

SECURITIES AND EXCHANGE COMMISSION

FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

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FILER

ACUITY BRANDS INC

CIK: [1144215](#) | IRS No.: [582632672](#) | State of Incorporation: **DE** | Fiscal Year End: **0831**
Type: **S-8** | Act: **33** | File No.: [333-185971](#) | Film No.: [13525630](#)
SIC: **3640** Electric lighting & wiring equipment

Mailing Address

1170 PEACHTREE STREET,
NE
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Business Address

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

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

ACUITY BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

58-2632672
(I.R.S. Employer
Identification No.)

Acuity Brands, Inc.
1170 Peachtree Street, N.E.
Suite 2400
Atlanta, Georgia 30309
(404) 853-1400

(Address, including zip code, of registrant's principal executive offices)

Acuity Brands, Inc. 2012 Omnibus Stock Incentive Compensation Plan

(Full title of the plan)

Richard K. Reece
Executive Vice President and Chief Financial Officer

Acuity Brands, Inc.
1170 Peachtree Street, N.E., Suite 2400
Atlanta, Georgia 30309
(404) 853-1400

Copies to:

Keith M. Townsend
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 572-4600

(Name, address, including zip code, 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 definition of “large accelerated filer”, “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer

Accelerated Filer

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 Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.01 per share	2,285,228(1)	\$64.06(2)	\$146,391,705.68(2)	\$16,779.83(3)

- (1) Pursuant to Rule 416(a), this Registration Statement also covers such indeterminate number of additional securities as may become issuable under the plan as a result of any future stock split, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457(h) on the basis of the average of the high and low sales prices per share (\$64.06 per share) of Common Stock of Acuity Brands, Inc. as reported on the New York Stock Exchange on January 8, 2013.
- (3) In accordance with Rule 457(p) of the Securities Act of 1933, as amended, the filing fee paid in connection with this Registration Statement has been offset against the portion of the fee paid under the Company’s prior registration statement on Form S-8 (333-152134) attributable to the 1,885,228 shares that remain unused under such prior registration statement that are being registered here.

EXPLANATORY NOTE

Acuity Brands, Inc. (“Acuity,” the “Registrant” or the “Company”) previously filed a registration statement on Form S-8 on July 3, 2008 (File No. 333-152134) (the “Prior Registration Statement”) to register under the Securities Act of 1933, as amended (the “Securities Act”) shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), issuable pursuant to the Company’s Acuity Brands, Inc. Long-Term Incentive Plan (the “Prior Plan”). The Company is filing this registration statement on Form S-8 (the “Registration Statement”) to register 2,285,228 shares of Common Stock to be issued to employees of the Company and certain subsidiaries and to directors of the Company pursuant to the Acuity Brands, Inc. 2012 Omnibus Stock Incentive Compensation Plan (the “Plan”), 1,885,228 of which were previously registered under the Prior Registration Statement and 400,000 of which are newly authorized shares. The Plan replaces the Prior Plan. Therefore, the Company is filing this Registration Statement to register all of the shares under the Plan, but in accordance with Rule 457(p) of the Securities Act, the filing fee paid in connection with this Registration Statement has been offset against the portion of the fee paid under the Prior Registration Statement attributable to the 1,885,228 shares that remain unused under such Prior Registration Statement.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to employees of the Company and certain subsidiaries and to directors of the Company as specified by Rule 428(b)(1) of the Securities Act. In accordance with the instructions of Part I of Form S-8, such documents will not be filed with the Securities Exchange Commission (the “Commission”) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in this Registration Statement 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 have been previously filed by the Registrant with the Commission and are hereby incorporated by reference into this Registration Statement as of their respective dates:

- (a) Annual Report on Form 10-K for the year ended August 31, 2012;
- (b) Quarterly Report on Form 10-Q for the quarter ended November 30, 2012;
- (c) Current Reports on Form 8-K filed on October 2, 2012 (except the information “furnished” under Items 2.02 and 9.01) and January 8, 2013 (except the information “furnished” under Items 2.02 and 9.01); and
- (d) The description of the Company’s Common Stock contained in the Company’s Registration Statement on Form 10/A (File No. 001-16583) dated November 9, 2001, filed under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including any amendment or report filed for the purpose of updating such description.

