

APPLICA INC
Form S-8
August 04, 2006

Table of Contents

As filed with the Securities and Exchange Commission on August 4, 2006

Registration No. 333-

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

APPLICA INCORPORATED

(Exact name of registrant as specified in its charter)

Florida

59-1028301

(State or other jurisdiction of incorporation
or organization)

(IRS Employer
Identification Number)

**3633 Flamingo Road
Miramar, Florida 33027**

(Address of Principal Executive Offices)

Applica Incorporated 401(k) Profit Sharing Plan and Trust

(Full title of the Plan)

**Lisa R. Carstarphen
Vice President and General Counsel
Applica Incorporated
3633 Flamingo Road
Miramar, Florida 33027**

(Name and address of agent for service)

(954) 883-1000

Telephone number, including area code, of agent for service

Copies to:

**Paul Berkowitz, Esq.
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131**

(305) 579-0500

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)(2)(3)	Proposed maximum offering price per share (4)	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.10 par value(3)	150,000	\$ 3.77	\$565,500	\$ 60.51

- (1) Represents the estimated maximum aggregate number of shares of common stock, \$0.10 par value (the Common Stock) of Applica Incorporated (the Registrant) issuable pursuant to the Applica Incorporated 401(k) Profit Sharing Plan and Trust (the Plan) for approximately one year.
- (2) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Plan.
- (3) Pursuant to Rule 416 under the Securities Act, this registration statement also registers an indeterminate number of

additional shares that may be issued to adjust the number of shares issued pursuant to the Plan as the result of any future stock split, stock dividend or similar adjustment of the Registrant's Common Stock.

- (4) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and (h)(1) of the General Rules and Regulations under the Securities Act on the basis of the average of the high and low price of a share of Common Stock as reported by the New York Stock Exchange on August 1, 2006.
-

TABLE OF CONTENTS

PART I. INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

Item 4. Description of Securities

Item 5. Interests of Named Experts and Counsel

Item 6. Indemnification of Directors and Officers

Item 7. Exemption from Registration Claimed

Item 8. Exhibits

Item 9. Undertakings

SIGNATURES

EXHIBIT INDEX

EX-5.1 IRS Determination Letter

EX-23.1 Consent of Grant Thornton LLP

EX-23.2 Consent of Kaufman Rossin & Co.

Table of Contents

PART I. INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified by Items 1 and 2 of Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 of the General Rules and Regulations under the Securities Act and the introductory note to Part I of Form S-8.

The documents containing the information specified in Part I of Form S-8 will be sent or given to participating employees as specified by Rule 428(b) of the Securities Act. Such documents and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, 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, which have been filed with the Securities and Exchange Commission, are hereby incorporated by reference into this Registration Statement:

- (a) The Annual Report of the Registrant on Form 10-K for the fiscal year ended December 31, 2005;
- (b) The Annual Report of the Applica Incorporated 401(k) Profit Sharing Plan and Trust on Form 11-K for the year ended December 31, 2005;
- (c) The Registrant's Current Reports on Form 8-K or Form 8-K/A filed on January 26, 2006, February 1, 2006, February 6, 2006, February 24, 2006, February 28, 2006, April 20, 2006, May 12, 2006, July 26, 2006 and July 27, 2006 (not including any information furnished under Items 2.02 or 7.01 of Form 8-K, which information is not incorporated by reference herein);
- (d) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2006 and June 30, 2006;
- (e) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) since the end of the fiscal year 2005; and
- (f) The description of the Registrant's Common Stock contained in its Registration Statement on Form 8-A (Registration No. 001-10177) filed with the Securities and Exchange Commission and any amendments to such Registration Statement filed subsequently thereto, including all amendments or reports filed for the purpose of updating such description.

In addition, all documents filed by the Registrant or the Plan pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (not including any information furnished under Items 2.02 or 7.01 of Form 8-K, which information is not incorporated by reference herein) subsequent to the date of this Registration Statement and 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, will be deemed to be incorporated herein by reference and to be a part of this Registration Statement from the date of filing of such documents. Any statement contained in a document incorporated herein by reference will be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein, or in a subsequently filed document incorporated herein by reference, modifies or supersedes the statement. Any statement modified or superseded will not be deemed, except as 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.

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

Under Section 607.0831 of the Florida Business Corporation Act (the "FBCA"), a director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act regarding corporate management or policy unless (1) the director breached or failed to perform his or her duties as a director and (2) the director's breach of, or failure to perform, those duties constitutes (a) a violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was unlawful, (b) a transaction from which the director derived an improper personal benefit, either directly or indirectly, (c) a circumstance under which the liability provisions of Section 607.0834 are applicable, (d) in a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful misconduct, or (e) in a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. A judgment or other final adjudication against a director in any criminal proceeding for a violation of the criminal law estops that director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

Under Section 607.0850 of the FBCA, a corporation has power to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of the corporation), by reason of the fact that he or she 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 liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she 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 or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act 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 corporation or, with respect to any criminal action or proceeding, has reasonable cause to believe that his or her conduct was unlawful.

