

CUMMINS INC
Form S-8
June 06, 2012

As filed with the United States Securities and Exchange Commission on June 6, 2012

Registration No. 333-_____

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

FORM S-8
REGISTRATION STATEMENT

Under
THE SECURITIES ACT OF 1933

CUMMINS INC.

(Exact name of registrant as specified in its charter)

Indiana

(State or Other Jurisdiction of
Incorporation or Organization)

500 Jackson Street

Box 3005

Columbus, Indiana 47202-3005

(Address, Including Zip Code, of Principal Executive Offices)

Cummins Inc. 2012 Omnibus Incentive Plan

(Full Title of the Plan)

35 0257090

(I.R.S. Employer
Identification No.)

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Sharon R. Barner
 Vice President General Counsel
 500 Jackson Street
 P.O. Box 3005
 Columbus, Indiana 47202-3005

COPY TO:
 Mark Sifferlen
 Vice President - Ethics & Compliance and
 Corporate Secretary
 500 Jackson Street
 P.O. Box 3005
 Columbus, Indiana 47202-3005

(812) 377-3609

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

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 definition 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 Smaller reporting company
 (Do not check if smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, Par Value \$2.50 per share	3,500,000 shares	\$94.17	\$329,595,000	\$37,772
Common Stock, Par Value \$2.50 per share (3)	4,009,467 shares	(4)	(4)	(4)
Total:	7,509,467 shares	\$94.17	\$329,595,000	\$37,772 (4)

(1) This Registration Statement covers, in addition to the number of shares of Common Stock stated above, options and other rights to purchase or acquire the shares of Common Stock covered by the prospectus of the above-named plan, and, pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), any additional shares of Common Stock which become issuable under the Cummins Inc. 2012 Omnibus Incentive Plan (the Plan) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares of Common Stock.

(2) Pursuant to Rule 457(h) and (c) promulgated under the Securities Act, the maximum offering price, per share and in the aggregate, and the registration fee were calculated based upon the average of the high and low prices of the Common Stock on May 31, 2012, as reported on the New York Stock Exchange.

(3) The number of shares issuable under the Plan has been increased by 4,009,467 shares of Common Stock (the Prior Shares) that remained available under the Cummins Inc. 2003 Stock Incentive Plan as of May 8, 2012. The Prior Shares were registered on Forms S-8 (Registration Statement Nos. 333-162796 and 333-123368), and are being transferred to the Plan.

(4) The registration fee for the Prior Shares has been previously paid under Registration Statement Nos. 333-162796 and 333-123368, and pursuant to Instruction E to Form S-8 no additional fee is paid with respect to these shares. The registration fee is calculated solely on the basis of the 3,500,000 shares to be offered for the first time under the Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents constituting Part I of this registration statement (this Registration Statement) will be sent or given to participants in the Cummins Inc. 2012 Omnibus Incentive Plan as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, filed by Cummins Inc. (hereinafter referred to as the Registrant or the Company) with the Securities and Exchange Commission (the Commission) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated herein by reference and deemed to be a part hereof:

- The Registrant's annual report on Form 10-K for the year ended December 31, 2011;
- The Registrant's quarterly report on Form 10-Q for the three months ended April 1, 2012;
- The Registrant's current reports on Form 8-K filed February 28, 2012 and May 9, 2012; and
- The description of the common stock, par value \$2.50 per share, of the Registrant (the Common Stock) contained in Item 1 of the Registrant's Registration Statement on Form 8-A dated January 8, 1987 and the amendments thereto on Form 8-K dated July 13, 1990 and on Form 8-A dated December 22, 1988, August 24, 1989, November 7, 1990, November 1, 1993, January 12, 1994 and July 15, 1996, respectively, and any other amendments or reports filed for the purpose of updating such description.

All other 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 hereby 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 the filing of such documents.

Any statement contained in a document incorporated or deemed incorporated herein by reference shall be deemed to be modified or superseded for the purpose of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is, or is deemed to be, incorporated herein by reference modifies or supersedes such statement. Any such 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.

The legal validity of the Common Stock being registered hereunder has been passed upon by Mark Sifferlen, Vice President - Ethics & Compliance and Corporate Secretary of the Company. As Vice President - Ethics & Compliance and Corporate Secretary of the Company, Mr. Sifferlen is an employee of the Company and is eligible to receive awards under and otherwise participate in the 2012 Omnibus Incentive Plan.