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered hereunder have been sold or that deregisters all such securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of the filing of such documents.

Any statement contained in any document incorporated or deemed to be incorporated by reference into this Registration Statement shall be deemed to be modified or superseded for purposes thereof to the extent that a statement contained therein or in any other subsequently filed document that is also incorporated or deemed to be incorporated therein by reference modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable (the Common Stock is registered under Section 12(b) of the Exchange Act).

Item 5. Interests of Named Experts and Counsel.

The validity of the securities issuable under the Plan will be passed upon for us by King & Spalding LLP.

Item 6. Indemnification of Directors and Officers.

The following summary is qualified in its entirety by reference to the complete text of the statute, the Company's Certificate of Incorporation, as amended, and the Company's Amended and Restated Bylaws.

Section 145(a) of the Delaware General Corporation Law (the "DGCL") 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 such 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, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the 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(b) of the DGCL 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 or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if the 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, except that no indemnification shall 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 Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Further subsections of DGCL Section 145 provide that:

to the extent a present or former director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145 or in the defense of any claim, issue or matter therein, such person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection therewith;

the indemnification and advancement of expenses provided for pursuant to Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise; and

the corporation shall have the power to purchase and maintain insurance of behalf of any person who 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, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145.

As used in this Item 6, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether or not by or in the right of Registrant, and whether civil, criminal, administrative, investigative or otherwise.

Section 145 of the DGCL makes provision for the indemnification of officers and directors in terms sufficiently broad to indemnify officers and directors of each of the registrants incorporated in Delaware under certain circumstances from liabilities (including reimbursement for expenses incurred) arising under the Securities Act.

The Company's bylaws grant its directors and officers a right to indemnification to the fullest extent permitted by law for all expenses relating to civil, criminal, administrative or investigative procedures to which they are a party (i) by reason of the fact that they are or were directors or officers of the company or (ii) by reason of the fact that, while they are or were directors or officers of the company, they are or were serving at the request of the company as a director, officer or employee of another enterprise. The Company's bylaws further provide that an advancement for any such expenses shall only be made upon delivery to the Company by the indemnitee of an undertaking to repay all amounts so advanced if it is ultimately determined that such indemnitee is not entitled to be indemnified by the Company.

The Company's certificate of incorporation provides that a director of the Company shall not be personally liable to the Company 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 company 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. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the company shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The Company has also entered into indemnification agreements with its directors and certain of its officers. These agreements require the Company to indemnify these directors and officers with respect to their activities as directors or officers of the Company or when serving at the Company's request as a director, officer or trustee of another corporation, trust or other enterprise against expenses (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by them in any threatened, pending or completed suit or proceeding (civil, criminal, administrative or investigative) to which they are, or are threatened to be made, parties as a result of their service to the Company. The Company has agreed to indemnify each indemnitee for any one or a combination of the following, whichever is most advantageous to the indemnitee, as determined by the indemnitee: (i) the benefits provided by the Company's certificate of incorporation and bylaws in effect on the date of the indemnification agreement; (ii) the benefits provided by the Company's certificate of incorporation and bylaws at the time expenses are incurred by the indemnitee; (iii) the benefits allowable under Delaware law in effect on the date of the indemnification agreement; (iv) the benefits allowable under the law of the jurisdiction under which the Company exists at the time expenses are incurred by the indemnitee; (v) the benefits available under liability insurance obtained by the Company; and (vi) such other benefits as may be otherwise available to the indemnitee under the Company's existing practices. Under the indemnification agreements, each indemnitee will continue to be indemnified even after ceasing to occupy a position as an officer, director, employee or agent of the

Company with respect to suits or proceedings arising out of acts or omissions during his service to the Company. Each indemnitee has agreed to notify the Company promptly of any proceeding brought or threatened and not to make any admission or settlement without the Company's consent, unless the indemnitee determines to undertake his own defense and waives the benefits of the indemnification agreement.