In addition, under Section 607.0850 of the FBCA, a corporation has the power to indemnify any person, who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor 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, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Under Section 607.0850 of the FBCA, the indemnification and advancement of expenses provided pursuant to Section 607.0850 of the FBCA are not exclusive, and a corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute: (a) a violation of the criminal law, unless the director, officer, employee or agent had reasonable cause to believe his or her conduct was unlawful; (b) a transaction from which the director, officer, employee or agent derived an improper personal benefit;

(c) in the case of a director, a circumstance under which

3

Table of Contents

the above liability provisions of Section 607.0834 are applicable; or (d) willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

The Third Amended and Restated Bylaws of the Registrant provide that the Registrant will indemnify and hold harmless any director, officer, employee or agent of the Registrant and its subsidiaries against all liability and expense to the fullest extent permitted by law currently in effect or later enacted. The Registrant has also entered into an agreement with each of its directors and certain executive officers wherein it has agreed to indemnify each of them to the fullest extent permitted by law.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

A list of exhibits filed with this Registration Statement is in the Exhibit Index that immediately precedes such exhibits and is incorporated by reference herein.

Pursuant to Item 8(a), the shares of Common Stock registered hereby will be purchased through open-market transactions. Therefore, an opinion regarding the legality of the securities is not required.

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;

(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 not more than 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 Registration Statement is on Form S-3 or Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 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.

4

Table of Contents

(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 Securities and Exchange 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.

5

Table of Contents

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 Miramar, State of Florida on this 31st day of July, 2006.

APPLICA INCORPORATED

By: /s/ Harry D. Schulman

By: Harry D. Schulman
 Title: Chairman, President and Chief
 Executive Officer

Pursuant to the requirements of the Securities Act of 1933, the trustee (or such other person who administers the Applica Incorporated 401(k) Profit Sharing Plan and Trust) has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miramar, State of Florida on this 31st day of July, 2006.

APPLICA INCORPORATED 401(K) PROFIT SHARING PLAN AND TRUST

By: /s/ Terry L. Polistina

By: Applica Incorporated
 By: Terry L. Polistina, Chief Operating
 Officer
 and Chief Financial Officer of Applica
 Incorporated

POWER OF ATTORNEY

Each person whose signature appears below hereby appoints Harry D. Schulman and Terry L. Polistina, each acting alone, with full powers of substitution and resubstitution, his true and lawful attorney-in-fact with authority to execute in the name of each such person, and to file with the Securities and Exchange Commission, together with any exhibits thereto and other documents therewith, any and all amendments (including without limitation post-effective amendments) to this Registration Statement necessary or advisable to enable the Registrant to comply with the Securities Act of 1933, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission in respect thereof, which amendments may make such other changes in the Registration Statement as the aforesaid attorney-in-fact executing the same deems appropriate. Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Harry D. Schulman	Chairman, President, Chief Executive Officer and Director	July 31, 2006
Harry D. Schulman	(Principal Executive Officer)	
/s/ Terry L. Polistina	Chief Operating Officer and Chief Financial Officer (Principal Financial and Accounting Officer)	July 31, 2006
Terry L. Polistina		

Table of Contents

Signature	Title	Date
/s/ Susan J. Ganz Susan J. Ganz	Director	July 31, 2006
/s/ J. Maurice Hopkins J. Maurice Hopkins	Director	July 31, 2006
/s/ Thomas J. Kane Thomas J. Kane	Director	July 31, 2006
/s/ Christopher B. Madison Christopher B. Madison	Director	July 31, 2006
/s/ Leonard Glazer Leonard Glazer	Director	July 31, 2006
/s/ Paul K. Sugrue Paul K. Sugrue	Director	July 31, 2006
/s/ Ware H. Grove Ware H. Grove	Director	July 31, 2006
/s/ Jerald I. Rosen Jerald I. Rosen	Director	July 31, 2006

Table of Contents

EXHIBIT INDEX

Exhibit Number	Description
4.1	Third Amended and Restated Articles of Incorporation (incorporated by reference from Exhibit 3.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2006)
4.2	Third Amended and Restated Bylaws (incorporated by reference from Exhibit 3.2 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2005)
5.1	Internal Revenue Service Determination Letter that the Plan is qualified under Section 401 of the Internal Revenue Code.
23.1	Consent of Grant Thornton LLP
23.2	Consent of Kaufman, Rossin & Co.
24.1	Power of Attorney (contained on the signature pages of this Registration Statement)

II-1