Item 6. Indemnification of Directors and Officers.

Article VI of the By-laws of the Company sets forth certain rights of the directors and officers of the Company to indemnification.

Section 23-1-37 of the Indiana Code provides that Indiana corporations have the power to indemnify their directors, officers, employees and agents against certain expenses and liabilities in connection with actions, suits and proceedings and the power to maintain certain insurance policies against liabilities incurred by such officers, directors, employees and agents.

The Company maintains insurance policies that provide for indemnification of directors, officers, employees and agents against certain liabilities.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits filed herewith or incorporated herein by reference are set forth in the attached Exhibit Index.

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;

(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 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 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 herein, 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.

(4) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the Registrant pursuant to

this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the Registrant relating to the offering required to be filed pursuant to Rule 424 under the Securities Act of 1933;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the Registrant or used or referred to by the Registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the Registrant or its securities provided by or on behalf of the Registrant; and

- (iv) Any other communication that is an offer in the offering made by the Registrant to the purchaser.
- (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 Exchange Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, 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.

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 Columbus, State of Indiana, on this 6th day of June, 2012.

CUMMINS INC.

By: /s/ Marsha L. Hunt

Marsha L. Hunt

Vice President Corporate Controller

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons on June 6, 2012 in the capacities indicated. Each person whose signature appears below constitutes and appoints Marya M. Rose, Mark R. Sifferlen, Marsha L. Hunt, Richard E. Harris, and Patrick J. Ward, and each of them individually, his or her true and lawful attorney-in-fact and agent, with full power of substitution and revocation, for him or her and in his or 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 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 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 all that said attorneys-in-fact and agents, or either of them, may lawfully do or cause to be done by virtue hereof.

Signature

Title

 /s/ N. Thomas Linebarger

Director and Chairman of the Board and Chief Executive Officer

N. Thomas Linebarger

(Principal Executive Officer)

 /s/ Patrick J. Ward

Vice President Chief Financial Officer

Patrick J. Ward

(Principal Financial Officer)

 /s/ Marsha L. Hunt

Vice President Corporate Controller

Marsha L. Hunt

(Principal Accounting Officer)

 /s/ Robert J. Bernhard

Director

Robert J. Bernhard

 /s/ Franklin R. Chang Diaz

Director

Franklin R. Chang Diaz

 /s/ Stephen B. Dobbs

Director

Stephen B. Dobbs

_____/s/ Robert K. Herdman_____ Director

Robert K. Herdman

_____/s/ Alexis M. Herman_____ Director

Alexis M. Herman

_____/s/ William I. Miller_____ Director

William I. Miller

_____/s/ Georgia R. Nelson_____ Director

Georgia R. Nelson

_____/s/ Carl Ware_____ Director

Carl Ware

EXHIBIT INDEX

Exhibit

Number Document Description

- 4.1 Restated Articles of Incorporation of the Company, as amended (incorporated by reference to Exhibit 3(a) to the Company's Quarterly Report on Form 10-Q for the quarter ended June 28, 2009).
- 4.2 By-laws of the Company, as amended and restated effective as of July 14, 2009 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated July 17, 2009).
- 4.3 Amendment to the By-laws of the Company, effective May 8, 2012 (incorporated by reference to Annex C to the Company's Definitive Proxy Statement on Schedule 14A filed on March 27, 2012).
- 4.4 Cummins Inc. 2012 Omnibus Incentive Plan (incorporated by reference to Annex A to the Company's Definitive Proxy Statement on Schedule 14A filed on March 27, 2012).
- 5 Opinion of Mark Sifferlen, Esq., Vice President - Ethics & Compliance and Corporate Secretary of the Company (including consent of counsel).*
- 23.1 Consent of Mark Sifferlen, Esq., Vice President - Ethics & Compliance and Corporate Secretary of the Company (filed as part of Exhibit (5)).*
- 23.2 Consent of PricewaterhouseCoopers LLP.*
- 24 Powers of Attorney (included on the signature page to this Registration Statement).

Documents incorporated by reference to filings made by the Company under the Securities Exchange Act of 1934, as amended, are under Securities and Exchange Commission File No. 001-04949.

* Filed herewith.

