

EXPEDITORS INTERNATIONAL OF WASHINGTON INC

Form S-8

May 28, 2008

As filed with the Securities and Exchange Commission on May 28, 2008

United States
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.

(Exact name of registrant as specified in its charter)

Washington

91-1069248

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

(State or other jurisdiction of
incorporation or organization)

**1015 Third Avenue, 12th Floor
Seattle, Washington 98104**

(Address of Principal Executive Offices) (Zip Code)

EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.

2008 Stock Option Plan

2008 Directors' Restricted Stock Plan

(Full title of the plans)

**Amy J. Tangeman, General Counsel
Expeditors International of Washington, Inc.
1015 Third Avenue, 12th Floor, Seattle, Washington 98104**

(Name and address of agent for service)

(206) 674-3400

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered ⁽¹⁾ | Amount to be registered | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee |
|-------------------------------------------------------------------------------------------|-------------------------|-------------------------------------------|-------------------------------------------|----------------------------|
| Common Shares reserved for issuance pursuant to the 2008 Stock Option Plan | 3,000,000 | \$45.72 ⁽²⁾ | \$137,160,000 | \$5,390.39 |
| Common Shares reserved for issuance pursuant to the 2008 Directors' Restricted Stock Plan | 200,000 | \$45.72 ⁽²⁾ | \$9,144,000 | \$359.36 |
| Total Common Shares | 3,200,000 | \$45.72 | \$146,304,000 | \$5,749.75 |

⁽¹⁾ Common Shares, \$0.01 par value, offered by the Registrant pursuant to the 2008 Stock Option Plan and 2008 Directors' Restricted Stock Plan described herein.

⁽²⁾ The proposed maximum offering price per share and the registration fee were calculated in accordance with Rule 457(c) and (h) under the Securities Act of 1933, as amended, based on the average of the high and low prices of the Registrant's Common Shares as reported by the NASDAQ Global Select Market on May 22, 2008, which was \$45.72 per share.

INTRODUCTORY STATEMENT

This registration statement on Form S-8 registers 3,200,000 shares of common stock ("Common Shares") of Expeditors International of Washington, Inc. (the "Registrant") reserved for issuance pursuant to the Registrant's 2008 Stock Option Plan and 2008 Directors' Restricted Stock Plan.

Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act of 1933"), this registration statement also covers any additional securities that may be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

PART I. INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.*

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

* This information is not required to be included in, and is not incorporated by reference in, this registration statement.

PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed with the United States Securities and Exchange Commission (the "Commission"), are incorporated herein by reference:

- (a) The Registrant's annual report for the year ended December 31, 2007, filed with the Commission on February 29, 2008 pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act of 1934").
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act of 1934 since the end of the fiscal year covered by the Registrant's annual report incorporated by reference herein pursuant to (a) above.
- (c) The description of the Registrant's securities contained in the Registrant's registration statement on Form 8-A filed with the Commission on April 28, 1985 under Section 12(g) of the Exchange Act of 1934, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act of 1934, 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 in this registration statement and to be a part hereof from the date of 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.

Sections 23B.08.500 through 23B.08.600 of the Washington Business Corporation Act (the "Washington Act") authorize a court to award, or a corporation's board of directors to grant, indemnification to directors and officers on terms sufficiently broad to permit indemnification under certain circumstances for liabilities arising under the Securities Act of 1933. Article XII of the Registrant's Restated Articles of Incorporation and Article IX of the Registrant's Amended and Restated Bylaws together provide for indemnification of the Registrant's directors, officers, employees and agents to the maximum extent permitted by Washington law. The directors and officers of the Registrant also may be indemnified against liability they may incur for serving in that capacity pursuant to a liability insurance policy maintained by the Registrant for such purpose.

Section 23B.08.320 of the Washington Act authorizes a corporation to limit a director's liability to the corporation or its shareholders for monetary damages for acts or omissions as a director, except in certain circumstances involving intentional misconduct, self-dealing or illegal corporate loans or distributions, or any transaction from which the director personally receives a benefit in money, property or services to which the director is not legally entitled.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted for directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed 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.

The Registrant has entered into a contract with each director memorializing the indemnification provision referenced above.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

| <u>Exhibit Number</u> | <u>Exhibit</u> |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1 | Expeditors International of Washington, Inc. 2008 Stock Option Plan (incorporated by reference to Appendix A to the Registrant's definitive proxy statement on Schedule 14A filed with the Commission on March 21, 2008) |
| 4.2 | Expeditors International of Washington, Inc. 2008 Directors' Restricted Stock Plan (incorporated by reference to Appendix B to the Registrant's definitive proxy statement on Schedule 14A filed with the Commission on March 21, 2008) |
| 4.3 | Form of Expeditors International of Washington, Inc. Stock Option Agreement |
| 4.4 | Form of Expeditors International of Washington, Inc. Restricted Stock Award Agreement |
| 5.1 | Opinion of Amy J. Tangeman, General Counsel |
| 23.1 | Consent of KPMG LLP |
| 23.2 | Consent of Amy J. Tangeman, General Counsel (contained in her opinion filed as Exhibit 5.1 to this registration statement) |
| 23.3 | Power of Attorney (see page II-7 of this registration statement) |

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.

(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

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the Registrant 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.
- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
 - (i) If the Registrant is relying on Rule 430B:
 - (A) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
 - (B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after

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effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

- (ii) If the Registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
- (5) 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:

The undersigned Registrant undertakes that in a primary offering of securities of the undersigned 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 undersigned 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 undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

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- (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 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.

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- (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 Securities and Exchange 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.

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Signatures

The Registrant. 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 Seattle, State of Washington, on May 27, 2008.

EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.

/s/ Peter J. Rose

Name: Peter J. Rose

Title: Chairman and Chief Executive Officer

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SIGNATURES OF OFFICERS AND DIRECTORS

AND POWER OF ATTORNEY

Know all men by these presents, that each person whose signature appears below hereby constitutes and appoints Peter J. Rose, R. Jordan Gates and Amy J. Tangeman, or any of them, his or her true and lawful attorneys-in-fact and agents, each 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 or post-effective amendments to this registration statement, and to file the same with all exhibits thereto and other documents in connection therewith, with the United States Securities and Exchange Commission, granting unto each of said attorneys-in-fact and agents full power 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 that any one or more of said attorneys-in-fact and agents or their 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 and on the date indicated.

Signature

Title

Date

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| | | |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------|--------------|
| <i>/s/ Peter J. Rose</i> Peter J. Rose | Director, Chairman and Chief Executive Officer (Principal Executive Officer) | May 27, 2008 |
| <i>/s/ R. Jordan Gates</i> R. Jordan Gates | Director, President and Chief Operating Officer (Principal Financial and Accounting Officer) | May 27, 2008 |
| <i>/s/ James L.K. Wang</i> James L. K. Wang | Director, President-Asia | May 24, 2008 |
| <i>/s/ James J. Casey</i> James J. Casey | Director | May 25, 2008 |
| <i>/s/ Michael J. Malone</i> Michael J. Malone | Director | May 23, 2008 |
| <i>/s/ Dan P. Kourkouvelis</i> Dan P. Kourkouvelis | Director | May 24, 2008 |
| <i>/s/ John W. Meisenbach</i> John W. Meisenbach | Director | May 23, 2008 |
| <i>/s/ Mark A. Emmert</i> Mark A. Emmert | Director | May 24, 2008 |
| <i>/s/ Robert R. Wright</i> Robert R. Wright | Director | May 23, 2008 |

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EXHIBIT INDEX

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