

ALAMO GROUP INC
Form S-8
June 07, 2011

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

ALAMO GROUP INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation
or Organization)

74-1621248
(I.R.S. Employer
Identification Number)

1627 East Walnut
Seguin, Texas
(Address of Principal Executive Offices)

78155
(Zip Code)

Alamo Group Inc. 2009 Equity Incentive Plan

(Full Title of the Plan)

Ronald A. Robinson, President

Alamo Group Inc.

1627 East Walnut

Seguin, Texas 78155

(Name and Address of Agent for Service)

(830) 379-1480

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

Indicate by check mark whether registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition 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 Smaller reporting company **CALCULATION OF REGISTRATION FEE**

| Title of Securities To Be Registered | Amount to be Registered ¹ | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|--------------------------------------|---|---|----------------------------|
| Common Stock, \$0.10 Par Value Per Share | 63,250 ² | \$19.53 ² | \$1,235,283 ² | \$143.42 |
| Common Stock, par value \$0.10 per share | 327,000 ³ | \$24.65 ³ | \$8,058,915 ³ | \$935.64 |
| Total | 390,250 | N/A | \$9,294,198 | \$1,079.06 |

¹ In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

² Represents shares relating to outstanding options issued under the Alamo Group Inc. 2009 Equity Incentive Plan (the "2009 Plan"). With respect to these shares, in accordance with rule 457(h) under the Securities Act of 1933, as amended (the "Securities Act"), the price per share and the aggregate offering price is calculated based on the average of the exercise price (\$19.53) of such options.

³ Represents shares issuable under the 2009 Plan not subject to outstanding options. Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and Rule 457(h) under the Securities Act, the price per share and aggregate offering price are calculated on the basis of the average of the high and low prices of the common stock as reported on the New York Stock Exchange on June 3, 2011.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information. The information required in Item 1 is included in documents sent or given to participants in the plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act).

Item 2. Registration Information and Employee Plan Annual Information. The written statement required by Item 2 is included in documents sent or given to participants in the plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Alamo Group Inc. is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the Commission). The following documents, which are on file with the Commission, are incorporated in this registration statement by reference:

(a) Alamo Group Inc. s latest annual report on Form 10-K filed pursuant to Section 13 of the Exchange Act.

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above.

(c) The description of the securities contained in Alamo Group Inc. s registration statements on Form S-3 filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by Alamo Group Inc. 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 in this registration statement and to be part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is 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.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Under Article Eight of its Certificate of Incorporation, Alamo Group Inc. is required to indemnify any person who at any time is, or shall have been, a director or officer of Alamo Group Inc. to the full extent permitted by Section 145 of the Delaware General Corporation Law, as such Section may be amended from time to time. Section 145 of the General Corporation Law of the State of Delaware empowers Alamo Group Inc. to indemnify, subject to the standards and limitations set forth therein, any person in connection with any action, suit or proceeding brought or threatened by reason of the fact that such person is or was a Director, officer, employee or agent of Alamo Group Inc. or is or was serving in such capacity with respect to another corporation or other enterprise at the request of Alamo Group Inc..

Under Section 1 of Article Six of the Bylaws of Alamo Group Inc., Alamo Group Inc. is required to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of Alamo Group Inc.), by reason of the fact that such person is or was a director, officer, employee or agent of Alamo Group Inc., or is or was serving at the request of Alamo Group Inc. as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of Alamo Group Inc. and, with respect to any criminal action or proceeding, that he had no reasonable cause to believe his conduct was unlawful.

Under Section 2 of Article Six of the Bylaws of Alamo Group Inc., Alamo Group Inc. also is required to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action or suit by or in the right of Alamo Group Inc. to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of Alamo Group Inc., or is or was serving at the request of Alamo Group Inc. as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise if he acted in good faith and in a manner he reasonably believed to be in the best interests of Alamo Group Inc., except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to Alamo Group Inc., unless and only to the extent that the court in which such action or suit was brought shall determine 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 such court shall deem proper.

Any indemnification under Section 1 or 2 of Article Six of the Bylaws of Alamo Group Inc. shall be made by Alamo Group Inc. only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct described in such sections. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written

opinion, or (iii) by the stockholders.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit 5.1 Opinion of Oppenheimer, Blend, Harrison & Tate, Inc.

Exhibit 23.2 Consent of KPMG LLP

Exhibit 23.3 Consent of Ernst & Young LLP

Exhibit 99.1 Alamo Group Inc. 2009 Equity Incentive Plan

Item 9. Undertakings.

1. Item 512(a) of Regulation S-K. 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;

(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; 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 (i) and (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, 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.

2. *Item 512(b) of Regulation S-K.* 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 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.

3. *Item 512(h) of Regulation S-K.* 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 Securities and Exchange 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.

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 Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Seguin, Texas, on this 6th day of June, 2011.

ALAMO GROUP INC.

By: /s/ Ronald A. Robinson
Ronald A. Robinson, President and
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|-------------------------------|--|--------------|
| <u>/s/ James B. Skaggs</u> | | |
| James B. Skaggs | Chairman of the Board and Director | June 6, 2011 |
| <u>/s/ Ronald A. Robinson</u> | | |
| Ronald A. Robinson | President, Chief Executive Officer and Director (Principal Executive Officer) | June 6, 2011 |
| <u>/s/ Dan E. Malone</u> | | |
| Dan E. Malone | Executive Vice President, Chief Financial Officer (Principal Financial Officer) | June 6, 2011 |
| <u>/s/ Richard J. Wehrle</u> | | |
| Richard J. Wehrle | Vice President and Controller (Principal Accounting Officer) | June 6, 2011 |

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/s/ Helen W. Cornell Director June 6, 2011

Helen W. Cornell

/s/ Jerry E. Goldress Director June 6, 2011

Jerry E. Goldress

/s/ David W. Grzelak Director June 6, 2011

David W. Grzelak

/s/ Gary L. Martin Director June 6, 2011

Gary L. Martin

INDEX TO EXHIBITS

| <u>Number</u> | <u>Description</u> |
|----------------------|---|
| 3.1(1) | Certificate of Incorporation, as amended, of Alamo Group Inc. |
| 3.2(2) | By-Laws of Alamo Group Inc. as amended |
| 5.1 | Opinion of Oppenheimer, Blend, Harrison & Tate, Inc., counsel to Alamo Group Inc. |
| 23.1 | Consent of Oppenheimer, Blend, Harrison & Tate, Inc. (included in Exhibit 5.1) |
| 23.2 | Consent of KPMG LLP |
| 23.3 | Consent of Ernst & Young LLP |
| 99.1 | Alamo Group Inc. 2009 Equity Incentive Plan |

(1) Incorporated by reference to the Form S-1 of Alamo Group Inc. filed February 5, 1993.

(2) Incorporated by reference to the Form 10-K of Alamo Group Inc. filed March 10, 2009.

