

MONRO MUFFLER BRAKE INC

Form S-8

April 06, 2006

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As filed with the Securities and Exchange Commission  
on April 6, 2006

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**MONRO MUFFLER BRAKE, INC.**

(Exact name of registrant as specified in its charter)

New York

16-0838627

(State or Other Jurisdiction of  
Incorporation or Organization)

(I.R.S. Employer  
Identification No.)

200 Holleder Parkway, Rochester, New York

14615

(Address of Principal Executive Offices)

(Zip Code)

MONRO MUFFLER BRAKE, INC. 2003 NON-EMPLOYEE DIRECTORS STOCK OPTION PLAN  
(Full Title of the Plan)

Robert G. Gross

President and Chief Executive Officer

MONRO MUFFLER BRAKE, INC.

200 Holleder Parkway

Rochester, New York 14615

(585) 647-6400

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

Copy to:

Marc Weingarten, Esq.

Schulte Roth & Zabel LLP

919 Third Avenue

New York, New York 10022

**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, par value \$.01 per share	140,000 shares	\$37.13	\$5,198,200	\$557

- (1) This amount reflects: (a) the 90,000 shares (60,000 shares as adjusted for the registrant's three-for-two stock split, effective on October 31, 2003 (the "Stock Split")), approved by the registrant's Board of Directors and shareholders on May 20, 2003 and August 19, 2003, respectively; and (b) the 50,000 shares approved by the Compensation Committee of the registrant's Board of Directors and shareholders on June 8 and August 9, 2005, respectively. In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers an indeterminate number of shares as may be required to cover possible adjustments

under the  
Monro Muffler  
Brake, Inc. 2003  
Non-Employee  
Directors Stock  
Option Plan, as  
amended (the  
Plan ).

- (2) Estimated solely  
for the purpose  
of calculating  
the registration  
fee pursuant to  
Rule 457(h)(1)  
under the  
Securities Act,  
based on the  
average of the  
high and low  
prices quoted  
for the Common  
Stock (the  
Common Stock )  
in NASDAQ  
trading on  
April 3, 2006.
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PART I  
INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information required by Part I of Form S-8 will be sent or given to participants in the Plan as specified by Rule 428(b)(1) of the Securities Act. These documents and the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II  
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents By Reference.

The following documents which have been filed by Monro Muffler Brake, Inc., a New York corporation (the Company ), with the Securities and Exchange Commission (the Commission ) are hereby incorporated by reference:

1. The Company s Annual Report on Form 10-K for its fiscal year ended March 26, 2005, filed with the Commission on June 9, 2005.
2. The Company s Quarterly Report on Form 10-Q, filed with the Commission on August 4, 2005.
3. The Company s Quarterly Report on Form 10-Q, filed with the Commission on November 3, 2005.
4. The Company s Quarterly Report on Form 10-Q, filed with the Commission on February 2, 2006.
5. The Company s Notice of Annual Meeting of Stockholders and Proxy Statement for its Annual Meeting of Stockholders held on August 19, 2003, filed pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the Exchange Act ).
6. The Company s Notice of Annual Meeting of Stockholders and Proxy Statement for its Annual Meeting of Stockholders held on August 9, 2005, filed pursuant to Section 14 of the Exchange Act.
7. The description of the Common Stock contained in the Company s Registration Statement on Form S-1 filed with the Commission pursuant to Section 12 of the Exchange Act, on June 19, 1991 (File No. 33-41290), and any amendment or report filed for the purpose of further updating such description.

All reports and other documents subsequently filed by the Company 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 hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in and to be a part of this Registration Statement from the date of filing of such reports and documents.

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Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Limitation of Directors' Liability.

Section 402(b) of the Business Corporation Law of the State of New York (the "BCL"), authorizes a New York corporation in its certificate of incorporation to limit or eliminate the personal liability of its directors to the corporation and its shareholders for damages for certain breaches of duty when acting in their capacity as directors.

