

ACTIVISION INC /NY
Form S-8
October 01, 2007

As filed with the Securities and Exchange Commission on October 1, 2007.

Registration No. 333-

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

ACTIVISION, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

95-4803544
(I.R.S. Employer
Identification No.)

3100 Ocean Park Boulevard
Santa Monica, California 90405
(Address of principal executive offices)

ACTIVISION, INC. 2007 INCENTIVE PLAN
(Full title of the plan)

George L. Rose
Secretary
Activision, Inc.
3100 Ocean Park Boulevard
Santa Monica, California 90405

(Name and address of agent for service)

(310) 255-2000
(Telephone number, including area code,
of agent for service)

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)
Common Stock, par value \$0.01 per share (3)	17,685,577	\$ 21.22	\$ 375,199,516	\$ 11,519

- (1) Represents shares issuable pursuant to the Activision, Inc. 2007 Incentive Plan (the "Plan"). Pursuant to Rule 416, there are also registered hereunder such indeterminate number of additional shares as may become available for issuance pursuant to the Plan as a result of the antidilution provisions contained therein.
- (2) The registration fee with respect to these shares has been computed in accordance with paragraphs (c) and (h) of Rule 457, based upon the average of the daily high and low prices of shares of the common stock on September 27, 2007, as reported by The Nasdaq Stock Market, Inc.
- (3) One preferred stock purchase right (a "Right") will also be issued with respect to each share of Common Stock. The terms of the Rights are described in Activision, Inc.'s Registration Statement on Form 8-A, File No. 001-15839, filed on April 19, 2000.

EXPLANATORY NOTE

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The information called for by Part I of Form S-8 is included in the description of the Activision, Inc. 2007 Incentive Plan (the Plan) to be delivered to persons acquiring shares pursuant to the Plan. Pursuant to the Note to Part I of Form S-8, this information is not being filed with or included in this registration statement on Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by Activision, Inc. (the Company) with the Securities and Exchange Commission (the Commission), are incorporated by reference into this registration statement on Form S-8:

- (a) Annual report on Form 10-K for the fiscal year ended March 31, 2007;

- (b) (i) Quarterly report on Form 10-Q for the fiscal quarter ended June 30, 2007;

- (ii) The following current reports on Form 8-K:

dated March 31, 2007 and filed with the Commission on April 5, 2007;

dated May 3, 2007 and filed with the Commission on May 3, 2007;

dated May 31, 2007 and filed with the Commission on June 1, 2007;

dated June 7, 2007 and filed with the Commission on June 7, 2007;

dated June 13, 2007 and filed with the Commission on June 19, 2007;

dated July 11, 2007 and filed with the Commission on July 17, 2007; and

dated August 2, 2007 and filed with the Commission on August 2, 2007;

but in each case excluding all information that is furnished and not filed therewith; and

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(c) The description of the Company's common stock, par value \$0.000001 per share, contained in the Company's Registration Statement on Form 8-A, File No. 000-12699, filed on July 23, 1984, and the description of the preferred stock purchase rights contained in the Company's Registration Statement on Form 8-A, File No. 001-15839, filed on April 19, 2000, and any amendment or report filed for the purpose of updating either such description.

In addition, all documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 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 into this registration statement on Form S-8 and to be a part hereof from the date of filing of such documents. Any statement contained in later-dated documents supplements, modifies or supersedes statements contained in earlier-dated documents.

Item 6. Indemnification of Directors and Officers.

The Company's certificate of incorporation limits the liability of the Company's directors to the fullest extent permitted by the General Corporation Law of the State of Delaware (the "DGCL"). The DGCL provides that a corporation may limit the personal liability of its directors for monetary damages for breach of that individual's fiduciary duties as a director except for liability for any of the following: (a) a breach of the director's duty of loyalty to the corporation or its stockholders; (b) any act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (c) certain unlawful payments of dividends or unlawful stock repurchases or redemptions; or (d) any transaction from which the director derived an improper personal benefit.

Section 145 of the DGCL generally provides that a corporation may indemnify directors and officers against attorneys' fees and other judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed action, suit or proceeding in which such person was or is a party or is threatened to be made a party by reason of such person being or having been a director, officer, employee or agent of the corporation. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of stockholders or disinterested directors, or otherwise.

The Company's certificate of incorporation and by-laws provide that any officer or director of the Company who, by reason of the fact that he or she is an officer or director of the Company, is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal or investigative (hereinafter a "proceeding") will be indemnified by the Company to the fullest extent permitted by the DGCL. The by-laws further provide officers and directors a right to advancement of expenses prior to the final disposition of a proceeding.