The Company also maintains directors' and officers' liability insurance for its directors and officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

<u>Exhibit</u>	<u>Description</u>
5.1*	Opinion of King & Spalding LLP.
10.1	Acuity Brands, Inc. 2012 Omnibus Stock Incentive Compensation Plan, filed as Exhibit A to the Company's Proxy Statement, filed with the Commission on November 19, 2012 and incorporated herein by reference.
23.1*	Consent of Ernst & Young LLP.
23.2*	Consent of King & Spalding LLP (included in Exhibit 5.1).
24.1*	Powers of Attorney (included on signature pages).

* Filed herewith

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 of 1933;
 - (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. 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 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 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 undersigned Registrant hereby undertakes that, for the purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 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, Acuity Brands, Inc. has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on this 11th day of January, 2013.

ACUITY BRANDS, INC.

By: /s/ Vernon J. Nagel
Vernon J. Nagel
Chairman, President, and Chief Executive Officer

KNOW ALL MEN BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Vernon J. Nagel and Richard K. Reece, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for such persons and in his or her name, place and stead, in any and all capacities, to sign any and all 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 said attorneys-in-fact and agents, and each of them, full power and authority to do and to perform each and every act and thing requisite or necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacity indicated on the 11th day of January, 2013.

<u>Signature</u>	<u>Title</u>
<u>/s/ Vernon J. Nagel</u> Vernon J. Nagel	Chairman, President and Chief Executive Officer
<u>/s/ Richard K. Reece</u> Richard K. Reece	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Peter C. Browning</u> Peter C. Browning	Director
<u>/s/ George C. (Jack) Guynn</u> George C. (Jack) Guynn	Director
<u>/s/ Gordon D. Harnett</u> Gordon D. Harnett	Director

KING & SPALDING

King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, Georgia 30309-3521
Phone: 404/ 572-4600
Fax: 404/572-5100
www.kslaw.com

January 11, 2013

Acuity Brands, Inc.
1170 Peachtree Street, NE
Suite 2400
Atlanta, Georgia 30309

Re: Acuity Brands, Inc. Form S-8 Registration Statement

Ladies and Gentlemen:

We have acted as counsel for Acuity Brands, Inc., a Delaware corporation (the “Company”), in connection with the preparation of a Registration Statement on Form S-8 (the “Registration Statement”) to be filed with the Securities and Exchange Commission. The Registration Statement relates to 2,285,228 shares (the “Shares”) of the Company’s common stock, par value \$0.01 per share to be issued pursuant to the terms of the Acuity Brands, Inc. 2012 Omnibus Stock Incentive Compensation Plan (the “Plan”).

In connection with this opinion, we have examined and relied upon such records, documents, certificates and other instruments as in our judgment are necessary or appropriate to form the basis for the opinions hereinafter set forth. In all such examinations, we have assumed the genuineness of signatures on original documents and the conformity to such original documents of all copies submitted to us as certified, conformed or photographic copies, and as to certificates of public officials, we have assumed the same to have been properly given and to be accurate.

For purposes of this opinion, we have assumed that the Shares that may be issued pursuant to the Plan will continue to be duly authorized on the dates of such issuance.

The opinions expressed herein are limited in all respects to the federal laws of the United States of America and laws of the State of Delaware, and no opinion is expressed with respect to the laws of any other jurisdiction or any effect which such laws may have on the opinions expressed herein. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

Based upon the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

- a. The Shares are duly authorized; and
- b. When issued pursuant to the Plan, the Shares will be validly issued, fully paid and nonassessable.

This opinion is given as of the date hereof, and we assume no obligation to advise you after the date hereof of facts or circumstances that come to our attention or changes in law that occur which could affect the opinions contained herein. This letter is being rendered solely for the benefit of the Company in connection with the matters addressed herein. This opinion may not be furnished to or relied upon by any person or entity for any purpose without our prior written consent.

We consent to the filing of this opinion as an Exhibit to the Registration Statement to be filed by the Company and to the references to us in such registration statement.

Very truly yours,

/s/ King & Spalding LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement on Form S-8 pertaining to the Acuity Brands, Inc. 2012 Omnibus Stock Incentive Compensation Plan of our reports dated October 26, 2012, with respect to the consolidated financial statements and schedule of Acuity Brands, Inc. and the effectiveness of internal control over financial reporting of Acuity Brands, Inc. included in its Annual Report (Form 10-K) for the year ended August 31, 2012, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Atlanta, Georgia
January 11, 2013