

GREENBRIER COMPANIES INC

Form S-8

April 12, 2013

As filed with the Securities and Exchange Commission on April 12, 2013

Registration No. 33-

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

FORM S-8
REGISTRATION STATEMENT

UNDER
THE SECURITIES ACT OF 1933

The Greenbrier Companies, Inc.

(Exact name of registrant as specified in its charter)

Oregon
(State or other jurisdiction of
incorporation or organization)

93-0816972
(IRS Employer
Identification No.)

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One Centerpointe Drive, Suite 200

Lake Oswego, Oregon
(Address of principal executive offices)

97035
(Zip Code)

2010 Amended and Restated Stock Incentive Plan

(Full title of the plan)

William A. Furman

President and Chief Executive Officer

The Greenbrier Companies, Inc.

One Centerpointe Drive, Suite 200

Lake Oswego, Oregon 97035

(503) 684-7000

(Name, address and telephone number of agent for service)

Copy to:

Sherrill A. Corbett

Tonkon Torp LLP

1600 Pioneer Tower

888 S.W. Fifth Avenue

Portland, Oregon 97204

(503) 221-1440

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):

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Large accelerated filer ☐ Accelerated filer ☒ x
 Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed	Proposed	Amount of registration fee
		maximum offering price per share	maximum aggregate offering price	
Common Stock, no par value	1,500,000 shares ⁽¹⁾	\$21.49 ⁽²⁾	\$32,235,000 ⁽²⁾	\$4,396.85

⁽¹⁾ This filing registers an additional 1,500,000 shares of the registrant's common stock reserved for issuance under the 2010 Amended and Restated Stock Incentive Plan, as amended (the "2010 Plan"). In accordance with Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), there are also registered an undetermined number of additional shares of common stock that may become available for purchase in accordance with the provisions of the 2010 Plan in the event of any future change in the outstanding shares of common stock as a result of a stock dividend, stock split or similar adjustment.

⁽²⁾ Calculated pursuant to Rule 457(h)(1) and 457(c) for purposes of computing the registration fee, based on the average of the high and low sales prices of the common stock on April 9, 2013, as reported by the New York Stock Exchange.

EXPLANATORY NOTE

The Greenbrier Companies, Inc. has prepared this Registration Statement in accordance with the requirements of Form S-8 under the Securities Act to register an additional 1,500,000 shares of common stock reserved for issuance under the Company's 2010 Amended and Restated Stock Incentive Plan, as amended (the "2010 Plan").

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Documents containing the information called for in Part I of Form S-8 will be delivered to participants in the 2010 Plan as specified by Rule 428 of the Securities Act. In accordance with Rule 428 of the Securities Act and the requirements of Part I of Form S-8, such documents are not being filed with or included in this Registration Statement on Form S-8 (by incorporation by reference or otherwise).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company with the Commission are incorporated by reference into this registration statement:

- (a) The Company's annual report on Form 10-K for the fiscal year ended August 31, 2012, filed with the Commission on November 1, 2012.
- (b) The Company's quarterly reports on Form 10-Q for the quarters ended November 30, 2012 and February 28, 2013, filed with the Commission on January 9, 2013 and April 4, 2013, respectively.
- (c) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Company's annual report referred to in (a) above.
- (d) The description of the Company's common stock set forth in the Company's registration statement on Form S-1, as declared effective on July 11, 1994 (Registration No. 33-78852), and any amendment or report filed for the purpose of updating such description.

In addition, all documents filed by the Company subsequent to those listed above with the Commission pursuant to sections 13(a), 13(c), 14 or 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, will be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing of such documents. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K prior or subsequent to the date hereof shall not be incorporated by reference into this Registration Statement, except as to specific sections of such statements as set forth therein. Any statement contained in a document incorporated by reference herein will 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 also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded will 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.

A member of Tonkon Torp LLP, legal counsel to the Company, is the Secretary of the Company.

Item 6. Indemnification of Directors and Officers.

The Oregon Business Corporation Act (the "OBCA") authorizes the indemnification of a director or officer made party to a proceeding because the director or officer is or was a director or officer against liability (including amounts paid in settlement) incurred in the proceeding and against expenses with respect to the proceeding (including attorney fees) if: (a) the conduct of the director or officer was in good faith, (b) the director or officer reasonably believed that his conduct was in the best interests of the corporation or at least not opposed to its best interests, (c) in the case of a criminal proceeding, the director or officer had no reasonable cause to believe his conduct was unlawful, (d) in the case of any proceeding by or in the right of the corporation, if the director or officer was not adjudged liable, and (e) in connection with any other proceeding charging improper personal benefit to the director or officer, if the director or officer was not adjudged liable on the basis that personal benefit was improperly received by the director or officer. The OBCA also authorizes a court to order indemnification, whether or not the above standards of conduct have been met, if the court determines that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances. The Company's Articles of Incorporation permit, and the Company's Bylaws require, the Company to indemnify directors and officers to the fullest extent permissible by law.

