrant and its shareholders to the fullest extent permitted by the laws of the State of Tennessee, as so amended. Specifically, a director will not be personally liable to the Registrant or its shareholders for monetary damages for breach of such director fiduciary duty as a director, except for liability for (1) any breach of the director's duty of loyalty, (2) any acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) unlawful distributions, or (4) receipt of an improper personal benefit. The Registrant's charter provides that if the TBCA is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of the Registrant's directors will be eliminated or limited to the fullest extent permitted by the law, as so amended.

The inclusion of this provision in the Registrant's charter may have the effect of reducing the likelihood of derivative litigation against directors and may discourage or deter shareholders or management from bringing a lawsuit against directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited the Registrant and its shareholders.

The Registrant has also entered into indemnification agreements with its directors and executive officers, pursuant to which the Registrant has agreed to hold harmless and indemnify such persons to the fullest extent authorized or permitted by the provisions of the TBCA, as may be amended from time to time. Subject to certain exceptions set forth in the indemnification agreements, the Registrant has further agreed in the indemnification agreements to hold harmless and indemnify the director or executive officer against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually incurred by such person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of the Registrant) to which such person is, was or at any time becomes a party, or is threatened to be made a party, by reason of the fact that such person is, was or at any time becomes a director, officer, employee or agent of the Registrant, or is or was serving or at any time serves at the request of the Registrant as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnification agreements also provide for contribution by the Registrant to the extent full indemnification is not available in certain circumstances, and advancement to the director or executive officer of monies to pay expenses in connection with actions, suits and proceedings.

In addition, the Registrant carries insurance on behalf of directors and officers that may cover liabilities under the Securities Act.

Insofar as indemnification for liabilities, arising under the Securities Act of 1933 may be permitted to the Registrant's directors, officers and shareholders 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.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description
4.1	Charter, as amended, of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K, filed with the Commission on April 22, 2002)
4.2	Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1, filed with the Commission in August 1994)
4.3	2005 Equity Incentive Plan (incorporated by reference to Appendix B to the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Commission on May 2, 2005)
5.1	Opinion and Consent of Kilpatrick Stockton LLP*
23.1	Consent of Joseph Decosimo and Company, PLLC*
23.2	Consent of Kilpatrick Stockton LLP (included in Exhibit 5)*
24.1	Power of Attorney (see signature page)*

* Filed herewith.

Item 9. Undertakings.

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made of the securities registered hereby, 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;

(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 a 20 percent 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) 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 Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 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 Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this 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 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 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.
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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, on this 12 day of August, 2005.

MILLER INDUSTRIES, INC.

By: /s/ Jeffrey I. Badgley
Jeffrey I. Badgley, President,
Co-Chief Executive Officer and Director

Know all men by these presents, that each person whose signature appears below constitutes and appoints Jeffrey I. Badgley as attorney-in-fact, with power of substitution, for him in any and all capacities, to sign any amendments to this Registration Statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact may 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 the 12 day of August, 2005.

Signature	Title
<u>/ s / W i l l i a m G . M i l l e r</u> William G. Miller	Chairman of the Board of Directors and Co-Chief Executive Officer
<u>/ s / J e f f r e y I . B a d g l e y</u> Jeffrey I. Badgley	President, Co-Chief Executive Officer and Director
<u>/ s / J . V i n c e n t M i s h</u> J. Vincent Mish	Executive Vice President, Treasurer and Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/ s / A . R u s s e l l C h a n d l e r , I I I</u> A. Russell Chandler, III	Director
<u>/ s / P a u l E . D r a c k</u> Paul E. Drack	Director
<u>/ s / R i c h a r d H . R o b e r t s</u> Richard H. Roberts	Director