

CHART INDUSTRIES INC

Form S-8

November 14, 2006

As filed with the Securities and Exchange Commission on November 14, 2006  
Registration No. 333 \_\_\_\_\_

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**FORM S 8**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**  
**CHART INDUSTRIES, INC.**  
**(Exact Name of Registrant as Specified in Its Charter)**

**Delaware** **34-1712937**  
**(State or Other Jurisdiction of** **(I.R.S. Employer Identification No.)**  
**Incorporation or Organization)**  
**One Infinity Corporate Centre Drive**  
**Suite 300**  
**Garfield Heights, Ohio 44125-5370**  
**(Address of Principal Executive Offices, Including Zip Code)**

**Amended and Restated Chart Industries, Inc. 2005 Stock Incentive Plan**  
**(Full Title of the Plan)**

**Matthew J. Klaben, Esq.**  
**Vice President, General Counsel and Secretary**  
**One Infinity Corporate Centre Drive**  
**Suite 300**  
**Garfield Heights, Ohio 44125-5370**  
**Tel.: (440) 753-1490**  
**Fax: (440) 753-1491**  
**(Name, Address and Telephone Number, Including Area Code, of Agent for Service)**

**Copy to:**  
**Arthur C. Hall III, Esq.**  
**Calfee, Halter & Griswold LLP**  
**1400 McDonald Investment Center**  
**800 Superior Avenue**  
**Cleveland, Ohio 44114-2688**  
**(216) 622-8200**

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities To Be</b>	<b>Amount To Be</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
<b>Registered Common Stock, par value \$0.01 per share</b>	<b>Registered 3,421,030 shares(1)</b>	<b>\$12.66(2)</b>	<b>\$43,310,240</b>	<b>\$ 4,634</b>

(1) Pursuant to Rule 416 under

the Securities Act of 1933, as amended (the Securities Act ), this Registration Statement also covers additional shares of Common Stock that may be issued or become issuable under the terms of the Plan in order to prevent dilution resulting from any stock split, stock dividend or similar transaction.

- (2) Estimated in accordance with Rule 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee and based upon the average of the high and low prices of the Common Stock reported on the Nasdaq Global Market on November 6, 2006.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents of Chart Industries, Inc. (the Company), previously filed with the Securities and Exchange Commission (the Commission), are incorporated herein by reference:

- (a) The Company's Prospectus filed pursuant to Rule 424(b) with respect to the initial public offering of the Company's Common Stock on July 27, 2006;
- (b) The Company's Quarterly Reports on Form 10-Q for the quarterly periods ended June 30, 2006 and September 30, 2006;
- (c) The Company's Current Report on Form 8-K, filed on August 16, 2006;
- (d) The description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A, filed with the Commission on July 20, 2006, and any amendments and reports filed for the purpose of updating the description;

other than the portions of such documents that by statute or rule, by designation in such document or otherwise, are not deemed to be filed with the Commission or are not required to be incorporated herein by reference.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all 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 the filing of such documents, other than the portions of such documents that by statute, by designation in such documents or otherwise, are not deemed to be filed with the Commission or are not required to be incorporated herein by reference.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded, for purposes of this Registration Statement, to the extent that a statement contained in this Registration Statement, or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in this Registration Statement, 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.**

A description of the Company's Common Stock is incorporated herein by reference. See Item 3.

**Item 5. Interests of Named Experts and Counsel.**

The validity of the securities being registered will be passed upon by Matthew J. Klaben, the Company's Vice President, General Counsel and Secretary. As of October 31, 2006, Mr. Klaben owned 2,500 shares of the Company's Common Stock. Mr. Klaben is eligible to participate in the Amended and Restated Chart Industries, Inc. 2005 Stock Incentive Plan, pursuant to which the Company's Common Stock will be issued, and holds a stock option to acquire Common Stock under that plan.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (the "DGCL") grants each corporation organized thereunder the power to indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with 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 the corporation, by reason of being or having been in any such capacity, if he acted in good faith in a manner 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 his conduct was unlawful.

Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders of monetary damages for violations of the director's fiduciary duty of care, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit. The Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws for Chart Industries, Inc. provide for such limitations on liability.

The Company has entered into indemnification agreements with each of its directors and officers providing for additional indemnification protection beyond that provided by the Directors and Officers Liability Insurance Policy. In the indemnification agreements, the Company has agreed, subject to certain exceptions, to indemnify and hold harmless the director or officer to the maximum extent then authorized or permitted by the provisions of the Amended and Restated Certificate of Incorporation, the DGCL, or by any amendment(s) thereto.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference as part of this Registration Statement.

**Item 9. Undertakings.**

(a) The Company 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 this 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 this 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% 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 this Registration Statement or any material change to such information in this 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 Company pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this 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.

(b) The Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Sections 13(a) or 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 this 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 of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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 City of Garfield Heights, State of Ohio, on this 14th day of November, 2006.

**CHART INDUSTRIES, INC.**

By: /s/ Michael F. Biehl  
Michael F. Biehl  
Executive Vice President, Chief  
Financial  
Officer 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 this 14th day of November, 2006.

Signature

Title

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**EXHIBIT INDEX**

Exhibit No. Description

- 4.1 Amended and Restated Certificate of Incorporation of the Company, as last amended on July 20, 2006. (1)
- 4.2 Amended and Restated By-Laws of the Company, as amended and restated on July 20, 2006. (2)
- 4.3 Specimen Certificate of common stock, par value \$0.01 per share, of the Company. (3)
- 4.4 Amended and Restated Chart Industries, Inc. 2005 Stock Incentive Plan. (4)
- 5.1 Opinion of Matthew J. Klaben, Vice President, General Counsel and Secretary as to the validity of the securities being offered. (x)
- 23.1 Consent of Ernst & Young LLP. (x)
- 23.2 Consent of Matthew J. Klaben, Vice President, General Counsel and Secretary (included in Exhibit 5.1 to this Registration Statement).

(1) Incorporated herein by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1/A (Registration No. 333-133254), as filed with the Commission on July 20, 2006.

(2) Incorporated herein by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-1/A (Registration No. 333-133254), as filed with the Commission on July 20, 2006.



- (3) Incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1/A (Registration No. 333-133254), as filed with the Commission on July 11, 2006.
  
- (4) Incorporated herein by reference to Exhibit 10.16 to the Company's Registration Statement on Form S-1/A (Registration No. 333-133254), as filed with the Commission on July 11, 2006.
  
- (x) Filed herewith.