

NCI BUILDING SYSTEMS INC
Form S-3/A
February 27, 2013

As filed with the Securities and Exchange Commission on February 27, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1

to

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

NCI BUILDING SYSTEMS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

10943 North Sam Houston

76-0127701

**(State or Other Jurisdiction of
Incorporation or Organization)**

**Parkway West
Houston, Texas 77064**

**(I.R.S. Employer
Identification Number)**

(281) 897-7788

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

Todd R. Moore

Executive Vice President, General Counsel and Secretary

10943 North Sam Houston Parkway West

Houston, Texas 77064

(281) 897-7788

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

Copy to:

Steven J. Slutzky

Debevoise & Plimpton LLP

919 Third Avenue

New York, New York 10022

(212) 909-6000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are to be offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. "

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. "

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	<input checked="" type="checkbox"/>
Non-accelerated filer " (Do not check if a smaller reporting company)	Smaller reporting company "	<input type="checkbox"/>

EXPLANATORY NOTE

This Amendment No. 1 to the Registration Statement on Form S-3 filed by NCI Building Systems, Inc. on February 5, 2013 (Commission File No. 333-186466) (the “Registration Statement”) is being filed solely to amend Item 16 of Part II of the Registration Statement and to file Exhibit 5.1 identified therein. No changes or additions are being made hereby to the Prospectus constituting Part I of the Registration Statement (not included herein) or to Items 14, 15 or 17 of Part II of the Registration Statement. Accordingly, Part I and Items 14, 15 and 17 of Part II of the Registration Statement are omitted from this filing.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 16. *Exhibits*

Exhibit No. Description

- | | |
|------|--|
| 1.1* | Form of Underwriting Agreement. |
| 2.1 | Stockholders Agreement, dated as of October 20, 2009, by and between the Company, Clayton, Dubilier & Rice Fund VIII, L.P. and CD&R Friends & Family Fund VIII, L.P. (filed as Exhibit 2.1 to NCI's Current Report on Form 8-K dated October 26, 2009 and incorporated by reference herein) |
| 2.2 | Registration Rights Agreement, dated as of October 20, 2009, by and between the Company, Clayton, Dubilier & Rice Fund VIII, L.P. and CD&R Friends & Family Fund VIII, L.P. (filed as Exhibit 2.2 to NCI's Current Report on Form 8-K dated October 26, 2009 and incorporated by reference herein) |
| 2.3 | Indemnification Agreement, dated as of October 20, 2009, by and between the Company, NCI Group, Inc., Robertson-Ceco II Corporation, Clayton, Dubilier & Rice Fund VIII, L.P., CD&R Friends & Family Fund VIII, L.P. and Clayton, Dubilier & Rice, Inc. (filed as Exhibit 2.3 to NCI's Current Report on Form 8-K dated October 26, 2009 and incorporated by reference herein) |
| 2.5 | Investment Agreement, dated as of August 14, 2009, by and between NCI Building Systems, Inc. and Clayton, Dubilier & Rice Fund VIII, L.P. (filed as Exhibit 2.1 to NCI's Current Report on Form 8-K dated August 19, 2009 and incorporated by reference herein) |
| 2.6 | Amendment, dated as of August 28, 2009, to the Investment Agreement, dated as of August 14, 2009, by and between NCI Building Systems, Inc. and Clayton, Dubilier & Rice Fund VIII, L.P. (filed as Exhibit 2.1 to NCI's Current Report on Form 8-K dated August 28, 2009 and incorporated by reference herein) |
| 2.7 | Amendment No. 2, dated as of August 31, 2009, to the Investment Agreement (as amended), dated as of August 14, 2009, by and between NCI Building Systems, Inc. and Clayton, Dubilier & Rice, Fund VIII, L.P., including exhibits thereto (filed as Exhibit 2.1 to NCI's Current Report on Form 8-K filed September 1, 2009 and incorporated by reference herein) |
| 2.8 | Amendment No. 3, dated as of October 8, 2009, to the Investment Agreement (as amended), dated as of August 14, 2009, by and between NCI Building Systems, Inc. and Clayton, Dubilier & Rice, Fund VIII, L.P., including exhibits thereto (filed as Exhibit 2.1 to NCI's Current Report on Form 8-K filed October 8, 2009 and incorporated by reference herein) |
| 2.9 | Amendment No. 4, dated as of October 16, 2009, to the Investment Agreement (as amended), dated as of August 14, 2009, by and between NCI Building Systems, Inc. and Clayton, Dubilier & Rice, Fund VIII, L.P., including exhibits thereto (filed as Exhibit 2.1 to NCI's Current Report on Form 8-K filed October |

19, 2009 and incorporated by reference herein)