The Company maintains a directors' and officers' insurance policy which insures the officers and directors of the Company from any claim arising out of an alleged wrongful act by such persons in their respective capacities as officers and directors of the Company.

In addition, the Company has entered into agreements with certain of its directors and officers that require the Company, among other things, to indemnify such persons against certain liabilities that may arise by reason of their status or service as directors or officers and, in some cases, to advance expenses incurred by them as a result of any proceeding against them as to which they could be indemnified.

The Commission takes the position that indemnification of directors, officers and controlling persons against liabilities arising under the Securities Act of 1933 is against public policy as expressed in the Securities Act of 1933 and therefore is unenforceable.

Item 8. Exhibits.

The following is a list of all exhibits filed as a part of this registration statement on Form S-8, including those incorporated herein by reference.

**Exhibit
Number**

Description of Exhibit

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- 3.1 Amended and Restated Certificate of Incorporation of Activision Holdings, Inc., dated June 9, 2000 (incorporated by reference to Exhibit 2.5 of the Company's Form 8-K, filed June 16, 2000).
- 3.2 Certificate of Amendment of Amended and Restated Certificate of Incorporation of Activision Holdings, Inc., dated as of June 9, 2000 (incorporated by reference to Exhibit 2.7 of the Company's Form 8-K, filed June 16, 2000).

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Exhibit Number	Description of Exhibit
3.3	Certificate of Designation of Series A Junior Preferred Stock of Activision, Inc. dated as of December 27, 2001 (incorporated by reference to Exhibit 3.4 of the Company's Form 10-Q for the quarter ended December 31, 2001).
3.4	Certificate of Amendment of Amended and Restated Certificate of Incorporation, as amended, of Activision, Inc., dated as of April 4, 2005 (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K, filed April 5, 2005).
3.5	Certificate of Designation of Series A Junior Preferred Stock of Activision, Inc. dated August 4, 2005 (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K, filed August 5, 2005).
3.6	Third Amended and Restated By-Laws of Activision, Inc. dated September 27, 2007.
4.1	Rights Agreement dated as of April 18, 2000, between Activision, Inc. and Continental Stock Transfer & Trust Company, which includes as exhibits the form of Right Certificates as Exhibit A, the Summary of Rights to Purchase Series A Junior Preferred Stock as Exhibit B and the form of Certificate of Designation of Series A Junior Preferred Stock of Activision as Exhibit C (incorporated by reference to the Company's Registration Statement on Form 8-A, Registration No. 001-15839, filed April 19, 2000).
5.1	Opinion of Jones Day.
23.1	Consent of Independent Registered Public Accounting Firm of PricewaterhouseCoopers LLP.
23.2	Consent of Jones Day (included in Exhibit 5.1)
24.1	Power of attorney (included on signature pages).
99.1	Activision, Inc. 2007 Incentive Plan.

Item 9. Undertakings.

A. The undersigned registrant hereby undertakes:

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 a 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% 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 this registration statement or any material change to such information in this 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 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this 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 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 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.

B. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the ~~28~~ securities

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 Securities Act of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

C. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers,

SIGNATURES

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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 Santa Monica, State of California, on this 1st day of October, 2007.

ACTIVISION, INC.

By: /s/ George L. Rose
George L. Rose
Secretary, Activision, Inc.

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 date indicated.

SIGNATURES	TITLE	DATE
/s/ Robert A. Kotick Robert A. Kotick	Chairman, Chief Executive Officer, and Director (Principal Executive Officer)	October 1, 2007
/s/ Brian G. Kelly Brian G. Kelly	Co-Chairman and Director	September 28, 2007
/s/ Michael Griffith Michael Griffith	President and Chief Executive Officer of Activision Publishing, Inc. (Principal Executive Officer of Activision, Inc.)	October 1, 2007
/s/ Thomas Tipl Thomas Tipl	Chief Financial Officer of Activision Publishing, Inc. (Principal Financial and Accounting Officer of Activision, Inc.)	October 1, 2007
/s/ Ronald Doornink Ronald Doornink	Director	October 1, 2007
/s/ Robert J. Morgado Robert J. Morgado	Director	October 1, 2007
/s/ Richard Sarnoff Richard Sarnoff	Director	October 1, 2007
/s/ Peter J. Nolan Peter J. Nolan	Director	October 1, 2007

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