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CLAIRE'S STORES INC
Form S-8 POS
May 01, 2001

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON APRIL 30, 2001
REGISTRATION NO. 333-42027

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
POST-EFFECTIVE AMENDMENT NO. 1

CLAIRE'S STORES, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

FLORIDA

59-0940416

(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

(I.R.S. EMPLOYER IDENTIFICATION
NO.)

3 S.W. 129TH AVENUE
PEMBROKE PINES, FLORIDA 33027

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

CLAIRE'S STORES, INC. 1996 STOCK OPTION PLAN

(FULL TITLE OF THE PLAN)

IRA D. KAPLAN
SENIOR VICE PRESIDENT, CHIEF FINANCIAL OFFICER AND TREASURER
3 S.W. 129TH AVENUE
PEMBROKE PINES, FLORIDA 33027

(NAME AND ADDRESS OF AGENT FOR SERVICE)

(954) 433-3900

(TELEPHONE NUMBER, INCLUDING AREA CODE, OF AGENT FOR SERVICE)

COPIES OF ALL COMMUNICATIONS TO:

Andrew E. Balog, Esq.
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
(305) 579-0500

CALCULATION OF REGISTRATION FEE

TITLE OF SECURITIES TO BE REGISTERED (1)	AMOUNT TO BE REGISTERED (1) (2) (3)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE (4)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (4)

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COMMON STOCK, \$.05 6,261,639 SHARES \$17.82 \$17,820,000
PAR VALUE PER SHARE

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- (1) The Registrant is the successor issuer to Claire's Stores, Inc. pursuant to Rule 12g-3(a) of the Securities Exchange Act of 1934 by virtue of its filing with the Commission of a Current Report on Form 8-K dated June 30, 2000 in connection with Claire's Stores, Inc.'s reincorporation from the State of Delaware to the State of Florida. Pursuant to Rule 12g-3(a), the Registrant's shares of common stock, like those of its predecessor, are deemed to be registered under Section 12(b) of the Securities Exchange Act of 1934.
- (2) Includes 5,261,639 shares previously registered by this Registration Statement as filed with the Securities and Exchange Commission on December 11, 1997 by the Registrant's predecessor as described above in Note 1. Also includes an additional 1,000,000 shares reserved for issuance under the Claire's Stores, Inc. 1996 Stock Option Plan (the "Plan"), pursuant to an amendment to the Plan that increased the number of shares available for grant under the Plan by 1,000,000.
- (3) This Registration Statement also covers any additional shares that may hereafter become issuable as a result of the adjustment provisions of the Plan.
- (4) Estimated solely for the purpose of calculating the registration fee as to the additional 1,000,000 shares being registered hereunder in accordance with Rule 457 under the Securities Act of 1933. The Proposed Maximum Offering Price for such shares is based on the average of the high and low prices reported on The New York Stock Exchange on April 24, 2001.

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PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants in the Claire's Stores, Inc. 1996 Stock Option Plan, as amended (the "Plan"), as specified by Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act").

Such document(s) are not being filed with the Commission, but constitute (along with the documents incorporated by reference into the Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed by Claire's Stores, Inc. (the "Registrant") with the Commission are hereby incorporated herein by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended February 3, 2001; and
- (b) The description of the Registrant's Common Stock contained in its Registration Statement on Form 8-A, including any amendment or report filed for the purpose of updating such description.

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement and prior to the termination of this offering shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents with the Commission.

Any statements contained in this Registration Statement, or 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 which is also deemed to be incorporated by reference herein modifies or supersedes such statement. Any such 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. The class of securities to be offered is registered under Section 12 of the Exchange Act.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Registrant, a Florida corporation, is empowered by Section 607.0850 of the Florida Business Corporation Act, subject to the procedures and limitations stated therein, to indemnify any person who was or is a party to any proceeding other than any action by, or in the right of, the corporation, by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, in the best interest of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 607.0850 also empowers a Florida corporation to indemnify any person who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof, if

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he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any proceeding referred to above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

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The indemnification and advancement of expenses provided pursuant to Section 607.0850 are not exclusive, and a corporation may make any other or further indemnification or advancement of expenses to any of its directors, officers, employees or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, a director, officer, employee or agent is not entitled to indemnification or advancement of expenses if a judgment or other final adjudication establish that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute: (i) a violation of the criminal law, unless the director, officer, employee or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful; (ii) a transaction from which the director, officer, employee or agent derived an improper personal benefit; (iii) in the case of a director, a circumstance under which the liability provisions of Section 607.0834 of the Florida Business Corporation Act, relating to a director's liability for voting in favor of or asserting to an unlawful distribution, are applicable; or (iv) willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

The Registrant's By-Laws and Amended and Restated Articles of Incorporation provide that the Registrant shall indemnify each person who was or is made a part or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer or employee of the Registrant or is or was serving at the request of the Registrant as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Registrant to the fullest extent authorized by the Florida Business Corporation Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Registrant to provide broader indemnification rights than such law permitted the Registrant to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall

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inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided otherwise therein with respect to proceedings to enforce rights to indemnification, the Registrant shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Registrant's board of directors. The right to indemnification conferred therein shall be a contract right and shall include the right to be paid by the Registrant the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Florida Business Corporation Act requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including without limitation, service to an employee benefit plan) shall be made only upon delivery to the Registrant of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses thereunder or otherwise (hereinafter an "undertaking").

If a claim under the preceding paragraph is not paid in full by the Registrant within sixty days after a written claim has been received by the Registrant, except in the case of a claim for an advancement of expenses in which case the applicable period shall be twenty days, the indemnitee may at any time thereafter bring suit against the Registrant to recover the unpaid amount of the claim. If successful in whole or in part in any such suit or in a suit brought by the Registrant to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit by the Registrant to recover an advancement of expenses pursuant to the terms of an undertaking the Registrant shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met the applicable standard of conduct set forth in the Florida Business Corporation Act. Neither the failure of the Registrant (including its board of directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Florida Business Corporation Act, nor an actual determination by the Registrant (including its board of directors, independent legal counsel, or its shareholders) that the indemnitee has not met such applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right thereunder, or by the Registrant to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified or to such advancement of expenses thereunder or otherwise shall be on the Registrant.

The Registrant's Amended and Restated Articles of Incorporation and By-Laws provide that the rights to indemnification and to the advancement of expenses conferred therein shall not be exclusive of any other right which any person may have or thereafter acquire under any statute therein.

The Registrant maintains an insurance policy covering directors and officers under which the insurer agrees to pay, subject to certain exclusions, for any claim made against the directors and officers of the Registrant for a

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wrongful act for which they may become legally obligated to pay or for which the Registrant is required to indemnify its directors and officers.

At present, there is no pending litigation or proceeding involving a director or officer of the Registrant as to which indemnification is being sought, nor is the Registrant aware of any threatened litigation that may result in claims for indemnification by any officer or director.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.
Not applicable.

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ITEM 8. EXHIBITS.

EXHIBIT

NO.	DESCRIPTION
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4.1	Amended and Restated Articles of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K dated June 30, 2000).
4.2	By-Laws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K dated June 30, 2000).
*4.3	Claire's Stores, Inc. 1996 Stock Option Plan
*4.4	First Amendment to the Claire's Stores, Inc. 1996 Stock Option Plan
*5.1	Opinion of Greenberg Traurig, P.A.
*23.1	Consent of KPMG LLP.
*23.2	Consent of Greenberg Traurig, P.A. (included in Exhibit 5.1 hereof).
*24.1	Power of Attorney (included in the signature page hereto).