

Owens Corning
Form S-8
April 24, 2013

As filed with the Securities and Exchange Commission on April 24, 2013

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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

OWENS CORNING

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

43-2109021
(I.R.S. Employer
Identification Number)

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One Owens Corning Parkway,

Toledo, OH
(Address of Principal Executive Offices)

43659
(Zip Code)

Owens Corning Employee Stock Purchase Plan

Owens Corning 2013 Stock Plan

(Full Title of the Plan)

John W. Christy

Senior Vice President, General Counsel and Secretary

Owens Corning

One Owens Corning Parkway

Toledo, Ohio 43659

(419) 248-8000

(Name, Address and 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 the 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

Calculation of Registration Fee

| Title of Securities to be Registered | Amount | Proposed | Proposed | Amount of |
|--------------------------------------|------------|----------------|-----------|------------------|
| | to be | Maximum | Maximum | Registration Fee |
| | Registered | Offering Price | Aggregate | |

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| | | Per Share | Offering Price | |
|--|----------------------|------------------|-----------------------|----------------|
| Common Stock, par value \$0.01 per share | 5,392,261 shares (1) | \$38.57(2) | \$207,979,506.77 (2) | \$28,368.40(3) |

- (1) Consists of 2,000,000 shares of common stock, par value \$0.01 per share (the Common Stock), that may be issued pursuant to the Owens Corning Employee Stock Purchase Plan (the ESPP) and 3,392,261 shares of Common Stock that may be issued pursuant to the Owens Corning 2013 Stock Plan. Pursuant to Rule 416 of the Securities Act of 1933, as amended, this Registration Statement also covers such additional and indeterminate number of securities as may become issuable because of the provisions of the plans, relating to adjustments for changes resulting from a stock dividend, stock split or similar change.
- (2) Estimated in accordance with Rules 457(c) and (h) under the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee. The price of \$38.57 per share represents the average of the high and low sales prices of the Common Stock as reported on the New York Stock Exchange on April 18, 2013.
- (3) Pursuant to Rule 457(p) under the Securities Act of 1933, as amended, the \$78,921.48 remaining of the filing fee previously paid with respect to unsold securities that were registered pursuant to a Registration Statement on Form S-1 (No. 333-136363) initially filed by Owens Corning on August 7, 2006, is being carried forward, of which \$28,368.40 is set off against the registration fee due for this offering and of which \$50,553.08 remains available for future registration fees. No additional registration fee has been paid with respect to this offering.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

Owens Corning, a Delaware corporation (the Registrant), hereby incorporates by reference in this Registration Statement the following documents and information previously filed with the Securities and Exchange Commission (the Commission):

- (1) the Registrant's annual report on Form 10-K for the year ended December 31, 2012, filed with the Commission on February 20, 2013;
- (2) the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013, filed with the Commission on April 24, 2013;
- (3) the Registrant's Current Report on Form 8-K filed with the Commission on April 18, 2013; and
- (4) the description of the Common Stock of the Registrant contained in the Registrant's registration statement on Form 8-A filed with the Commission on October 19, 2006 under the Securities Exchange Act of 1934, as amended (the Exchange Act), including any amendment thereto or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement 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 into this Registration Statement and to be a part hereof from the respective dates of filing of such documents (such documents, and the documents enumerated above, being hereinafter referred to as Incorporated Documents).

Any statement contained in an Incorporated Document 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 Incorporated Document 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.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Registrant is incorporated under the laws of the state of Delaware. Section 145 of the General Corporation Law of the State of Delaware (the DGCL) provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of such corporation, by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise, if such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. Section 145 of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any indemnified person against any liability asserted against him or her and incurred by him or her in any indemnified capacity, or arising out of his or her status as such, regardless of whether the corporation would otherwise have the power to indemnify him or her under the DGCL.

Article X of the Registrant's amended and restated certificate of incorporation provides that the Registrant shall, to the fullest extent authorized or permitted by applicable law, indemnify any person made, or threatened to be made, a party to any action or proceeding (whether civil or criminal or otherwise) by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the Registrant or by reason of the fact that such person, at the request of Registrant, is or was serving as a director, manager, officer, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise. No director of the Registrant shall 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) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit.

