

SHILOH INDUSTRIES INC

Form S-8

March 13, 2019

As filed with the Securities and Exchange Commission on March 12, 2019

Registration Statement No. 333-_____

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

Shiloh Industries, Inc.

(Exact name of registrant as specified in its charter)

Delaware 51-0347683
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)

880 Steel Drive

Valley City, Ohio 44280

(Address of principal executive offices)

Shiloh Industries, Inc. 2019 Equity and Incentive Compensation Plan

(Full title of the plan)

Kenton Bednarz

Edgar Filing: SHILOH INDUSTRIES INC - Form S-8

Vice President, Legal and Government Affairs

47632 Halyard Drive

Plymouth, Michigan 48170

(Name and address of agent for service)

(734) 738-1373

(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, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	Accelerated filer
Non-accelerated filer	Smaller reporting company
Emerging growth company	

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of each Class of	Amount	Proposed Maximum	Proposed Maximum	
	to be	Offering Price	Aggregate	Amount of
Securities to be Registered (1)	Registered (2) Per Share (3)	Offering Price	Registration Fee	
Common Stock, par value \$0.01 per share	1,500,000 \$6.05	\$9,075,000	\$1099.89	
(1) Represents shares of common stock, par value \$0.01 per share (“Common Stock”), of Shiloh Industries, Inc. (the “Registrant”) issuable pursuant to the Shiloh Industries, Inc. 2019 Equity and Incentive Compensation Plan (the “Plan”) being registered hereon.				
(2) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement also covers such additional shares of Common Stock as may become issuable pursuant to the anti-dilution provisions of the Plan.				
(3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant Rule 457(c) and 457(h) under the Securities Act, on the basis of the average of the high and low sale prices of the Common Stock on the Nasdaq Global Market on March 8, 2019.				

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information required in this Part I will be delivered to the participants in the Plan, as specified in Rule 428(b)(1) of the Securities Act. Such documents are not required to be filed with the Securities and Exchange Commission (the "Commission") as part of this Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and, in accordance therewith, files reports, proxy statements, and other information with the Commission. The following documents filed with Commission by the Registrant pursuant to the Exchange Act are hereby incorporated by reference into this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended October 31, 2018;
- (b) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended January 31, 2019;
- (c) The Registrant's Current Reports on Form 8-K filed with the Commission on December 21, 2018, January 4, 2019, and March 1, 2019; and
- (d) The description of the Registrant's Common Stock set forth in the Form 8-A Registration Statement (Commission File No. 000-21964) filed with the Commission on June 18, 1993, including any subsequently filed amendments and reports updating such description.

All documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act subsequent to the effective date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, will be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Notwithstanding anything herein, the Registrant is not incorporating by reference any information furnished under Item 2.02 or Item 7.01 of any Current Report on Form 8-K, unless, and to the extent, specified in any such Current Report on Form 8-K.

Any statement herein or contained in any document incorporated or deemed to be 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 prior statement. Any such 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.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant is incorporated under the laws of the State of Delaware. Section 145(a) of the Delaware General Corporation Law provides, in general, that a corporation shall have the power to 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, because the person is or was a director or officer of the corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity. Such indemnity may be against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best

interests of the corporation and if, with respect to any criminal action or proceeding, such person did not have reasonable cause to believe such person's conduct was unlawful.

Section 145(b) of the Delaware General Corporation Law provides, in general, that a corporation shall have the power to 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 because the person is or was a director or officer of the corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity. Such indemnity may be against any expenses, including attorneys' fees, actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify such person against the expenses, including attorneys' fees, actually and reasonably incurred.

The Registrant's amended and restated certificate of incorporation provides for the indemnification of its directors to the fullest extent permitted under the Delaware General Corporation Law. The Registrant's amended and restated bylaws provide for the indemnification of its directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 145(g) of the Delaware General Corporation Law provides, in general, that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation against any liability asserted against the person in any such capacity, or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of the law. We maintain directors' and officers' liability insurance for our directors and officers.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for: (i) any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions; or (iv) any transaction from which the director derived an improper personal benefit. The Registrant's amended and restated certificate of incorporation provides for such limitation of liability. Under the Registrant's amended and restated bylaws, the Corporation will pay the expenses, including attorneys' fees, incurred by a director or officer in defending any such action, suit or proceeding in advance of its final disposition, upon receipt of an undertaking by or on behalf of such person to repay all amounts advanced if it will ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified for such expenses.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

We have entered into customary indemnification agreements with our executive officers and directors that provide them, in general, with customary indemnification in connection with their service to us or on our behalf. Pursuant to

the indemnification agreements, the Registrant will indemnify a director or officer of the Registrant (the "Indemnitee") if the Indemnitee was, is or becomes a party to or is threatened to be made a party or witness or other participant to any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, by reason of the fact that the Indemnitee is or was a director or officer of the Registrant, or is or was serving at the request of the Registrant in specific capacities with another entity, against any and all reasonable expenses and costs incurred in connection with investigating, defending or being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in any such proceeding.

