

OM GROUP INC
Form S-8
August 04, 2014

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

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

OM GROUP, INC.
(Exact name of registrant as specified in its charter)

Delaware 52-1736882
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)

950 Main Avenue, Suite 1300
Cleveland, Ohio 44113-7210
(Address of principal executive offices) (Zip Code)

OM Group, Inc. 2014 Equity and Incentive Compensation Plan
(Full title of the plan)

Valerie Gentile Sachs
Vice President, General Counsel and Secretary
OM Group, Inc.
950 Main Avenue
Suite 1300
Cleveland, Ohio 44113-7210
(Name and address of agent for service)

(216) 781-0083
(Telephone number, including area code, of agent for service)

With copy to:
Michele L. Connell
Squire Patton Boggs (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114-1304

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

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Share (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, \$0.01 par value	2,550,000 shares	\$25.64	\$65,382,000	\$8,421.20

Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and (h)(1) and under (1) the Securities Act of 1933, based upon the average of the high and low prices of OM Group, Inc. common stock as reported on the New York Stock Exchange on August 1, 2014.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The information required by 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) under the Securities Act of 1933, as amended.

Item 2. Registrant Information and Employee Annual Plan Information.

The information 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) under the Securities Act of 1933, as amended.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

OM Group, Inc. (the "Company") incorporates by reference into this Registration Statement the following documents filed pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"):

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013;
- (b) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014;
- (c) The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014;
- (d) The Company's Current Report on Form 8-K/A filed on February 18, 2014;
- (e) The Company's Current Report on Form 8-K filed on May 15, 2014;
- (f) The Company's Current Report on Form 8-K filed on June 11, 2014; and
- (g) The description of the common stock, \$.01 par value, of the Company contained in the Company's Registration Statement on Form S-1 (Registration No. 333-74566) filed on December 5, 2001.

Until the Company files a post-effective amendment to this Registration Statement indicating that all securities offered have been sold, or deregistering all such securities that remain unsold, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act shall be deemed to be incorporated by reference into this Registration Statement and to be a part of this Registration Statement from the date of filing such documents. Any statement contained in a document incorporated by reference into this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any other subsequently filed document that also is or is deemed to be incorporated by reference into this Registration Statement 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.

1

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware (“Delaware Law”) empowers a Delaware corporation to indemnify any person who was, is or is threatened to be made, 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 such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include 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, provided that such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the corporation’s best interest, and, with respect to any criminal proceedings or action, had no reasonable cause to believe the conduct was unlawful.

A Delaware corporation may indemnify any person who was, is 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 under the same conditions noted above, except that if the person is adjudged to be liable to the corporation, indemnification will only be permitted to the extent deemed proper by the applicable court.

To the extent that a present or former officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify that person against expenses (including attorney’s fees) that such officer or director actually and reasonably incurred.

In accordance with Delaware Law, Article Eighth of the Company’s Restated Certificate of Incorporation contains a provision limiting the personal liability of the Company’s directors for violations of their fiduciary duty. Such provision states that a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as director except for liability (i) for any breach of the director’s duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (iii) for a violation of Section 174 of the Delaware Law or (iv) for a transaction from which the director derived an improper personal benefit.

Article Seventh of the Company’s Restated Certificate of Incorporation and Article VII of the Company’s Amended and Restated By-Laws provide for indemnification of each person who may be indemnified, including the Company’s officers and directors, to the fullest extent permitted by applicable law.

The Company has entered into indemnification agreements with its officers and directors containing provisions that require the Company, among other things, to advance the officers’ and directors’ expenses incurred as a result of any proceeding against them as to which they could be indemnified and to maintain officers’ and directors’ liability insurance on a basis acceptable to the Company.

The Company has directors' and officers' liability insurance covering, subject to certain exceptions, actions taken by the Company's directors and officers in their capacities as such.

Item 7. Exemption From Registration Claimed.

2

Not applicable.

Item 8. Exhibits.

The Exhibits to this Registration Statement are listed in the Exhibit Index, which Exhibit Index is incorporated herein by this reference.

Item 9. Undertakings.

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 (the "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. 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 a 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 (1)(i) and (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 the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for purposes of determining any liability under the 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.

(4) That, for the purpose of determining liability under the Act, 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 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.

Insofar as indemnification for liabilities arising under the 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 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 of 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, 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 Cleveland, State of Ohio, on August 4, 2014.

OM GROUP, INC.

By:/s/ Joseph Scaminace
Joseph Scaminace, Chairman 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 date indicated.

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/s/ Joseph Scaminace Joseph Scaminace	Chairman and Chief Executive Officer (Principal Executive Officer)	August 4, 2014
/s/ Christopher M. Hix Christopher M. Hix	Vice President and Chief Financial Officer (Principal Financial Officer)	August 4, 2014
/s/ Carol A. Benton Carol A. Benton	Corporate Controller (Principal Accounting Officer)	August 4, 2014
/s/ Hans-Georg Betz Hans-Georg Betz*	Director	August 4, 2014
/s/ Richard W. Blackburn Richard W. Blackburn*	Director	August 4, 2014
/s/ Carl R. Christenson Carl R. Christenson*	Director	August 4, 2014
/s/ Steven J. Demetriou Steven J. Demetriou*	Director	August 4, 2014
/s/ John A. McFarland John A. McFarland*	Director	August 4, 2014
/s/ Patrick S. Mullin Patrick S. Mullin*	Director	August 4, 2014
/s/ Katharine L. Plourde Katharine L. Plourde*	Director	August 4, 2014
*By: /s/ Joseph Scaminace Joseph Scaminace Attorney-in-Fact		August 4, 2014

EXHIBIT INDEX

Exhibit

No. Description

- 4.1* Restated Certificate of Incorporation of the Company
- 4.2** Amended and Restated Bylaws of the Company
- 4.3*** Form of Common Stock Certificate of the Company
- 4.4 OM Group, Inc. 2014 Equity and Incentive Compensation Plan
- 5 Opinion of Squire Patton Boggs (US) LLP
- 23.1 Consent of Ernst & Young LLP
- 23.2 Consent of Squire Patton Boggs (US) LLP (contained in Exhibit 5)
- 24 Powers-of-Attorney

* This document was filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008 and is incorporated herein by reference.

** This document was filed as an exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2010 and is incorporated herein by reference.

*** This document was filed as an exhibit to the Company's Form S-1 Registration Statement (Registration No. 33-60444) which became effective on October 12, 1993 and is incorporated herein by reference.