Section 7 of the Company's Restated Certificate of Incorporation limits the liability of its directors (in their capacity as directors but not in their capacity as Company officers) to the Company and its shareholders to the fullest extent permitted by the BCL. However, in accordance with the BCL, the Restated Certificate of Incorporation states that it does not eliminate or limit:

(a) the liability of any director if a judgment or other final adjudication adverse to such director establishes (i) that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) that such director personally gained in fact a financial profit or other advantage to which he was not legally entitled, or (iii) that such director's acts violated Section 719 of the BCL; or (b) the liability of any director for any act or omission prior to the adoption of this Restated Certificate of Incorporation.

The Certificate of Incorporation also provides that no amendment, modification or repeal of Section 7 shall adversely affect any right or protection of a director that exists at the time of such amendment, modification or repeal.

Indemnification and Insurance.

Section 722 of the BCL provides that a corporation may indemnify its current and former directors and officers under certain circumstances. The Company's Bylaws generally provide that the Company will indemnify to the fullest extent permitted by law any person who is or was a director or officer of the Company against any judgments, fines, amount paid in settlement and reasonable expenses, including attorneys' fees, which may arise by reason of the fact that such person is or was a director or officer of the Company, or where, at the Company's request, such person serves or served any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity. In accordance with Section 726 of the BCL, the Company also maintains insurance for the benefit of its directors and officers insuring them against certain liabilities arising out

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of their service in such capacities, including liabilities under the securities law.

Section 721 of the BCL provides that no such indemnification can be made if a judgment or other final adjudication adverse to such person establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

The following is a complete list of exhibits filed as a part of this Registration Statement:

Exhibit No.	Document
4	Monro Muffler Brake, Inc. 2003 Non-Employee Directors' Stock Option Plan
4.1	Monro Muffler Brake, Inc. 2003 Non-Employee Directors Stock Option Plan Amendment No. 1
5	Opinion of Schulte Roth & Zabel LLP
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Schulte Roth & Zabel LLP (included in Exhibit 5)
24	Powers of Attorney (see pages II-1 and II-2 of this Registration Statement)

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; and



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(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) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 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; and

(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 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.

(h) 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 Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 the final adjudication of such issue.

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**POWER OF ATTORNEY**

The registrant and each person whose signature appears below hereby appoint Robert G. Gross and Catherine D Amico, and each of them, as their attorneys-in-fact, with full power of substitution, to execute in their names and on behalf of the registrant and each such person, individually and in each capacity stated below, one or more amendments (including post-effective amendments) to this Registration Statement as the attorney-in-fact acting on the premise shall from time to time deem appropriate and to file any such amendment to this Registration Statement with the Securities and Exchange Commission.

**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 Rochester, State of New York, on this 23<sup>rd</sup> day of March, 2006.

MONRO MUFFLER BRAKE, INC.

By: /s/ Robert G. Gross  
Robert G. Gross  
President and Chief Executive Officer  
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Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Name and Signature	Title	Date
/s/ Robert G. Gross  Robert G. Gross	Director, President and Chief Executive Officer (Principal Executive Officer)	March 23, 2006
/s/ Catherine D Amico  Catherine D Amico	Executive Vice-President-Finance Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	March 23, 2006
/s/ Richard A. Berenson  Richard A. Berenson	Director	March 23, 2006
/s/ Frederick M. Danziger  Frederick M. Danziger	Director	March 23, 2006
/s/ Donald Glickman  Donald Glickman	Director	March 23, 2006
/s/ Robert E. Mellor  Robert E. Mellor	Director	March 23, 2006
/s/ Peter J. Solomon  Peter J. Solomon	Director	March 23, 2006
/s/ Lionel B. Spiro  Lionel B. Spiro	Director	March 23, 2006
/s/ Francis R. Strawbridge  Francis R. Strawbridge	Director	March 23, 2006

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