

NEW YORK TIMES CO  
Form S-8  
April 30, 2010

As filed with the Securities and Exchange Commission on April 30, 2010

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form S-8**  
**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**THE NEW YORK TIMES COMPANY**

*(Exact Name of Registrant as Specified in its Charter)*

**New York**  
*(State or other Jurisdiction*  
  
*of Incorporation or Organization)*

**13-1102020**  
*(I.R.S. Employer*  
  
*Identification No.)*

Edgar Filing: NEW YORK TIMES CO - Form S-8

620 Eighth Avenue

New York, New York 10018

(212) 556-1234

*(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)*

# **The New York Times Company**

## **2010 Incentive Compensation Plan**

*(Full title of the plan)*

**KENNETH A. RICHIERI, ESQ.**

**Senior Vice President, General Counsel and Secretary**

**The New York Times Company**

620 Eighth Avenue

New York, New York 10018

(212) 556-1234

*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

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 a smaller reporting company)

Smaller reporting company

Edgar Filing: NEW YORK TIMES CO - Form S-8

CALCULATION OF REGISTRATION FEE

| <b>Title of securities<br/>to be registered</b>  | <b>Amount<br/>to be<br/>Registered (1)</b> | <b>Proposed<br/>maximum<br/>offering price<br/>per share (2)</b> | <b>Proposed<br/>maximum<br/>aggregate<br/>offering price (2)</b> | <b>Amount of<br/>registration fee (3)</b> |
|--|--|--|--|---|
| Class A Common Stock, par value \$0.10 per share | 8,000,000                                  | \$10.30  | \$82,400,000   | \$5,876                                   |

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of Class A Common Stock which become issuable under the above-named plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares of Class A Common Stock.
- (2) Calculated pursuant to Rules 457(c) and 457(h) of the Securities Act, solely for the purpose of computing the registration fee, based on the average of the high and low sales price of the Registrant's Class A Common Stock, as reported by the New York Stock Exchange on April 28, 2010.
- (3) Calculated pursuant to Section 6(b) of the Securities Act as follows: Proposed maximum aggregate offering price multiplied by .00007130.

**PART I**

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

**Item 1. Plan Information.\***

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

\* The documents containing the information specified in Part I will be delivered in accordance with Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the Commission), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. 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.**

The following documents, which have been filed by The New York Times Company (the Registrant) with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are hereby incorporated by reference in this Registration Statement:

- (1) Annual Report on Form 10-K for the fiscal year ended December 27, 2009;
- (2) Quarterly Report on Form 10-Q for the fiscal quarter ended March 28, 2010;
- (3) Current Reports on Form 8-K filed with the Commission on January 8, 2010, January 14, 2010, February 18, 2010 (Item 5.02 only) and April 28, 2010; and
- (4) The description of the Registrant's Class A common stock contained in its registration statement on Form 10 filed under Section 12 of the Exchange Act, as amended, on April 28, 1967, including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement, but 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 herein 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 purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that 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.**

Pursuant to the New York Business Corporation Law (the "NYBCL"), the Registrant has the power to indemnify certain persons, including its officers and directors, under stated circumstances and subject to certain limitations in connection with services performed in good faith for the Registrant.

Pursuant to Article Ninth of its amended and restated certificate of incorporation, no director of the Registrant shall be personally liable to the Registrant or its stockholders for damages for any breach of duty as a director; provided that Article Ninth shall neither eliminate nor limit liability: (a) if a judgment or other final adjudication adverse to such director establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that his or her acts of misconduct violated Section 719 of the NYBCL; or (b) for any act or omission prior to the effectiveness of Article Ninth. Any repeal of or modification to the provisions of Article Ninth shall not adversely affect any right or protection of a director of the Registrant existing pursuant to Article Ninth immediately prior to such repeal or modification.

Under the Registrant's by-laws, any person made or threatened to be made a party to any civil or criminal action or proceeding by reason of the fact that he or she or his or her testator or intestate is or was a director or officer of the Registrant, or served any other corporation or entity of any type or kind, domestic or foreign, in any capacity, at the request of the Registrant, shall be indemnified against judgments, fines, amounts paid in settlement, taxes or penalties and expenses, including attorneys' fees, to the full extent permitted by law; provided that no indemnification may be made in any case if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

The Registrant's by-laws provide that such right to indemnification is not intended to limit any right to indemnification to which any officer or director would be entitled by law in the absence of such by-law provision, nor shall it be deemed exclusive of any other rights such a person may have under law, any provision of its certificate of incorporation or by-laws, any agreement approved by the Registrant's board of directors or a resolution of stockholders or directors.