2.10 Lock-Up and Voting Agreement, dated as of August 31, 2009, by and among NCI Building Systems, Inc. and the signatories thereto (incorporated by reference to exhibit 2.2 to Form 8-K filed with the SEC on September 1, 2009)

2.11 Amendment No. 1 to Lock-Up and Voting Agreement, dated as of October 8, 2009, by and among NCI Building Systems, Inc. and the signatories thereto (incorporated by reference to exhibit 2.3 to Form 8-K filed with the SEC on October 8, 2009)

2.12 Lock-Up and Voting Agreement, dated as of October 8, 2009, by and among NCI Building Systems, Inc. and the signatories thereto (incorporated by reference to exhibit 2.2 to Form 8-K filed with the SEC on October 8, 2009)

2.13 Equity Purchase Agreement, dated as of May 2, 2012, by and among VSMA, Inc., Metl-Span LLC, NCI Group, Inc. and BlueScope Steel North America Corporation (filed as Exhibit 2.1 to NCI's Current Report on Form 8-K dated May 8, 2012 and incorporated by reference herein)

II-1

Exhibit No. Description

- 3.1 Restated Certificate of Incorporation, as amended through September 30, 1998 (filed as Exhibit 3.1 to NCI's Annual Report on Form 10-K for the fiscal year ended November 2, 2002 and incorporated by reference herein).
- 3.2 Certificate of Amendment to Restated Certificate of Incorporation, effective as of March 12, 2007 (filed as Exhibit 3.2 to NCI's Quarter Report on Form 10-Q for the quarter ended April 29, 2007 and incorporated by reference herein).
- 3.3 Certificate of Amendment to Restated Certificate of Incorporation, effective as of March 4, 2010 (filed as Exhibit 4.3 to NCI's registration statement on Form S-8 filed with the SEC on April 23, 2010 and incorporated by reference herein)
- 3.4 Third Amended and Restated By-Laws of NCI Building Systems, Inc., effective as of February 19, 2010 (filed as Exhibit 3.1 to NCI's Current Report on Form 8-K dated February 24, 2010 and incorporated by reference herein).
- 3.5 Amendment Agreement, dated as of May 8, 2012 (filed as Exhibit 4.1 to NCI's Current Report on Form 8-K dated May 14, 2012 and incorporated by reference herein)
- 3.6 Amended and Restated Certificate of Designations, Preferences and Rights of Series B Cumulative Convertible Participating Preferred Stock of the Company (filed as Annex B to Schedule 14C dated June 15, 2012 and incorporated by reference herein)
- 3.7 Certificate of Elimination of the Series A Junior Participating Preferred Stock of the Company (filed as Exhibit 3.2 to NCI's Current Report on Form 8-K dated October 26, 2009 and incorporated by reference herein)
- 3.8 Certificate of Increase of Number of Shares of Series B Cumulative Convertible Participating Preferred Stock of the Company (filed as Exhibit 3.3 to NCI's Current Report on Form 8-K dated October 26, 2009 and incorporated by reference herein)
- 4.1 Form of certificate representing shares of NCI's common stock (filed as Exhibit 1 to NCI's registration statement on Form 8-A filed with the SEC on July 20, 1998 and incorporated by reference herein).
- 5.1** Opinion of Debevoise & Plimpton LLP as to the legality of the securities being registered.
- 23.1# Consent of Ernst & Young, LLP.
- 23.2** Consent of Debevoise & Plimpton LLP (included in Exhibit 5.1).
- 24.1# Powers of Attorney (included on signature page).

* NCI Building Systems, Inc. will file by a post-effective amendment to this registration statement or as an exhibit to a Current Report on Form 8-K in connection with a specific offering.

**

Filed herewith.

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Previously filed.

II-2

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-3 and have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas, on February 27, 2013.

NCI BUILDING SYSTEMS, INC.

By: /s/ Todd R. Moore
Todd R. Moore
Executive Vice President, General Counsel
and Corporate 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 below on February 27, 2013.

Signature

Title

NCI BUILDING SYSTEMS, INC.

* Norman C. Chambers	Chairman of the Board, President, Chief Executive Officer and Director (Principal Executive Officer)
* Mark E. Johnson	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer)
* Richard Allen	Vice President — Finance and Chief Accounting Officer (Principal Accounting Officer)
* Kathleen J. Affeldt	Director
* James G. Berges	Director

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* Gary L. Forbes	Director
* John J. Holland	Director
* Lawrence J. Kremer	Director
* George Martinez	Director
* Nathan K. Sleeper	Director
* Jonathan L. Zrebiec	Director
/s/ Todd R. Moore Todd R. Moore	Attorney-in-fact

II-3

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II-4

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II-5