

CONNS INC  
Form S-8  
May 25, 2016

As filed with the Securities and Exchange Commission on May 25, 2016

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
*Under*  
***THE SECURITIES ACT OF 1933***

**CONN S, INC**  
**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction of**  
**incorporation or organization)**

**06-1672840**  
**(I.R.S. Employer**  
**Identification No.)**

**4055 Technology Forest Blvd., Suite 210**

**The Woodlands, Texas  
(Address of principal executive offices)**

**77381  
(Zip Code)**

**Conn s, Inc. 2016 Omnibus Incentive Plan**

**(Full title of the plan)**

**Thomas R. Moran**

**Executive Vice President and Chief Financial Officer**

**4055 Technology Forest Blvd, Suite 210**

**The Woodlands, Texas 77381**

**(936) 230-5899**

**(Name, address, and telephone number of agent for service)**

***copies to:***

**Kevin P. Lewis**

**Sidley Austin LLP**

**1000 Louisiana Street, Suite 6000**

**Houston, Texas 77002**

**(713) 495-4500**

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.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company



**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be registered</b>	<b>Amount to be registered (1)</b>	<b>Proposed maximum offering price per share (2)</b>	<b>Proposed maximum aggregate offering price (2)</b>	<b>Amount of registration fee</b>
Common Stock	1,200,000	\$10.72	\$12,864,000	\$1,296

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act ) this Registration Statement shall also cover any additional shares of the Registrant's common stock in respect of the securities identified in the above table as a result of any stock dividend, stock split, recapitalization or other similar transaction.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act. The price per share and aggregate offering price are based upon \$10.72 per share, which is the average of the high and low prices of the Registrant's common stock on May 19, 2016, as quoted on the NASDAQ Global Select Market.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

Not filed as part of this Registration Statement pursuant to Note to Part 1 of Form S-8.

**Item 2. Registrant Information and Employee Plan Annual Information.**

Not filed as part of this Registration Statement pursuant to Note to Part 1 of Form S-8.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the Commission):

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended January 31, 2016, filed with the Commission on March 29, 2016;

(b) The description of the Registrant's common stock, par value \$.01 per share, contained in the Registrant's registration statement on Form 8-A (No. 000-50421), including any other amendments or reports filed for the purpose of updating such description; and

(c) In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), prior to the 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 into this Registration Statement and to be a part hereof from the date of filing of such documents.

**Item 4. Description of Securities.**

Not applicable. The class of securities to be offered is registered under Section 12 of the Exchange Act.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 102(b)(7) of the Delaware General Corporation Law, as amended, or the DGCL, provides that a certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision may not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (relating to liability for unauthorized acquisitions or redemptions of, or dividends on, capital stock) or (iv) for any transaction from which the director derived an improper personal benefit.

Section 145(a) of the DGCL empowers a corporation to indemnify any person who was or is a party or is threatened to be made a 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 the corporation) by reason of the fact that the person 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, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 145(b) of the DGCL empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was serving in any of the capacities set forth above against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification is permitted in respect of any claim, issue, or matter as to which such person is adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court deems proper.

Section 145(c) of the DGCL further provides that, to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 145(a) or 145(b) of the DGCL, or in defense of any claim, issue or matter therein, such person will be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. Section 145(d) of the DGCL provides that any indemnification under Sections 145(a) and 145(b) of the DGCL (unless ordered by a court) shall be made by a corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in Sections 145(a) and 145(b) of the DGCL. Such determination is to be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, (iii) if there are not such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders.

Section 145(f) of the DGCL provides that the indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of Section 145 of the DGCL shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 145(g) of the DGCL empowers 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, partnership, joint venture, trust or other enterprise against any such liability asserted against such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against liability under Section 145 of the DGCL.

Section 145(j) of the DGCL provides that that indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 of the DGCL shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

Article Seven of the Registrant's Certificate of Incorporation provides that the Registrant will indemnify to the fullest extent permitted by law any person who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was its director, officer, incorporator, employee, or agent, or is or was serving at its request as a director, officer, incorporator, employee, partner, trustee, or agent of another corporation, partnership, joint venture, trust, or other enterprise (including an employee benefit plan) against expenses (including counsel fees and disbursements), judgments, fines (including excise taxes assessed on a person with respect to an employee benefit plan), and amounts paid in settlement incurred by such person in connection with such proceeding. Article Seven of the Registrant's Certificate of Incorporation also requires the Registrant to pay expenses (including attorneys' fees) incurred by a director or officer in defending any proceeding in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Registrant as permitted by law. In addition, Article Seven of the Registrant's Certificate of Incorporation provides that if the DGCL is amended after the effective date of the Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of its directors shall be eliminated or limited to the fullest extent permitted by the DGCL. The Registrant has included in its Amended and Restated Bylaws provisions to indemnify its directors and officers, as permitted by the DGCL.

In accordance with Section 102(b)(7) of the DGCL, Article Eight of the Registrant's Certificate of Incorporation contains a provision eliminating the personal liability of directors except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (relating to liability for unauthorized acquisitions or redemptions of, or dividends on, capital stock), or (iv) for any transaction from which the director derived an improper personal benefit.

The Registrant has entered into indemnification agreements with its directors and certain of its officers under which the Registrant agreed to provide indemnification and expense reimbursement as outlined above.