The Registrant maintains directors' and officers' liability insurance which insures against liabilities that directors or officers of the Registrant may incur in such capacities.

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

Not applicable.

**Item 8. Exhibits.**

| <b>Exhibit No.</b> | <b>Exhibit</b>  |
|--------------------|---|
| 4                  | The New York Times Company 2010 Incentive Compensation Plan (filed as an exhibit to the Registrant's Form 8-K filed with the Commission on April 28, 2010, and incorporated by reference herein). |
| 5                  | Opinion of Morgan, Lewis & Bockius LLP as to the legality of the securities being registered.   |
| 23.1               | Consent of Ernst & Young LLP, independent registered public accounting firm.  |
| 23.2               | Consent of Morgan, Lewis & Bockius LLP (included in the opinion filed as Exhibit 5).  |
| 24                 | Powers of Attorney.   |

**Item 9. Undertakings.**

(a) The 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 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) of this section 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 Exchange Act that are incorporated by reference in this 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 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 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 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 and will be governed by the final adjudication of such issue.

**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 New York, State of New York on April 30, 2010.

THE NEW YORK TIMES COMPANY

By */s/* **KENNETH A. RICHIERI**  
**Kenneth A. Richieri**

**Senior Vice President, General Counsel and Secretary**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on this 30th day of April, 2010.

| <b>Signature</b>   | <b>Title</b>  |
|--|---|
| <i>/s/</i> ARTHUR SULZBERGER, JR.<br><b>Arthur Sulzberger, Jr.</b> | Chairman and Director   |
| <i>/s/</i> JANET L. ROBINSON<br><b>Janet L. Robinson</b>           | Chief Executive Officer, President and Director<br>(principal executive officer)          |
| <i>/s/</i> MICHAEL GOLDEN<br><b>Michael Golden</b>                 | Vice Chairman and Director  |
| <i>/s/</i> JAMES M. FOLLO<br><b>James M. Follo</b>                 | Senior Vice President and Chief Financial Officer<br>(principal financial officer)        |
| <i>/s/</i> R. ANTHONY BENTEN<br><b>R. Anthony Benten</b>           | Senior Vice President, Finance and Corporate Controller<br>(principal accounting officer) |
| <i>/s/</i> RAUL E. CESAN<br><b>Raul E. Cesan</b>                   | Director  |
| <i>/s/</i> ROBERT E. DENHAM<br><b>Robert E. Denham</b>             | Director  |
| <i>/s/</i> LYNN G. DOLNICK<br><b>Lynn G. Dolnick</b>               | Director  |
| <i>/s/</i> CAROLYN D. GREENSPON<br><b>Carolyn D. Greenspon</b>     | Director  |

Edgar Filing: NEW YORK TIMES CO - Form S-8

/s/ JAMES A. KOHLBERG

Director

**James A. Kohlberg**

/s/ DAWN G. LEPORE

Director

**Dawn G. Lepore**

/s/ DAVID E. LIDDLE Director

**David E. Liddle**

/s/ ELLEN R. MARRAM Director

**Ellen R. Marram**

/s/ THOMAS MIDDELHOFF Director

**Thomas Middelhoff**

/s/ DOREEN A. TOBEN Director

**Doreen A. Toben**

**EXHIBIT INDEX**

| <b>Exhibit No.</b> | <b>Exhibit</b>  |
|--------------------|---|
| 4                  | The New York Times Company 2010 Incentive Compensation Plan (filed as an exhibit to the Registrant's Form 8-K filed with the Commission on April 28, 2010, and incorporated by reference herein). |
| 5                  | Opinion of Morgan, Lewis & Bockius LLP as to the legality of the securities being registered.   |
| 23.1               | Consent of Ernst & Young LLP, independent registered public accounting firm.  |
| 23.2               | Consent of Morgan, Lewis & Bockius LLP (included in the opinion filed as Exhibit 5).  |
| 24                 | Powers of Attorney.   |