

Colfax CORP
Form S-8
August 07, 2012

As filed with the Securities and Exchange Commission on August 7, 2012

Registration No. 333-

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

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

Colfax Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

54-1887631
(I.R.S. Employer
Identification No.)

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8170 Maple Lawn Boulevard, Suite 180

Fulton, Maryland
(Address of Principal Executive Offices)

20759
(Zip Code)

Colfax Corporation 2008 Omnibus Incentive Plan, as Amended and Restated April 2, 2012

(Full Title of the Plan)

Steven E. Simms

President and Chief Executive Officer

Colfax Corporation

8170 Maple Lawn Boulevard, Suite 180

Fulton, Maryland 20759

(301) 323-9000

(Name, Address and Telephone of Agent for Service)

Copies to:

Ronald O. Mueller, Esq.

Gibson, Dunn & Crutcher, LLP

1050 Connecticut Avenue, N.W., Suite 200

Washington, D.C. 20036

(202) 955-8500

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. (Check one):

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of | Amount | Proposed | | Amount of |
|---|-------------------|-----------------------|---------------------------|------------------|
| | | Maximum | Proposed | |
| Securities to be Registered | to be | Offering Price | Maximum | |
| | Registered | Per Share (2) | Aggregate | |
| | | | Offering Price (2) | |
| Common Stock, par value \$0.001 per share (1) | 7,904,838 | \$28.29 | \$223,627,867.02 | \$25,627.75 |

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of the Registrant's common stock in respect of the securities identified in the above table as a result of any stock dividend, stock split, recapitalization or other similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(h) and (c) under the Securities Act. The maximum offering price per share is based on the average of the high and low prices of the Common Stock of Colfax Corporation as reported on the New York Stock Exchange on August 2, 2012.

INTRODUCTION

This Registration Statement on Form S-8 is filed by Colfax Corporation, a Delaware corporation (the **Company** or the **Registrant**), relating to 7,904,838 shares of the **Company**'s common stock, par value \$0.001 per share (the **Common Stock**), that may be offered and sold under the Colfax Corporation 2008 Omnibus Incentive Plan, as amended and restated on April 2, 2012 (the **Plan**).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information required in Part I of this Registration Statement is included in one or more prospectuses for the Plan that are not filed as part of this Registration Statement in accordance with Rule 428 of the Securities Act and the Note to Part I of Form S-8.

Item 3. Incorporation of Documents by Reference

The following documents or designated portions thereof are incorporated by reference herein and shall be deemed to be a part hereof:

(1) The **Company**'s Annual Report on Form 10-K for the fiscal year ended December 31, 2011, as filed with the Commission on February 23, 2012;

(2) The **Company**'s Quarterly Reports on Form 10-Q for the periods ended March 31, 2012 and June 30, 2012, as filed with the Commission on May 8, 2012 and August 7, 2012, respectively;

(3) The **Company**'s Current Reports on Form 8-K, filed with the Commission on January 5, 2012, January 6, 2012, January 17, 2012, January 30, 2012, February 24, 2012, March 5, 2012, March 14, 2012, April 23, 2012, April 24, 2012, May 17, 2012 and May 31, 2012; and

(4) The description of the Common Stock contained in the **Company**'s Registration Statement on Form 8-A, filed with the Commission on May 5, 2008 (file number 001-34045), together with any amendments or reports filed for the purposes of updating such description. In addition, all documents filed by the **Company** or the Plan pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act of 1934, as amended (the **Exchange Act**) prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and made a part hereof from their respective dates of filing (such documents, and the documents listed above, being hereinafter referred to as **Incorporated Documents**); *provided, however*, that the documents listed above or subsequently filed by the **Company** or the Plan pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act in each year during which the offering made by this Registration Statement is in effect prior to the filing with the Commission of the **Company**'s Annual Report on Form 10-K covering such year shall cease to be **Incorporated Documents** or to be incorporated by reference in this Registration Statement from and after the filing of such Annual Reports.

Any statement contained herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed **Incorporated Document** modifies or supersedes such statement. Any statement contained in an **Incorporated Document** 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 **Incorporated Document** 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.

Item 4. Description of Securities

Not Applicable.

Item 5. Interests of Named Experts and Counsel

Not Applicable.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 6. Indemnification of Directors and Officers

Delaware General Corporation Law

Section 145(a) of the General Corporation Law of the State of Delaware (the "DGCL") provides that a corporation may indemnify any person who was or is a party or is threatened to be made a 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 the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against 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 if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

Section 145(b) of the DGCL states that a corporation may indemnify any person who was or is a party 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 to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or 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, the person is fairly and reasonably entitled to indemnity for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145(d) of the DGCL states that any indemnification under subsections (a) and (b) of Section 145 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145. Such determination shall be made with respect to a person who is a director or officer at the time of such determination (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (4) by the stockholders.