The Registrant maintains standard policies of insurance under which coverage is provided (a) to its directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act, and (b) to the Registrant with respect to payments which may be made by the Registrant to such officers and directors pursuant to the above indemnification provision or otherwise as a matter of law.

The foregoing statements are subject to the detailed provisions of Sections 102, 145 and 1742 of the Delaware General Corporation Law and our amended and restated certificate of incorporation and amended and restated bylaws.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us under the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

Number Description

- 4.1 Certificate of Amendment of Restated Certificate of Incorporation of the Registrant, dated March 1, 2019 (incorporated herein by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on March 12, 2019).
- 4.2 Certificate of Amendment to Restated Certificate of Incorporation of the Registrant, dated March 9, 2016 (incorporated herein by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on June 8, 2016).
- 4.3 Certificate of Designation, dated December 31, 2001 (incorporated herein by reference to Exhibit 3.1(ii) to the Registrant's Annual Report on Form 10-K filed on February 13, 2002).
- 4.4 Restated Certificate of Incorporation of the Registrant, dated June 23, 1993 (incorporated herein by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on June 8, 2016).
- 4.5 Amended and Restated By-Laws of the Registrant, as amended through December 18, 2018 (incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on December 21, 2018).
- 4.6 Specimen certificate for the Common Stock, par value \$.01 per share, of the Registrant (incorporated herein by reference to Exhibit 4.1 to the Registrant's Annual Report on Form 10-K filed on December 20, 2018).
- 4.7 Registration Rights Agreement, dated June 22, 1993, by and among the Registrant, MTD Products Inc. and the stockholders named therein (incorporated herein by reference to Exhibit 4.2 to the Registrant's Annual Report on Form 10-K filed on December 20, 2018).
- 4.8 Shiloh Industries, Inc. 2019 Equity and Incentive Compensation Plan (incorporated herein by reference to Appendix A to the Registrant's Definitive Proxy Statement on Schedule 14A filed on January 17, 2019).
- 5.1 Opinion of Counsel.

- 23.1 Consent of Independent Registered Public Accounting Firm.
- 23.2 Consent of Counsel (included in Exhibit 5.1).
- 24.1 Power of Attorney.

II-4

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 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 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) above do not apply if the Registration Statement is on Form S-8, and 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 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 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 Act and will be governed by the final adjudication of such issue.

II-5

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 Valley City, state of Ohio, on this 12th day of March, 2019.

SHILOH INDUSTRIES, INC.

By: /s/ Kenton Bednarz
Secretary and Vice President, Legal and Government Affairs

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 indicated.

Date: March 12, 2019 *
Ramzi Y. Hermiz
President and Chief Executive Officer and Director
(Principal Executive Officer)

Date: March 12, 2019 *
Lillian Etzkorn
Senior Vice President, Chief Financial Officer
(Principal Financial Officer)

Date: March 12, 2019 *
Gary DeThomas
Vice President Corporate Controller
(Principal Accounting Officer)

Date: March 12, 2019 *
Curtis E. Moll
Chairman and Director

Date: March 12, 2019 *
Cloyd Abruzzo
Director

Date: March 12, 2019 *
Jean Brunol
Director

Date: March 12, 2019 *
Michael S. Hanley

Edgar Filing: SHILOH INDUSTRIES INC - Form S-8

Director

Date: March 12, 2019 *

David J. Hessler
Director

Date: March 12, 2019 *

Dieter Kaesgen
Director

Date: March 12, 2019 *

Robert J. King, Jr.
Director

* This Registration Statement has been signed on behalf of the above officers and directors by Kenton Bednarz, as attorney-in-fact pursuant to a power of attorney filed as Exhibit 24.1 to this Registration Statement.

DATED: March 12, 2019 By: /s/ Kenton Bednarz
Kenton Bednarz, Attorney-in-fact