

CONSTELLATION BRANDS, INC.

Form S-8

February 13, 2008

As filed with the Securities and Exchange Commission on February 13, 2008

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

CONSTELLATION BRANDS, INC.

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

16-0716709  
(I.R.S. Employer  
Identification No.)

370 Woodcliff Drive, Suite 300,  
Fairport, New York  
(Address of Principal Executive Offices)

14450  
(Zip Code)

CONSTELLATION BRANDS, INC. LONG-TERM STOCK INCENTIVE PLAN,  
AMENDED AND RESTATED AS OF DECEMBER 6, 2007  
(Full title of the Plan)

Thomas J. Mullin, Esq.  
Executive Vice President and General Counsel  
Constellation Brands, Inc.  
370 Woodcliff Drive, Suite 300  
Fairport, New York 14450  
(585) 218-3600  
(Name, address, and telephone  
number, including area code, of agent for service)

Copy to:  
James A. Locke III, Esq.  
Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604  
(585) 263-1000

CALCULATION OF REGISTRATION FEE

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| Title of Securities to be Registered (1)         | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--|-----------------------------|---|---|----------------------------|
| Class 1 Common Stock, par value \$0.01 per share | 365,750                     | \$22.27                                       | \$8,145,252.50                            | \$320.11                   |
|  | 212,500                     | \$24.13                                       | \$5,127,625.00                            | \$201.52                   |
|  | 112,907                     | \$22.08                                       | \$2,492,986.56                            | \$97.97                    |
|  | 4,661                       | \$25.03                                       | \$116,664.83                              | \$4.58                     |
|  | 102,200                     | \$24.62                                       | \$2,516,164.00                            | \$98.89                    |
|  | 1,015,500                   | \$23.48                                       | \$23,843,940.00                           | \$937.07                   |
|  | 13,186,482                  | \$16.1687 (3)                                 | \$213,208,271.51 (3)                      | \$8,379.09                 |
| <b>Total</b>                                     | <b>15,000,000</b>           |   | <b>\$255,450,904.40</b>                   | <b>\$10,039.22</b>         |

- (1) Pursuant to Rule 416(b) under the Securities Act of 1933, this registration statement covers such additional shares of Class 1 Common Stock as may be issuable pursuant to anti-dilution provisions of the Plan.
- (2) Inserted solely for the purpose of calculating the registration fee pursuant to Rule 457(h)(1).
- (3) As instructed by Rule 457(h)(1), based upon the book value of the Class 1 Common Stock as of the most recent practicable date prior to filing.

## Part II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

The following documents which have been filed by Constellation Brands, Inc. (the "Registrant") with the Securities and Exchange Commission are incorporated herein by reference:

- Annual Report on Form 10-K for the fiscal year ended February 28, 2007, filed on April 30, 2007;
- Quarterly Report on Form 10-Q for the fiscal quarter ended May 31, 2007, filed on July 10, 2007;
- Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 2007, filed on October 10, 2007;
- Quarterly Report on Form 10-Q for the fiscal quarter ended November 30, 2007, filed on January 9, 2008;
- Current Reports on Form 8-K filed on April 9, 2007 (two filings; in each case, Item 5.02 only), April 23, 2007, May 2, 2007, May 7, 2007 (Item 1.01 only), May 11, 2007 (Item 5.02 only), May 14, 2007, June 28, 2007 (of two filed that date, the report regarding appointment of new chief executive officer and only Item 5.02 thereof), July 31, 2007, October 4, 2007 (of two filed that date, the report regarding the appointment of a new director and only Item 5.02 thereof and Exhibit 99.1 thereto), November 14, 2007 (two filings; Item 1.01 and Exhibit 2.01 thereto and Item 2.05 only), November 20, 2007, December 4, 2007, December 11, 2007, December 12, 2007, December 18, 2007 (Item 8.01 only), January 8, 2008 (two filings; the entire report regarding the extension of the exchange offer and only Item 2.05 of the report regarding costs of exit or disposal activities); and
- All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents.

