

SEARS HOLDINGS CORP  
Form S-8  
December 02, 2008

As filed with the Securities and Exchange Commission on December 2, 2008

Registration No. 333-

Post-Effective Amendment No. 1 to Registration Statement No. 333-133248

**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT**

**and**

**POST-EFFECTIVE AMENDMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**SEARS HOLDINGS CORPORATION**

(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State or Other Jurisdiction of

20-1920798  
(I.R.S. Employer

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Incorporation or Organization)

Identification No.)

3333 Beverly Road

Hoffman Estates, Illinois 60179

(Address of Principal Executive Offices) (Zip Code)

2006 Stock Plan

(Full Title of the Plan)

William R. Harker

Senior Vice President, Human Resources, General Counsel and Secretary

Sears Holdings Corporation

3333 Beverly Road

Hoffman Estates, Illinois 60179

(Name and Address of Agent for Service)

(847) 286-2500

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

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 definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting

company)

**CALCULATION OF REGISTRATION FEE**

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<b>Title of Securities to be Registered</b>	<b>Amount to be registered</b>	<b>Proposed</b>		<b>Amount of registration fee</b>
		<b>maximum offering price per share</b>	<b>Proposed maximum aggregate offering price</b>	
Common Shares, par value \$0.01 per share	400,000	\$33.06 (1)	\$13,224,000(1)	\$520(2)

- (1) Estimated solely for purposes of determining the amount of the registration fee, in accordance with Rule 457(h)(1) and Rule 457(c) under the Securities Act of 1933, as amended, on the basis of the average of the high and low prices of the Registrant's common shares on The NASDAQ Global Select Market on November 25, 2008.
- (2) An aggregate of \$983.61 of such amount was previously paid in connection with 68,996 unsold common shares of the 1,000,000 common shares registered under registration statement no. 333-133248 initially filed on April 12, 2006 (\$14,256 in fees paid) by the Registrant, which unsold securities are being removed from registration as of this date. Accordingly, pursuant to Rule 457(p) under the Securities Act of 1933, as amended, \$983.61 is being offset against the total filing fee due for this Registration Statement.

**EXPLANATORY NOTE**

The Registrant hereby files this Registration Statement on Form S-8 relating to 400,000 additional common shares to be offered or sold under the Sears Holdings Corporation 2006 Stock Plan (the Plan ). This Registration Statement also constitutes Post-Effective Amendment No. 1 to the Registrant's Form S-8 Registration Statement (File No. 333-133248) to remove from registration 68,996 common shares that remain unsold.

**PART II**

**ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE**

The following documents filed with the Securities and Exchange Commission (the Commission ) by the Registrant are incorporated herein by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended February 2, 2008 (File No. 000-51217);
- (b) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, since February 2, 2008 (other than the portions of those documents not deemed to be filed); and
- (c) Description of Registrant's common stock included in Registrant's Registration Statement on Form S-4 (File No. 333-120954) filed under the Securities Act of 1933, as amended, including any amendment or report filed updating such description.

All documents filed by Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than the portions of those documents not deemed to be filed) subsequent to the date hereof and prior to the filing of a post-effective amendment hereto indicating that all securities offered hereunder have been sold or which deregisters all securities 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 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 in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any 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.

**ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL**

Certain matters with respect to the validity of the shares of common stock offered under this registration statement will be passed upon for the Registrant by William R. Harker, Senior Vice President, Human Resources, General Counsel and Secretary of the Registrant. Mr. Harker is eligible to participate in the Plan. As of December 2, 2008, Mr. Harker beneficially owned 15,621 shares of common stock, including unvested restricted shares of common stock.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Pursuant to the Delaware General Corporation Law (the "DGCL"), a corporation may indemnify any person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than a derivative action by or in the right of such corporation) who is or was a director, officer, employee or agent of such corporation, or serving at the request of such corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to such corporation unless the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

To the extent a director, officer, employee or agent is successful in the defense of such an action, suit or proceeding, the corporation is required by the DGCL to indemnify such person for actual and reasonable expenses incurred thereby. Expenses (including attorneys' fees) incurred by such persons in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that such person is not entitled to be so indemnified.

