

Quanex Building Products CORP

Form S-8

April 23, 2008

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
Quanex Building Products Corporation
(Exact name of registrant as specified in its charter)**

| | |
|--|--|
| Delaware (State or other jurisdiction of incorporation or organization) | 26-1561397 (I.R.S Employer Identification No.) |
|--|--|

**1900 West Loop South
Suite 1500
Houston, Texas 77027
(713) 961-4600**

(Registrant's telephone number, including area code)

Quanex Building Products Corporation 2008 Omnibus Incentive Plan
(Full title of the plan)

**Kevin P. Delaney
1900 West Loop South
Suite 1500
Houston, Texas 77027**

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

**With Copy to:
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010
(713) 651-5151**

Attention: Martin F. Doublesin

Indicate by check mark if 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

Smaller Reporting Company

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered (1) | Proposed maximum offering price per share (2) | Proposed maximum aggregate offering price (2) | Amount of registration fee (2) |
|---|-----------------------------|---|---|--------------------------------|
| Common Stock, \$.01 par value per share | 2,900,000 shares | \$15.13 | \$43,877,000 | \$1,724.37 |

(1) Represents shares registered

for purchase under the Quanex Building Products Corporation 2008 Omnibus Incentive Plan (the Plan). Also includes an indeterminable number of shares of common stock issuable as a result of the anti-dilution provisions of the Plan.

- (2) Estimated solely for the purpose of calculating the registration fee and is based on the book value of the securities computed as of April 22, 2008, in accordance with Rule 457(c) and Rule 457(h) of the Securities Act of 1933, as amended (the Securities Act).

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Consent of Deloitte & Touche LLP

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which were filed by Quanex Building Products Corporation (Quanex or the Registrant) with the Securities and Exchange Commission (the Commission), and any future filings made by Quanex with the Commission under Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents:

1. Registration Statement on Form 10, first filed with the Commission on January 11, 2008, and declared effective by the Commission on April 9, 2008;
2. The description of Quanex s common stock, \$0.01 par value per share (the Common Stock), contained in the Information Statement dated April 23, 2008, included in the Registrant s Registration Statement on Form 10 (Registration No. 1-33913) and filed with the Securities and Exchange Commission pursuant to Section 12(b) of the Securities Act of 1933, as amended (the Securities Act).

Item 6. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against amounts paid and expenses incurred in connection with an action or proceeding to which he is, or is threatened to be made, a party by reason of such position, if such person shall have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal proceeding, if such person had no reasonable cause to believe his conduct was unlawful; provided that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the adjudicating court determines that such indemnification is proper under the circumstances.

The Registrant s Certificate of Incorporation eliminates the personal monetary liability of a director to the Registrant and its stockholders for breach of his or her fiduciary duty of care as a director to the extent currently allowed under the Delaware General Corporation Law. Article XVII of the Registrant s Restated Certificate of Incorporation provides that a director of the Registrant shall not be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director s duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) based on the payment of an improper dividend or an improper repurchase of the Registrant s stock under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

The Bylaws of the Registrant provide that, under certain circumstances, the Registrant is required to indemnify any person who was, is, or is threatened to be made a party in any action, suit or proceeding because such person is or was a director or officer of the Registrant. The Registrant s Amended and Restated Bylaws were amended in February 1987 to provide for indemnification by the Registrant of its officers and directors to the fullest extent authorized by the General Corporation Law of the State of Delaware. This right to indemnification under the Registrant s Amended and Restated Bylaws is a contract right, and requires the Registrant to provide for the payment of expenses in advance of the final disposition of any suit or proceeding brought against the director or officer of the Registrant in his official capacity as such, provided that such director or officer delivers to the Registrant an undertaking to repay any amounts advanced if it is ultimately determined that such director or officer is not entitled to indemnification. The Registrant also maintains a directors and officers liability insurance policy.

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Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been informed that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 8. Exhibits

- 4.1 Quanex Building Products Corporation 2008 Omnibus Incentive Plan, filed as Exhibit 10.4 to the Registrant's Registration Statement on Form 10, Amendment No. 4 filed on March 17, 2008, and incorporated herein by reference.
- 5.1 Opinion of Kevin P. Delaney, Senior Vice President-General Counsel and Secretary of Quanex Building Products Corporation
- 23.1 Consent of Kevin P. Delaney, Senior Vice President-General Counsel and Secretary of Quanex Building Products Corporation (included in Exhibit 5.1).
- 23.2 Consent of Deloitte & Touche LLP.
- 24.1 Powers of Attorney from certain members of the Board of Directors of the Registrant (contained on page II-4).

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. 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:

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8 (§239.16b of this chapter), 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 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the registration statement; and

(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.

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- (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 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 and 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 Houston, State of Texas, on April 23, 2008.

**QUANEX BUILDING PRODUCTS
CORPORATION**

By: /S/ KEVIN P. DELANEY
Kevin P. Delaney
Senior Vice President-General Counsel
and Secretary

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KNOW ALL MEN BY THESE PRESENTS, that each director whose signature appears below constitutes and appoints Raymond A. Jean, Kevin P. Delaney and Brent L. Korb, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution for him and in his name, place and stead, in any and all capacities, to sign, execute and file this registration statement under the Securities Act and any and all amendments (including, without limitation, post-effective amendments and any amendment or amendments or additional registration statement filed pursuant to Rule 462 under the Securities Act increasing the amount of securities for which registration is being sought) to this registration statement, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, to sign any and all applications, registration statements, notices or other documents necessary or advisable to comply with the applicable state security laws, and to file the same, together with other documents in connection therewith, with the appropriate state securities authorities, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that 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 dates indicated.

| SIGNATURE | TITLE | DATE |
|--|---|----------------|
| /S/ RAYMOND A. JEAN Raymond A. Jean | Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer) | April 23, 2008 |
| /S/ THOMAS M. WALKER Thomas M. Walker | Senior Vice President Finance and Chief Financial Officer (Principal Financial Officer) | April 23, 2008 |
| /S/ BRENT L. KORB Brent L. Korb | Vice President Corporate Controller (Principal Accounting Officer) | April 23, 2008 |
| /S/ DONALD G. BARGER, JR. Donald G. Barger, Jr. | Director | April 23, 2008 |
| /S/ SUSAN F. DAVIS Susan F. Davis | Director | April 23, 2008 |
| /S/ JOSEPH D. RUPP Joseph D. Rupp | Director | April 23, 2008 |
| /S/ JOSEPH J. ROSS Joseph J. Ross | Director | April 23, 2008 |
| /S/ RICHARD L. WELLEK Richard L. Wellek | Director | April 23, 2008 |

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- 4.1 Quanex Building Products Corporation 2006 Omnibus Incentive Plan, filed as Exhibit 10.4 to the Registrant's Registration Statement on Form 10 (Registration No. 1-33913), and incorporated herein by reference.
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