#### Item 4. Description of Securities.

This Registration Statement registers the issuance by the Registrant of up to 15,000,000 shares of Class 1 Common Stock, \$0.01 par value per share ("Class 1 Stock"), pursuant to the Registrant's Long-Term Stock Incentive Plan, amended and restated as of December 6, 2007 (the "Plan"). The material terms of the Class 1 Stock are set forth below.

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## Voting

The shares of Class 1 Stock do not generally have voting rights. Holders of Class 1 Stock will not be entitled to vote except that such holders will be entitled to vote as a separate class on matters with respect to which a separate class vote of holders of Class 1 Stock is required by law and will be entitled to vote with respect to any increase or decrease in the number of shares of Class 1 Stock as a single class with the holders of the Registrant's Class A Stock, \$.01 par value per share ("Class A Stock"), and Class B Stock, \$.01 par value per share ("Class B Stock") (in which case the holders of Class 1 Stock and Class A Stock will be entitled to one (1) vote per share and the holders of Class B Stock will be entitled to ten (10) votes per share).

## Dividends and Distributions

The shares of Class 1 Stock will not have any preference as to dividends, but may participate in any dividend when and if declared by the Company's Board of Directors. Cash dividends may be declared and paid with respect to Class A Stock without corresponding cash dividends being declared and paid with respect to Class 1 Stock, and if cash dividends are declared and paid on Class 1 Stock then cash dividends must be declared and paid on Class A Stock in an amount that is at least ten percent greater than the cash dividends declared and paid on Class 1 Stock. The cash dividends declared and paid on Class B Stock and Class 1 Stock must always be the same. Upon liquidation of the Registrant, holders of Class 1 Stock will share ratably on a per share basis in net assets to be distributed with respect to common stock together with holders of Class A Stock and Class B Stock.

## Conversion

Each holder of a share of Class 1 Stock may, without cost to such holder and at the holder's option, convert shares of Class 1 Stock into shares of Class A Stock on a one-for-one basis; however, such conversion is permitted only if the holder immediately sells the Class A Stock acquired upon conversion in a market transaction or to an unrelated party in a bona fide private sale.

## Other

Holders of Class 1 Stock will not have preemptive rights to purchase shares of the Registrant's capital stock. Shares of Class 1 Stock are not redeemable, and there will be no sinking fund provisions for shares of Class 1 Stock.

## Item 5. Interest of Named Experts and Counsel.

James A. Locke III, Esq. serves as a member of the Board of Directors of the Registrant. Mr. Locke is a partner in the law firm Nixon Peabody LLP, which firm has rendered an opinion regarding the legality of the securities offered by this Registration Statement. As a member of the Registrant's Board of Directors, Mr. Locke is eligible to receive awards under the Plan. Mr. Locke presently owns, and has options to acquire, securities of the Registrant.

Certain other attorneys of Nixon Peabody LLP may also own shares of the Class A Stock into which the Class 1 Stock is convertible. A copy of the opinion of Nixon Peabody LLP is attached hereto as Exhibit 5.

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Item 6. Indemnification of Directors and Officers.

The General Corporation Law of Delaware (Section 102) allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or to any of its stockholders for monetary damage for a breach of his/her fiduciary duty as a director, except in the case where the director breached his/her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase or redemption in violation of Delaware corporate law or obtained an improper personal benefit. The Restated Certificate of Incorporation of the Registrant contains a provision which eliminates directors' personal liability as set forth above.

The General Corporation Law of Delaware (Section 145) gives Delaware corporations broad powers to indemnify their present and former directors and officers and those of affiliated corporations or other entities against expenses incurred in the defense of any lawsuit to which they are made parties by reason of being or having been such directors or officers, subject to specified conditions and exclusions; gives a director or officer who successfully defends an action the right to be so indemnified; authorizes the Registrant to advance expenses upon receipt of an undertaking by the person seeking indemnity to repay such amount if it is ultimately determined that such person is not entitled to indemnification; and authorizes the Registrant to buy directors' and officers' liability insurance. Such indemnification is not exclusive of any other right to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or otherwise.