The Registrant has obtained and expects to maintain a directors' and officers' liability insurance policy insuring its directors and officers against certain losses resulting from wrongful acts committed by them as directors and officers, including liabilities arising under the Securities Act.

The foregoing discussion of the indemnification provisions of the DGCL, the Registrant's Certificate of Incorporation and Amended and Restated Bylaws is not intended to be exhaustive and is qualified in its entirety by reference to such statute, the Registrant's Certificate of Incorporation and Amended and Restated Bylaws.

**Item 7. Exemption from Registration Claimed.**

Not applicable.



**Item 8. Exhibits.**

Exhibit Number	Description
4.1	Certificate of Incorporation of Conn s, Inc. (incorporated herein by reference to Exhibit 3.1 to Conn s, Inc. registration statement on Form S-1 (file no. 333-109046) as filed with the Securities and Exchange Commission on September 23, 2003)
4.2	Certificate of Amendment to the Certificate of Incorporation of Conn s, Inc. dated June 3, 2004 (incorporated herein by reference to Exhibit 3.1.1 to Conn s, Inc. Form 10-Q for the quarterly period ended April 30, 2004 (File No. 000-50421) as filed with the Securities and Exchange Commission on June 7, 2004)
4.3	Certificate of Amendment to the Certificate of Incorporation of Conn s, Inc. dated May 30, 2012 (incorporated herein by reference to Exhibit 3.1.2 to Conn s, Inc. Form 10-Q for the quarter ended April 30, 2012 (File No. 001-34956) as filed with the Securities and Exchange Commission on June 5, 2012)
4.4	Certificate of Correction to Certificate to the Certificate of Amendment to Conn s, Inc. Certificate of Incorporation (as corrected December 31, 2013) (incorporated herein by reference to Exhibit 3.1.3 to Conn s, Inc. Form 10-K for the annual period ended January 31, 2014 (File No. 001-34956) as filed with the Securities and Exchange Commission on March 27, 2014)
4.5	Certificate of Amendment to the Certificate of Incorporation of Conn s, Inc. as filed on May 29, 2014 (incorporated herein by reference to Exhibit 3.1.4 to Conn s, Inc. Form 10-Q for the quarter ended April 30, 2014 (File No. 001-34956) as filed with the Securities and Exchange Commission on June 2, 2014
4.6	Certificate of Designations of Series A Junior Participating Preferred Stock of Conn s, Inc. (incorporated herein by reference to Exhibit 3.1 to Conn s, Inc. Current Report on Form 8-K (File No. 001-34956) filed with the Securities and Exchange Commission on October 6, 2014)
4.7	Certificate of Elimination of Designations of Series A Junior Participating Preferred Stock of Conn s, Inc., dated September 10, 2015 (incorporated by reference to Exhibit 3.1 to Conn s, Inc. Current Report on Form 8-K (File No. 001-34956) filed with the Securities and Exchange Commission on September 11, 2015)
4.8	Amended and Restated Bylaws of Conn s, Inc. effective as of December 3, 2013 (incorporated by reference to Exhibit 3.2 to Conn s, Inc. Form 10-Q for the quarter ended October 31, 2013 (File No. 001-34956) as filed with the Securities and Exchange Commission on December 6, 2013)
5.1*	Opinion of Sidley Austin LLP
23.1*	Consent of Ernst & Young LLP
23.2*	Consent of Sidley Austin LLP (included in Exhibit 5.1)
24.1*	Power of Attorney (included in signature page)
99.1*	Conn s, Inc. 2016 Omnibus Incentive Plan

\* Filed herewith.

**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 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 herein or any material change to such information herein;

*provided, however,* that paragraphs (1)(i) and (1)(ii) above 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 this 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.; and

(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, as amended (the Securities Act ), each filing of the registrant's annual report pursuant to Section 13(a) or Section 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 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) The undersigned Registrant hereby undertakes that 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 foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC 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 Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 The Woodlands, Texas, on this 25<sup>th</sup> day of May 2016.

**CONN S, INC.**

By: /s/ Norman L. Miller  
 Norman L. Miller  
 Chairman of the Board and Chief  
 Executive Officer and President

**KNOW ALL BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Norman Miller, Thomas R. Moran and Robert F. Bell and each of them, either of whom may act without joinder of the other, his or her lawful attorneys-in-fact and agents, 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 (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 such 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 and about the premises as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all said attorneys-in-fact and agents, and each of them, or the substitute or substitutes of either of them, 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 May 25, 2016.

<b>Signature</b>	<b>Title</b>
/s/ Norman L. Miller Norman L. Miller	Chairman of the Board and Chief Executive Officer and President  (Principal Executive Officer)
/s/ Thomas R. Moran Thomas R. Moran	Executive Vice President and Chief Financial Officer  (Principal Financial Officer)
/s/ Mark A. Haley Mark A. Haley	Vice President and Chief Accounting Officer  (Principal Accounting Officer)
/s/ Kelly M. Malson Kelly M. Malson	Director
/s/ Bob L. Martin Bob L. Martin	Director
/s/ Douglas H. Martin	Director

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Douglas H. Martin	
/s/ William E. Saunders Jr. William E. Saunders Jr.	Director
/s/ William (David) Schofman William (David) Schofman	Director
/s/ Oded Shein Oded Shein	Director
/s/ James H. Haworth James H. Haworth	Director