Section 145(f) of the DGCL states that the indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 145(g) of the DGCL provides that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of Section 145.

Section 145(j) of the DGCL states that the indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Certificate of Incorporation

The registrant's amended and restated certificate of incorporation provides that no director of the registrant shall be liable to the registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this provision of the registrant's amended and restated certificate of incorporation shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the registrant or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this provision of the registrant's amended and restated certificate of incorporation shall be prospective only and shall not adversely affect any right or protection of, or any limitation of the liability of, a director of the registrant existing at, or arising out of facts or incidents occurring prior to, the effective date of such repeal or modification.

Bylaws

The registrant's amended and restated bylaws provide for the indemnification of the officers and directors of the registrant to the fullest extent permitted by the DGCL. The amended and restated bylaws provide that each person who was or is made a party to, or is threatened to be made a party to, any civil or criminal action, suit or proceeding by reason of the fact that such person is or was a director or officer of the registrant will be indemnified and held harmless by the registrant to the fullest extent authorized by the DGCL against all expense, liability and loss, including without limitation, attorneys' fees, incurred by such person in connection therewith, if such person acted in good faith and in a manner such person reasonably believed to be or not opposed to the best interests of the registrant and had no reason to believe that such person's conduct was illegal.

Insurance

The registrant maintains directors and officers liability insurance, which covers directors and officers of the registrant against certain claims or liabilities arising out of the performance of their duties.

Indemnification Agreements

The registrant has entered into agreements to indemnify its directors and certain of its officers. These agreements provide for indemnification of the registrant's directors and applicable officers to the fullest extent permitted by the DGCL against all expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by any such person in actions or proceedings, including actions by the registrant or in its right, arising out of such person's services as a director or officer of the registrant, any subsidiary of the registrant or any other company or enterprise to which the person provided services at the registrant's request. These agreements are intended to give the registrant's officers and directors additional contractual assurances regarding the scope of the indemnification set forth in its certificate of incorporation and bylaws and to provide additional procedural protections.

The foregoing discussion of the Company's amended and restated certificate of incorporation and amended and restated bylaws and Section 145 of the DGCL is not intended to be exhaustive and is qualified in its entirety by each of those documents and that statute.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Exhibit

| No. | Description |
|------|---|
| 4.1 | Amended and Restated Certificate of Incorporation (Incorporated by reference to Exhibit 3.01 to the Company's Current Report on Form 8-K, as filed with the Commission on January 30, 2012) |
| 4.2 | Colfax Corporation Amended and Restated Bylaws (Incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, as filed with the Commission on May 13, 2008) |
| 5.1 | Opinion of Gibson, Dunn & Crutcher LLP* |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm* |
| 23.2 | Consent of Gibson, Dunn & Crutcher LLP (included in Exhibit 5.1)* |
| 24.1 | Power of Attorney of Colfax Corporation (included on signature page hereto)* |
| 99.1 | Colfax Corporation 2008 Omnibus Incentive Plan, as amended and restated (Incorporated by reference to Exhibit 10.07 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2012, as filed with the Commission on August 7, 2012) |

* Filed herewith

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;

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- 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% 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:

- A. Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8, 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 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 the registration statement; and
- B. Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-3 or Form F-3 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 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 the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of 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.

(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.

(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.

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 Fulton, State of Maryland, on this 7th day of August, 2012.

COLFAX CORPORATION

By: /s/ Steven E. Simms
Steven E. Simms
President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Steven E. Simms, C. Scott Brannan and A. Lynne Puckett, and each of them severally, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority 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 might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or 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 dates indicated below.

| Signature | Title | Date |
|---|--|----------------|
| /s/ Steven E. Simms Steven E. Simms | President and Chief Executive Officer and Director (Principal Executive Officer) | August 7, 2012 |
| /s/ C. Scott Brannan C. Scott Brannan | Senior Vice President, Finance and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | August 7, 2012 |
| /s/ Mitchell P. Rales Mitchell P. Rales | Chairman of the Board of Directors | August 7, 2012 |
| /s/ Patrick W. Allender Patrick W. Allender | Director | August 7, 2012 |
| /s/ Thomas S. Gayner Thomas S. Gayner | Director | August 7, 2012 |
| /s/ Rhonda L. Jordan Rhonda L. Jordan | Director | August 7, 2012 |
| /s/ Clay H. Kiefaber Clay H. Kiefaber | Director | August 7, 2012 |
| /s/ San W. Orr, III San W. Orr, III | Director | August 7, 2012 |
| /s/ A. Clayton Perfall A. Clayton Perfall | Director | August 7, 2012 |
| /s/ Rajiv Vinnakota Rajiv Vinnakota | Director | August 7, 2012 |

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