The Registrant's Restated Certificate of Incorporation provides for indemnification to the fullest extent authorized by Section 145 of the General Corporation Law of Delaware for current and former directors and officers of the Registrant and also to persons who are or were serving at the request of the Registrant as directors, officers, employees or agents of other entities (including subsidiaries); provided that, with respect to proceedings initiated by such indemnitee, indemnification shall be provided only if such proceedings were authorized by the Board of Directors. The right of indemnification is not exclusive of any other right which any person may acquire under any statute, bylaw, agreement, contract, vote of stockholders or otherwise.

From time to time the Registrant has and will enter into agreements with underwriters for securities offerings which provide for indemnification of directors, officers and controlling persons of the Registrant for losses, claims, damages, or liabilities resulting from an untrue statement made in a registration statement in reliance upon and in conformity with written information furnished to the Registrant by or on behalf of such underwriters for inclusion in the registration statement.

The Registrant maintains directors' and officers' liability insurance and a corporate reimbursement policy insuring directors and officers against loss arising from claims made arising out of the performance of their duties.

Item 7. Exemption from Registration Claimed.

Not applicable.

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Item 8. Exhibits.

| Exhibit No. | Description  | Location  |
|-------------|--|---|
| 5           | Opinion of Nixon Peabody LLP   | Filed herewith  |
| 10.1        | Constellation Brands, Inc. Long-Term Stock Incentive Plan, amended and restated as of December 6, 2007 | Incorporated by reference to the Registrant's Current Report on Form 8-K filed on December 12, 2007 |
| 23.1        | Consent of Nixon Peabody LLP   | Contained in opinion filed as Exhibit 5 to this Registration Statement                              |
| 23.2        | Consent of KPMG LLP, independent registered public accounting firm                                     | Filed herewith  |
| 24          | Power of Attorney  | Included on the signature page to 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; 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) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic 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.

(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.



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(b) The undersigned Registrant hereby undertakes that, for purposes of determining 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 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.

(h) 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 provisions described in Item 6 of the Registration Statement, 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

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all 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 Town of Perinton, State of New York, on the 13th day of February, 2008.

CONSTELLATION  
BRANDS, INC.

By: /s/ Robert Sands  
Robert Sands  
President and  
Chief Executive  
Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Richard Sands and Robert Sands, and each of them, his true and lawful attorney-in-fact and agent, 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 and all amendments (including post-effective amendments) to the 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 or necessary fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or any of them, or their 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 date indicated.

|  |  |                   |
|--|--|-------------------|
| /s/ Robert Sands<br>Robert Sands                 | President and Chief Executive<br>Officer<br>and Director (principal executive<br>officer)                                    | February 13, 2008 |
| /s/ Robert Ryder<br>Robert Ryder                 | Executive Vice President and Chief<br>Financial Officer (principal financial<br>officer and principal accounting<br>officer) | February 13, 2008 |
| /s/ Barry A. Fromberg<br>Barry A. Fromberg       | Director   | February 13, 2008 |
| /s/ Jeananne K. Hauswald<br>Jeananne K. Hauswald | Director   | February 13, 2008 |
| /s/ James A. Locke III<br>James A. Locke III     | Director   | February 13, 2008 |
| /s/ Thomas C. McDermott<br>Thomas C. McDermott   | Director   | February 13, 2008 |

/s/ Richard Sands  
Richard Sands

Director

February 13, 2008

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/s/ Paul L. Smith  
Paul L. Smith

Director

February 13, 2008

/s/ Peter H. Soderberg  
Peter H. Soderberg

Director

February 13, 2008

/s/ Mark Zupan  
Mark Zupan

Director

February 13, 2008

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