The OBCA further provides that the articles of incorporation of a corporation may provide that no director shall be personally liable to a corporation or its shareholders for monetary damages for conduct as a director, except that such provision does not eliminate the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) for any unlawful distribution as defined under the OBCA, or (iv) for any transaction from which the director derived an improper personal benefit. The Company's Articles of Incorporation provide that, to the fullest extent permissible by law, no director shall be personally liable to the Company or its shareholders for monetary damages.

In addition to the indemnification and exculpation provided by the Company's Articles of Incorporation and Bylaws, the Company has entered into an indemnification agreement with its directors and certain officers. The indemnification agreements provide that no director or officer shall have a monetary liability of any kind in respect of the director's or officer's errors or omissions in serving the Company or any of its subsidiaries, shareholders or related enterprises, so long as such errors are not shown by clear and convincing evidence to have involved: (i) any breach of the duty of loyalty to such entities; (ii) any act or omission not in good faith or which involved intentional misconduct or a knowing violation of the law; (iii) any transaction from which the director or officer derived an improper personal benefit; (iv) any unlawful corporate distribution; or (v) profits made from the purchase and sale by the director or officer of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934. Furthermore, regardless of the theory of liability asserted and to the fullest extent permitted by law, no director or officer shall have personal liability for (i) punitive, exemplary or

consequential damages; (ii) treble or other damages computed based upon any multiple of damages actually and directly proved to have been sustained; (iii) fees of attorneys, accountants, expert witnesses or professional consultants; or (iv) civil fines or penalties of any kind or nature whatsoever.

The indemnification agreements also require the Company to indemnify any director or officer who is a party to, or is threatened to be made a party to, any proceeding, against all expenses, judgments, fines and amounts paid in settlement, actually and reasonably incurred by the director or officer in connection with such proceeding, if the director or officer: (i) acted in good faith and in a manner the director or officer reasonably believed was in or not opposed to the best interests of the Company; and (ii) with respect to any criminal proceeding, the director or officer also had no reasonable cause to believe that his or her conduct was unlawful. In any proceeding charging a director or officer with improper personal benefit to the director or officer, the Company will indemnify the director or officer if the appropriate court determines that the director or officer is fairly and reasonably entitled to indemnification.

The indemnification agreements also provide indemnity to a director or officer in proceedings brought by or in the right of the Company, as long as the director or officer acted in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Company. If a director or officer is adjudged liable to the Company, he or she will not be indemnified unless the appropriate court determines that the director or officer is fairly and reasonably entitled to indemnification.

The Company maintains directors' and officers' liability insurance under which the Company's directors and officers are insured against claims for errors, neglect, breach of duty and other matters.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made and to the extent required by the Securities Act and the rules and regulations promulgated thereunder, 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 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 a 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 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 registrant pursuant to section 13 or section 15(d) of the Exchange Act, that are incorporated by reference in this 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 undersigned 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 proceedings) 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, 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 Lake Oswego, Oregon, on April 11, 2013.

THE GREENBRIER COMPANIES, INC.

By /s/ WILLIAM A. FURMAN
William A. Furman
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below hereby constitutes and appoints William A. Furman his true and lawful attorney-in-fact and agent, with full power of substitution for him in any and all capacities, to sign any and all amendments or post-effective amendments to this registration statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto such attorney and agent full power and authority to do any and all acts and things necessary or advisable in connection with such matters, and hereby ratifying and confirming all that the attorney and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the date(s) indicated:

Principal Executive Officers:

Date:

/s/ WILLIAM A. FURMAN
William A. Furman
President, Chief Executive Officer and Director

April 11, 2013

/s/ MARK J. RITTENBAUM
Mark J. Rittenbaum
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

April 11, 2013

/s/ Adrian J. Downes
Adrian J. Downes
Senior Vice President and Chief Accounting Officer
(Principal Accounting Officer)

April 11, 2013

Directors:

/s/ BENJAMIN R. WHITELEY Benjamin R. Whiteley	April 11, 2013
/s/ WILLIAM A. FURMAN William A. Furman	April 11, 2013
/s/ GRAEME A. JACK Graeme A. Jack	April 11, 2013
/s/ DUANE C. MCDUGALL Duane C. McDougall	April 11, 2013
/s/ VICTORIA McMANUS Victoria McManus	April 11, 2013
/s/ A. DANIEL O NEAL, JR. A. Daniel O Neal, Jr.	April 11, 2013
/s/ CHARLES J. SWINDELLS Charles J. Swindells	April 11, 2013
/s/ WENDY TERAMOTO Wendy Teramoto	April 11, 2013
/s/ C. BRUCE WARD C. Bruce Ward	April 11, 2013
/s/ DONALD A. WASHBURN Donald A. Washburn	April 11, 2013