Article IX of the Registrant's amended and restated bylaws provides that the Registrant shall, to the fullest extent authorized or permitted by applicable law, indemnify any and all persons who may serve or who have served at any time as a director or officer of the Registrant, or may serve or at any time have served at the request of the Registrant as a director, manager, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, and any directors or officers of the Registrant who at the request of the Registrant may serve or at any time have served as agents or fiduciaries of an employee benefit plan of the Registrant or any of its subsidiaries, from and against any and all of the expenses, liabilities or other matters referred to in or covered by law, 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, manager, officer, employee or agent. The Registrant may also indemnify any and all other persons whom it shall have power to indemnify under any applicable law, to the fullest extent authorized or permitted by such law.

In addition to the provisions of the amended and restated articles of incorporation and amended and restated bylaws, the Registrant has entered into indemnification agreements with all of its directors, to indemnify the directors to the fullest extent permitted by the amended and restated bylaws. The Registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

The exhibits accompanying this Registration Statement are listed on the accompanying Exhibit Index.

ITEM 9. UNDERTAKINGS

(a) 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, as amended (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

(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 reports filed with or furnished to the Commission 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 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 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 Toledo, State of Ohio, on the 24th day of April, 2013.

OWENS CORNING

By: /s/ Michael C. McMurray
 Michael C. McMurray
 Senior Vice President and Chief Financial Officer

POWER OF ATTORNEY AND SIGNATURES

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature to this registration statement appears below hereby constitutes and appoints John W. Christy, Michael C. McMurray, and Michael H. Thaman and each of them, as such person's true and lawful attorneys-in-fact and agents with full power of substitution for such person and in such person's name, place and stead, in any and all capacities, to sign and to file with the Securities and Exchange Commission any and all amendments and post-effective amendments to this registration statement, with exhibits thereto and any and all other documents filed in connection with such filings, 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 in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or any substitute therefor, 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 dates indicated.

| Signature | Title | Date |
|--|---|----------------|
| /s/ Michael H. Thaman Michael H. Thaman | Chairman of the Board, President and Chief Executive Officer | April 18, 2013 |
| /s/ Michael C. McMurray Michael C. McMurray | Senior Vice President and Chief Financial Officer | April 18, 2013 |
| /s/ Kelly J. Schmidt Kelly J. Schmidt | Vice President and Controller | April 18, 2013 |

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| | | |
|--|----------|----------------|
| /s/ Norman P. Blake, Jr. Norman P. Blake, Jr. | Director | April 18, 2013 |
| /s/ J. Brian Ferguson J. Brian Ferguson | Director | April 18, 2013 |
| /s/ Ralph F. Hake Ralph F. Hake | Director | April 18, 2013 |
| /s/ F. Philip Handy F. Philip Handy | Director | April 18, 2013 |
| /s/ Ann Iverson Ann Iverson | Director | April 18, 2013 |
| /s/ James J. McMonagle James J. McMonagle | Director | April 18, 2013 |
| /s/ W. Howard Morris W. Howard Morris | Director | April 18, 2013 |
| /s/ Joseph F. Neely Joseph F. Neely | Director | April 18, 2013 |
| /s/ Suzanne P. Nimocks Suzanne P. Nimocks | Director | April 18, 2013 |
| /s/ John D. Williams John D. Williams | Director | April 18, 2013 |

EXHIBIT INDEX

| Exhibit No. | Description |
|-------------|---|
| 4.1 | Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 1-33100), filed November 2, 2006). |
| 4.2 | Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (File No. 1-33100), filed November 2, 2006). |
| 4.3 | Owens Corning Employee Stock Purchase Plan (incorporated by reference to Annex B to the Registrant's Definitive Proxy Statement on Schedule 14A, filed March 14, 2013). |
| *4.4 | Owens Corning 2013 Stock Plan. |
| *5.1 | Opinion of Sidley Austin LLP with respect to validity of issuance of securities. |
| *23.1 | Consent of PricewaterhouseCoopers LLP. |
| *23.2 | Consent of Sidley Austin LLP (included in Exhibit 5.1). |
| *24.1 | Power of Attorney (included on the signature page of the Registration Statement). |

* Each document marked with an asterisk is filed herewith.