

Wingstop Inc.
Form S-8
June 22, 2015

As filed with the Securities and Exchange Commission on June 22, 2015

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

WINGSTOP INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of

Incorporation or Organization)

5501 LBJ Freeway, 5th Floor,

47-3494862
(I.R.S. Employer

Identification Number)

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Dallas, Texas 75240

(Address of Principal Executive Offices) (Zip Code)

Wingstop Inc. 2015 Omnibus Incentive Compensation Plan

Wing Stop Holding Corporation 2010 Stock Option Plan

(Full Title of the Plan)

Charles R. Morrison

President and Chief Executive Officer

5501 LBJ Freeway, 5th Floor,

Dallas, Texas 75240

(972) 686-6500

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

Copies to:

Keith M. Townsend

King & Spalding LLP

1180 Peachtree Street

Atlanta, Georgia 30309

(404) 572-4600

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 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, par value \$0.01 per share | 2,143,589(1) | \$28.10(2) | \$60,234,850.90(2) | \$6,999.29(2) |
| Common Stock, par value \$0.01 per share | 1,127,560(3) | \$3.83(4) | \$4,318,554.80(4) | \$501.82(4) |
| TOTAL | 3,271,149 | | \$64,553,405.70 | \$7,501.11 |

- (1) Registered shares are comprised of 2,143,589 shares that may be issued under the Wingstop Inc. 2015 Omnibus Incentive Compensation Plan. Any additional shares of common stock of Wingstop Inc. to be issued as a result of stock dividends, stock splits or similar transactions shall be covered by this Registration Statement as provided in Rule 416(a) under the Securities Act of 1933.
- (2) Calculated in accordance with Rule 457(h) under the Securities Act of 1933 solely for the purpose of calculating the registration fee, which is based on the average of the high and low reported market prices of the shares of common stock of Wingstop Inc. on June 18, 2015.
- (3) Registered shares are comprised of 1,127,560 shares that may be issued under the Wing Stop Holding Corporation 2010 Stock Option Plan. Any additional shares of common stock of Wingstop Inc. to be issued as a result of stock dividends, stock splits or similar transactions shall be covered by this Registration Statement as provided in Rule 416(a) under the Securities Act of 1933.
- (4) Calculated in accordance with Rule 457(h) under the Securities Act of 1933 solely for the purpose of calculating the registration fee, which is based on the weighted average of the exercise price for outstanding stock options granted under the Wing Stop Holding Corporation 2010 Stock Option Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a)

PROSPECTUS

The document(s) containing information specified by Part I of this Registration Statement will be sent or given to participants in the Wingstop Inc. 2015 Omnibus Incentive Compensation Plan and the Wing Stop Holding Corporation 2010 Stock Option Plan, as specified in Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the Commission) under the Securities Act of 1933 (the Securities Act). Such documents are not being filed with the Commission but constitute (along with the documents incorporated by reference into the Registration Statement pursuant to Item 3 of Part II hereof), a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION

STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents that Wingstop Inc. (the Company) has previously filed with the Commission are incorporated herein by reference:

- (a) The prospectus filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act relating to the Registration Statement on Form S-1, as amended (Registration No. 333-203891); and
- (b) The description of the Company's common stock, \$0.01 par value per share (the Common Stock), contained in the Company's Registration Statement on Form 8-A, filed with the Commission on June 11, 2015, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Company subsequent to the date of this Registration Statement pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in the documents incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified, superseded or replaced for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference in this Registration Statement modifies, supersedes or replaces such statement. Any such statement so modified, superseded or replaced shall not be deemed, except as so modified, superseded or replaced, to constitute a part of this Registration Statement.

No document or information deemed to be furnished and not filed in accordance with rules of the Commission shall be deemed to be incorporated herein by reference unless such document or information expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 102(b)(7) of the DGCL allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Company's amended and restated certificate of incorporation will provide for this limitation of liability.

Section 145 of the DGCL, which we refer to as Section 145, provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil,

criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

The Company's amended and restated certificate of incorporation provides that it must indemnify its directors and officers to the fullest extent authorized by the DGCL and must also pay expenses incurred in defending any such proceeding in advance of its final disposition upon delivery of an undertaking, by or on behalf of an indemnified person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified under this section or otherwise.

The Company intends to enter into indemnification agreements with each of its current directors and officers. These agreements will require it to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Company, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of the Company's amended and restated certificate of incorporation, its bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

The Company expects to maintain standard policies of insurance that provide coverage (1) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act and (2) to the Company with respect to indemnification payments that it may make to such directors and officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits listed below in the Index to exhibits are part of this Registration Statement on Form S-8 and are numbered in accordance with Item 601 of Regulation S-K.

Item 9. Undertakings.

- (a) The undersigned Company hereby undertakes:

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- (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;
 - (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;
 - (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 reports filed with or furnished to the Commission by the Company 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 Company hereby undertakes that, for the purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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 of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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 Securities Act of 1933, the Company 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, State of Texas, on June 22, 2015.

Wingstop Inc.

By: /s/ Charles R. Morrison
 Name: Charles R. Morrison
 Title: President and Chief Executive Officer

Power of Attorney

Each of the undersigned officers and directors of Wingstop Inc. hereby constitutes and appoints Charles R. Morrison, Michael F. Mravle and Jay A. Young and each of them, his true and lawful attorneys-in-fact and agents, each with full power of substitution and re-substitution, for him and in his name, place and stead, in any and all capacities, to sign the Registration Statement of Wingstop Inc. on Form S-8, and any other registration statement relating to the same offering (including any and all amendments thereto (including post-effective amendments)), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitute or substitutes, 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 set forth opposite their names and on the date indicated above.

| Signature | Title |
|--|---|
| /s/ Charles R. Morrison Charles R. Morrison | President, Chief Executive Officer and Director (Principal Executive Officer) |
| /s/ Michael F. Mravle Michael F. Mravle | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) |
| /s/ Neal K. Aronson Neal K. Aronson | Chairman of the Board of Directors |
| /s/ Sidney J. Feltenstein Sidney J. Feltenstein | Director |

/s/ Michael J. Hislop Director

Michael J. Hislop

/s/ Lawrence P. Molloy Director

Lawrence P. Molloy

/s/ Erik O. Morris Director

Erik O. Morris

/s/ Steven M. Romaniello Director

Steven M. Romaniello

INDEX TO EXHIBITS

| Exhibit Number | Description |
|---------------------------|--|
| 4.1 | Amended and Restated Certificate of Incorporation of Wingstop Inc. (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1/A (Registration No. 333-203891), filed on June 2, 2015) |
| 4.2 | Bylaws of Wingstop Inc. (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-1/A (Registration No. 333-203891), filed on June 2, 2015) |
| 4.3 | Form of Stock Certificate for Common Stock (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1/A (Registration No. 333-203891), filed on June 2, 2015) |
| 5.1 | Opinion of King & Spalding LLP |
| 10.1 | Wingstop Inc. 2015 Omnibus Incentive Compensation Plan |
| 10.2 | Wing Stop Holding Corporation 2010 Stock Option Plan |
| 23.1 | Consent of King & Spalding LLP (included as part of Exhibit 5.1) |
| 23.2 | Consent of Ernst & Young LLP, independent registered public accounting firm |
| 24.1 | Powers of Attorney (included on signature page) |