

OFFICE DEPOT INC  
Form S-8  
July 27, 2007

Registration Statement No. 333-123527

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

FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**OFFICE DEPOT, INC.**

(Exact name of registrant as specified in its charter)

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

**59-2663954**  
(I.R.S. Employer  
Identification No.)

**2200 Old Germantown Road**  
**Delray Beach, Florida 33445**  
(Address of Principal Executive Office) (Zip Code)

**Office Depot, Inc. 2007 Long-Term Incentive Plan**  
(Full title of the plan)

**Elisa D. Garcia**  
**Executive Vice President,**  
**General Counsel & Secretary**  
**2200 Old Germantown Road**  
**Delray Beach, Florida 33445**  
**(561) 438-4800**

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

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**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</b>	<b>Amount of Registration Fee</b>
Common Stock, \$0.01 par value	25,000,000	\$26.50	\$662,500,000	\$20,338.75

(1) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to provisions of the Office Depot, Inc. 2007 Long-Term Incentive Plan.

(2) This amount is estimated only to determine the amount of the registration fee pursuant to 457(c) and 457(h) under the Securities Act. The price per share and aggregate offering price are based upon the average of the high and low prices of the Company's common stock as reported on the New York Stock Exchange on July 27, 2007.

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## PART I

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

The securities being registered under this Registration Statement will be distributed over time pursuant to the terms of the Office Depot 2007 Long-Term Incentive Plan approved by the Company's stockholders on April 25, 2007. The documents containing the information specified in this Part I of Form S-8 will be sent or given to participants as specified by Rule 428(b)(1) promulgated under the Securities Act. Such documents need not be filed with the Securities and Exchange Commission ("SEC") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

Office Depot, Inc. incorporates by reference into this Registration Statement the following documents:

- (a) The Company's Annual Report on Form 10-K for the year ended December 30, 2006 filed with the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, (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 Company's Annual Report on Form 10-K referred to in (a) above; and
- (c) The description of the Company's common stock contained in the Company's Registration Statement on Form 8-A for such securities filed with the SEC pursuant to Section 12 of the Exchange Act.
- (d) All documents and reports subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement and 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 this Registration Statement, or in a document incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement, to the extent that a statement contained herein or in any other subsequently filed document which is deemed to be incorporated by reference herein 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. Subject to the foregoing, all information appearing in this Registration Statement is so qualified in its entirety by the information appearing in the documents incorporated by reference.

#### **Item 4. Description of Securities.**

Not applicable.

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

Certain legal matters in connection with the shares of common stock to which this Registration Statement relates have been passed upon by Elisa D. Garcia, Executive Vice President, General Counsel & Corporate Secretary of the Company. Ms. Garcia owns securities of the Company.

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

Under Section 145 of the Delaware General Corporation Law, each director and officer of the Company may be indemnified by the Company against all expenses and liabilities (including attorney's fees, judgments, fines and amounts paid in settlement) actually or reasonably incurred in connection with the defense or settlement of any threatened, pending or completed legal proceedings in which he or she is involved by reason of the fact that he or she is or was a director or officer of the Company if such director or officer acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interest of the Company and, with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe that his or her conduct was unlawful. If the legal proceeding, however, is by or in the right of the Company, the director or officer may not be indemnified in respect of any claim, issue or matter as to which he or she shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Company unless a court determines otherwise.

The Company's Amended and Restated By-laws provide for indemnification of the Company's directors and officers, to the fullest extent permitted by Delaware law, for all expenses, liability and loss (including reasonable amounts paid in settlement) incurred in defending actions brought against them arising out of the performance of their duties.

The Company's Restated Certificate of Incorporation, as amended, contains a provision that eliminates, to the fullest extent permitted by Delaware law, the personal liability of each director of the Company to the Company's and its stockholders for monetary damages for certain breaches of fiduciary duty. This provision does not affect the director's liability for monetary damages for breaches of the duty of loyalty, actions or omissions not in good faith, knowing violation of law or intentional misconduct, willful or negligent conduct in approving an unlawful dividend, stock repurchase or redemption or obtaining any improper personal benefit.

The Company has obtained liability insurance policies under which the Company's directors and officers are insured, within the limits and subject to the limitations of the policies, against certain expenses in connection with the defense of certain actions, suits or proceedings, and certain liabilities which might be imposed as a result of certain actions, suits or proceedings, arising out of the performance of their duties.

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

Not applicable.

**Item 8. Exhibits.**

5.1 Opinion of Elisa D. Garcia, Executive Vice President, General Counsel & Corporate Secretary of the Company.

23.1 Consent of Deloitte & Touche LLP.

23.2 Consent of Elisa D. Garcia, Executive Vice President, General Counsel & Corporate Secretary of the Company (included in Exhibit 5.1 to this Registration Statement).

24 Power of Attorney (included on signature pages 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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this 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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 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 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) of this section do not apply if the registration statement is on Form S-8 (§239.16b of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Company pursuant to section 13 or section 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) 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.

(b) 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 (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 the 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 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 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, the Company 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 Delray Beach, State of Florida on the 26th day of July, 2007.

**OFFICE DEPOT, INC.**

By: /s/ Steve Odland

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Steve Odland  
Chief Executive Officer and Chairman of  
the Board of Directors

**POWER OF ATTORNEY**

Each director and/or officer of the Company whose signature appears below hereby appoints the agent for service named in this Registration Statement as his or her attorney-in-fact to sign in his or her name and behalf, in any and all capacities stated below and to file with the SEC any and all amendments, including post-effective amendments, to this Registration Statement, and the Company hereby also appoints such agent for service as its attorney-in-fact with like authority to sign and file any such amendments in its name and behalf.

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

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Steve Odland Steve Odland	Chief Executive Officer (Principal Executive Officer) Chairman of the Board of Directors	July 26, 2007
/s/ Patricia McKay Patricia McKay	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	July 26, 2007
/s/ Jennifer Moline Jennifer Moline	Senior Vice President and Controller (Principal Accounting Officer)	July 26, 2007
/s/ Lee A. Ault, III Lee A. Ault, III	Director	July 26, 2007
/s/ Neil R. Austrian Neil R. Austrian	Director	July 26, 2007
/s/ David W. Bernauer David W. Bernauer	Director	July 26, 2007
/s/ Abelardo E. Bru		

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Abelardo E. Bru	Director	July 26, 2007
/s/ Marsha J. Evans Marsha J. Evans	Director	July 26, 2007
/s/ David I. Fuente David I. Fuente	Director	July 26, 2007
/s/ Brenda J. Gaines Brenda J. Gaines	Director	July 26, 2007
/s/ Myra M. Hart Myra M. Hart	Director	July 26, 2007

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/s/ W. Scott Hedrick W. Scott Hedrick	Director	July 26, 2007
/s/ Kathleen Mason Kathleen Mason	Director	July 26, 2007
/s/ Michael J. Myers Michael J. Myers	Director	July 26, 2007

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**EXHIBIT INDEX**

**Exhibit  
No.**

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