

Nalco Holding CO  
Form S-8  
March 07, 2008

As filed with the Securities and Exchange Commission on March 7, 2008

Registration No. 333-

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT UNDER**

**THE SECURITIES ACT OF 1933**

**NALCO HOLDING COMPANY**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**16-1701300**

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

**1601 West Diehl Road**  
**Naperville, Illinois 60563**  
(Address of Principal Executive Offices)

**60606**  
(Zip Code)

**J. Erik Fyrwald Employment Letter Agreement**

(Full title of the plan)

**Stephen N. Landsman, Esq.**

**Vice President and General Counsel**

**Nalco Holding Company**

**1601 West Diehl Road**

**Naperville, IL 60563**

**Telephone: (630) 305-1000**

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

Copy to:

**Keith S. Crow, P.C.**

**Kirkland & Ellis LLP**

**200 East Randolph Drive**

**Chicago, Illinois 60601**

**Telephone: (312) 861-2000**

**CALCULATION OF REGISTRATION FEE**

**Title of securities to be registered**

**Amount to be registered (1)(2)**

**Proposed maximum offering price per share**

**Proposed maximum aggregate offering price**

**Amount of registration fee**

Common Stock, par value \$0.01 per share

200,000 shares

\$

21.66

\$

4,332,000

(3)

\$

170

Common Stock, par value \$0.01 per share

190,000 shares

\$

21.66

\$

4,115,400

(4)

\$

161

Total

390,000 shares

\$

8,447,400

\$

332

(1)

Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of common stock which become issuable under the above-named plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of our outstanding shares of common stock.

(2)

These shares relate to option and restricted stock awards granted outside of the Amended and Restated Nalco Holding Company 2004 Stock Incentive Plan to J. Erik Fyrwald, in connection with Mr. Fyrwald's employment as our new President and Chief Executive Officer. Pursuant to an employment letter agreement between Nalco Holding Company (the "Company") and J. Erik Fyrwald, dated February 22, 2008 (the "J. Erik Fyrwald Agreement"), Mr. Fyrwald will be granted approximately 200,000 restricted shares of the Company's common stock and options to purchase approximately 190,000 shares of the Company's common stock effective as of March 7, 2008.

(3)

The proposed maximum offering price for the restricted shares is calculated pursuant to paragraphs (c) and (h) of Rule 457 under the Securities Act on the basis of the average of the high and low sale prices for the shares of common stock as reported on the New York Stock Exchange on March 6, 2008 solely for the purpose of calculating the registration fee.

(4)

The proposed maximum offering price for the options is calculated pursuant to paragraphs (c) and (h) of Rule 457 under the Securities Act based on the weighted average strike price of approximately \$21.66 per share.



**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1.**

**Plan Information.\***

**Item 2.**

**Registrant Information and Employee Plan Annual Information.\***

\* The documents containing the information specified in Part I will be delivered in accordance with Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the Commission), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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## **PART II**

### **INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

#### **Item 3.**

##### **Incorporation of Documents by Reference.**

The following documents, which have been filed by the Company with the Commission, are incorporated in this Registration Statement by reference:

(a) The Company's Annual Report on Form 10-K for the year ended December 31, 2007, filed with the Commission on February 28, 2008; and

(b) The description of the Company's common stock, par value \$0.01 per share, included under the caption "Description of Capital Stock" in the Prospectus forming a part of the Company's Registration Statement on Form S-3, initially filed with the Commission on December 27, 2005 (Registration No. 333-130715).

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 after the date of this Registration Statement, but 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 herein and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated 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 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 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 Company is incorporated under the laws of the State of Delaware.

Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Company's amended and restated certificate of incorporation provides that no director shall be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent required from time to time by applicable law, (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for any act or omission not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.



Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party 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 the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding, provided the person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. A similar standard of care is applicable in the case of actions by or in the right of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action was brought determines that, despite the adjudication of liability but in view of all of the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses that the Delaware Court of Chancery or other court shall deem proper.

The Company's amended and restated certificate of incorporation and amended and restated bylaws provide that the Company will indemnify its directors and officers to the fullest extent permitted by law and that no director shall be personally liable for monetary damages to the Company or its stockholders for any breach of fiduciary duty, except to the extent provided by applicable law.

The Company maintains a directors' and officers' liability insurance policy to insure our directors and officers against liability for actions or omissions occurring in their capacity as a director or officer, subject to certain exclusions and limitations.

**Item 7.**

**Exemption from Registration Claimed.**

Not applicable.

**Item 8.**

**Exhibits.**

Reference is made to the attached Exhibit Index, which is incorporated by reference herein.

**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 the 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 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% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective 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; 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, each filing of the Company'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 herein, 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, 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 Naperville, State of Illinois, on March 7, 2008.

NALCO HOLDING COMPANY

By:

/s/ Stephen N. Landsman

Name: Stephen N. Landsman

Title: Vice President and General Counsel

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints Bradley J. Bell, Stephen N. Landsman and Michael P. Murphy, and each of them individually, with full power of substitution and resubstitution, his or her true and lawful attorney-in fact and agent, with full powers to each of them to sign for us, in our names and in the capacities indicated below, the Registration Statement on Form S-8 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and any and all amendments to said Registration Statement (including post-effective amendments), granting unto said attorneys, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents

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and purposes as each of them might or could do in person, and hereby ratifying and confirming all that said attorneys, and each of them, or their substitute or substitutes, shall do or cause to be done by virtue of this Power of Attorney. This power of attorney may be executed in counterparts and all capacities to sign any and all amendments.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities indicated on March 7, 2008.

Signature

Title

/s/ J. Erik Fyrwald

President, Chief Executive Officer and Chairman of the Board of Directors  
(Principal Executive Officer)

J. Erik Fyrwald

/s/ Bradley J. Bell

Chief Financial Officer  
(Principle Financial and Accounting Officer)

Bradley J. Bell

/s/ Rodney F. Chase

Director

Rodney F. Chase

/s/ Richard B. Marchese

Director

Richard B. Marchese

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/s/ Douglas A. Pertz

Director

Douglas A. Pertz

/s/ Daniel S. Sanders

Director

Daniel S. Sanders

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**EXHIBIT INDEX**

**Exhibit  
Number**

**Description**

4.1

J. Erik Fyrwald Employment Letter Agreement Prospectus, dated March 7, 2008.

5.1

Opinion of Stephen N. Landsman with respect to the legality of the shares of common stock being registered hereby.

23.1

Consent of Ernst & Young LLP.

23.2

Consent of Stephen N. Landsman (included in Exhibit 5.1).

24.1

Power of Attorney of certain officers and directors of the Company to file future amendments (set forth on the signature page of this Registration Statement).

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