The DGCL provides that the indemnification described above shall not be deemed exclusive of other indemnification that may be granted by a corporation pursuant to its by-laws, disinterested directors' vote, stockholders' vote, agreement or otherwise.

The DGCL also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above.

Registrant's restated certificate of incorporation requires Registrant to indemnify and hold harmless any director or officer of Registrant to the fullest extent permitted by Delaware law, against all expenses, liabilities and losses, including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid in settlement, reasonably incurred by those persons in connection with any action, suit or proceeding in which they were, are, or have been threatened to be involved by virtue of their service as a director or officer of Registrant or their service at the request of Registrant as a director, officer, employee or agent of, or in any other capacity with respect to, another corporation or a partnership, joint venture, trust or other entity or enterprise, including service with respect to employee benefit plans. In general, Registrant will indemnify such a director or officer who initiates an action, suit or proceeding only if such action, suit or proceeding was authorized by the board of directors of Registrant.

In addition, under Registrant's restated certificate of incorporation, Registrant will pay, in advance of the disposition of any action, suit or proceeding, any reasonable expenses incurred by such a director or officer subject to such person agreeing to repay any such amounts if it is judicially determined that such person is not entitled to be indemnified for such expenses. The indemnification rights conferred by Registrant are not exclusive of any other right to which persons seeking indemnification may be entitled under any statute, Registrant's certificate of incorporation or by-laws, any agreement, vote of stockholders or disinterested directors or otherwise.

The foregoing statements are subject to the detailed provisions of Section 145 of the DGCL and the full text of the restated certificate of incorporation of Registrant.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

The Exhibits to this registration statement are listed in the Exhibit Index beginning on page E-1 of this registration statement, which Index is incorporated herein by reference.

The Plan is not required to be qualified under Section 401 of the Internal Revenue Code.

ITEM 9. UNDERTAKINGS

The 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 a 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 paragraphs (1)(i) and (1)(ii) do not apply if the registration statement is on Form S-8 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 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.

(4) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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 Section 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.

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 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.

**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 Village of Hoffman Estates, Illinois, on December 2, 2008.

SEARS HOLDINGS CORPORATION

(Registrant)

By: /s/ William K. Phelan  
Name: William K. Phelan  
Title: Senior Vice President, Controller and

Treasurer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on December 2, 2008.

<b>Signature</b>	<b>Title</b>
Edward S. Lampert* Edward S. Lampert	Director, Chairman
W. Bruce Johnson* W. Bruce Johnson	Interim Chief Executive Officer and President (Principal Executive Officer)
J. Miles Reidy* J. Miles Reidy	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
William K. Phelan* William K. Phelan	Senior Vice President, Controller and Treasurer (Principal Accounting Officer)
William C. Crowley* William C. Crowley	Director, Executive Vice President and Chief Administrative Officer
Steven T. Mnuchin* Steven T. Mnuchin	Director
Richard C. Perry* Richard C. Perry	Director
Ann N. Reese* Ann N. Reese	Director
Kevin B. Rollins* Kevin B. Rollins	Director
Emily Scott* Emily Scott	Director
Thomas J. Tisch* Thomas J. Tisch	Director

\*By: /s/ William K. Phelan  
William K. Phelan  
Individually and as Attorney-in-fact





<b>Exhibit Number</b>	<b>Document Description</b>
3.1	Restated Certificate of Incorporation of Sears Holdings Corporation [incorporated by reference to Exhibit 3.1 to Sears Holdings current report on Form 8-K filed March 24, 2005 (File No. 000-51217)].
3.2	Restated By-laws of Sears Holdings Corporation [incorporated by reference to Exhibit 3.1 to Sears Holdings current report on Form 8-K filed March 24, 2005 (File No. 000-51217)].
5.1*	Opinion of William R. Harker, Esq.
23.1*	Consent of Deloitte & Touche LLP.
23.2*	Consent of William R. Harker, Esq. (included in the opinion filed as Exhibit 5).
24*	Power of Attorney

\* Filed herewith.