INDEX TO EXHIBITS

Exhibit Number	Description
4.1	The Registrant's Articles of Incorporation are incorporated herein by reference by Exhibit 3.1 to the Registrant's Form 10-Q filed April 5, 2006.
4.2	Articles of Merger amending the Registrant's Articles of Incorporation, are incorporated herein by reference to Exhibit 3.2 to the Registrant's Form 10-Q filed April 5, 2006.
4.3	The Registrant's Bylaws, as amended January 11, 2006, are incorporated herein by reference to Exhibit 3.3 to the Registrant's Form 10-Q filed April 5, 2006.
4.4	Amendment to the Registrant's Bylaws, dated October 31, 2006, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed November 6, 2006.
4.5	Amendment to the Registrant's Bylaws, dated January 8, 2008, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed November 8, 2007.
4.6	Amendment to the Registrant's Bylaws, dated April 8, 2008, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed April 11, 2008.
4.7	Amendment to the Registrant's Bylaws dated April 7, 2009, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed April 13, 2009.
4.8	Amendment to the Registrant's Bylaws dated June 8, 2009, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed June 10, 2009.
4.9	Amendment to the Registrant's Bylaws dated June 10, 2009, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed June 12, 2009.
4.10	Amendment to the Registrant's Bylaws dated October 30, 2012 and effective January 9, 2013, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed November 5, 2012.
4.11	Amendment to the Registrant's Bylaws dated January 9, 2013, is incorporated herein by reference to Exhibit 3.1 to the Registrant's Form 8-K filed January 15, 2013.
4.12	Specimen Common Stock Certificate of Registrant is incorporated herein by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-3 filed April 7, 2010 (SEC File Number 333-165924).

- 4.13 Indenture among the Registrant, the Guarantors named therein and U.S. Bank National Association as Trustee, dated May 22, 2006, is incorporated herein by reference to Exhibit 4.1 to the Registrant's Form 8-K filed May 25, 2006.
- 4.14 Rights Agreement between the Registrant and EquiServe Trust Company, N.A., as Rights Agent, dated as of July 13, 2004, is incorporated herein by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form 8-A filed September 16, 2004.
- 4.15 Amendment No. 1, dated November 9, 2004, to the Rights Agreement, dated as of July 13, 2004, is incorporated herein by reference to Exhibit 4.2 to the Registrant's Form 8-K filed November 15, 2004.
- 4.16 Amendment No. 2, dated February 5, 2005, to the Rights Agreement, dated as of July 13, 2004, is incorporated herein by reference to Exhibit 4.3 to the Registrant's Form 8-K filed February 9, 2005.
- 4.17 Amendment No. 3, dated June 10, 2009, to the Rights Agreement, dated as of July 13, 2004, is incorporated herein by reference to Exhibit 4.1 to the Registrant's Form 8-K filed June 12, 2009.
- 4.18 Amendment No. 4 to the Rights Agreement, dated March 29, 2011, is incorporated herein by reference to Exhibit 4.1 to the Registrant's Form 8-K filed March 30, 2011.
- 4.19 Warrant Agreement, dated June 10, 2009, among the Registrant, WLR Recovery Fund IV, L.P., WLR IV Parallel ESC, L.P. and each other holder from time to time party thereto, is incorporated herein by reference to Exhibit 4.2 to the Registrant's Form 8-K filed June 12, 2009.
- 4.20 Investor Rights and Restrictions Agreement, dated June 10, 2009, among the Registrant, WLR Recovery Fund IV, L.P., WLR IV Parallel ESC, L.P., WL Ross & Co. LLC and the other holders from time to time party thereto, is incorporated herein by reference to Exhibit 4.3 to the Registrant's Form 8-K filed June 12, 2009.
- 4.21 Indenture between the Registrant and U.S. Bank National Association, as Trustee, including the form of Global Note attached as Exhibit A thereto, dated April 5, 2011, is incorporated herein by reference to Exhibit 4.1 to the Registrant's Form 8-K filed April 5, 2011.
- 5.1 Opinion of Tonkon Torp LLP.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of Deloitte & Touche LLP.
- 23.3 Consent of Tonkon Torp LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (provided on the signature page hereto).

- 99.1 The Greenbrier Companies, Inc. 2010 Amended and Restated Stock Incentive Plan is incorporated herein by reference to Appendix B to the Registrant's Proxy Statement on Schedule 14A filed November 24, 2010.
- 99.2 Amendment No. 1 to The Greenbrier Companies, Inc. 2010 Amended and Restated Stock Incentive Plan is incorporated herein by reference to Appendix B to the Registrant's Proxy Statement on Schedule 14A filed November 16, 2012.