

ARTS WAY MANUFACTURING CO INC
Form S-8
October 15, 2010
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
Under the Securities Act of 1933

ART'S-WAY MANUFACTURING CO., INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

42-0920725
(I.R.S. Employer

5556 Highway 9
Armstrong, Iowa 50514
(Address of Principal Executive Office and Zip Code)

2007 Non-Employee Directors Stock Option Plan
2007 Employee Stock Option Plan
(Full Title of the Plan)

Carrie L. Majeski
President and Chief Executive Officer
Art's-Way Manufacturing Co., Inc.
5556 Highway 9
Armstrong, Iowa 50514
(712) 864-3131

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

Copies to:
Ryan C. Brauer, Esq.
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Fax: (612) 492-7077

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 | <input type="radio"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller Reporting Company | <input checked="" type="checkbox"/> |

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 |
|--|----------------------------|--|--|----------------------------|
| Common Stock, \$01 par value per share: | | | | |
| -To be issued under the 2007 Non-Employee Directors Plan | 186,000 | \$9.76 | \$1,815,360 | \$129.44 |
| -To be issued under the 2007 Employee Stock Option Plan | 198,170 | \$9.76 | \$1,934,139 | \$137.90 |
| TOTAL: | 384,170 | | \$3,749,499 | \$267.34 |

(1) Pursuant to Rule 416, this Registration Statement also covers an indeterminate number of additional shares of Common Stock that may be offered or sold as a result of any adjustments based on stock splits, stock dividends or similar events provided under the Plan.

(2) Estimated pursuant to Rule 457(h) solely for the purpose of calculating the registration fee and based upon the average of the high and low prices of the Registrant's Common Stock as reported by the NASDAQ on October 12, 2010.

PART I

The information specified in Items 1 and 2 of Part I of this Registration Statement is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the instructions to Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the plan covered by this Registration Statement as required by Rule 428.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, previously filed with the Securities and Exchange Commission (the "Commission"), are hereby incorporated by reference herein:

1. Annual Report on 10-K of Art's Way Manufacturing Co., Inc. (the "Company") for the year ended November 30, 2009;
2. All other reports filed by the Registrant pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") since November 30, 2009; and
3. Description of our common stock included in our Registration Statement on Form 8-A, filed on January 12, 1971, including all amendments and reports filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of 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 such 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.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein (or in any other subsequently filed document which also is incorporated by reference herein) modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed to constitute a part hereof except as so modified or superseded.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law provides for the indemnification of officers, directors, and other corporate agents in terms sufficiently broad to indemnify such persons under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act. The Registrant's Restated Certificate of Incorporation and the Registrant's Amended and Restated Bylaws provide for indemnification to the fullest extent permitted by the Delaware General Corporation Law. The Registrant also maintains insurance policies

that insure its officers and directors against certain liabilities. The Registrant has also entered into agreements with its directors and certain of its officers that will require the Registrant, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers to the fullest extent permitted by law.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

5.1 Opinion of Fredrikson & Byron, P.A.

23.1 Consent of Fredrikson & Byron, P.A. (included in Exhibit 5.1).

23.2 Consent of Eide and Bailly LLP.

24.1 Power of Attorney (included on signature page hereof).

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;

(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;

(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 periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the 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 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 Armstrong, State of Iowa, on October 15, 2010.

ART'S-WAY MANUFACTURING CO.,
INC.

By: /s/ Carrie L. Majeski
Carrie L. Majeski
President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes CARRIE L. MAJESKI his or her 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 or all amendments to this Annual Report on Form 10-K and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto 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 in and about the premises, as fully to all intents and purposes as he or she might could do in person, hereby ratifying and confirming all said attorney-in-fact and agent, or her substitute or substitutes may lawfully do or cause to be done by virtue thereof.

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 listed below.

| Signature | Title | Date |
|--|---|------------------|
| /s/ Carrie L. Majeski Carrie L. Majeski | President, Chief Executive Officer and Principal Financial Officer | October 15, 2010 |
| /s/ Amber J. Murra, CPA Amber J. Murra, CPA | Director of Finance, Principal Accounting Officer | October 15, 2010 |
| /s/ J. Ward McConnell, Jr. J. Ward McConnell, Jr. | Executive Chairman, Director | October 15, 2010 |
| /s/ David R. Castle David R. Castle | Director | October 15, 2010 |
| /s/ Fred W. Krahmer Fred W. Krahmer | Director | October 15, 2010 |
| /s/ James Lynch James Lynch | Director | October 15, 2010 |

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| /s/ Douglas McClellan Douglas McClellan | Director | October 15, 2010 |
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| /s/ Marc. H. McConnell Marc H. McConnell | Executive Vice Chairman, Director | October 15, 2010 |
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| /s/ Thomas E. Buffamante Thomas E. Buffamante | Director | October 15, 2010 |
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EXHIBIT INDEX

| Exhibit Number | Exhibit Description |
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