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NATCO GROUP INC
Form S-8
December 18, 2003

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON DECEMBER 18, 2003

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

NATCO GROUP INC.

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of
incorporation or organization)

22-2906892

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

2950 NORTH LOOP WEST, 7TH FLOOR
HOUSTON, TEXAS 77092

(Address of principal executive offices, including zip code)

NATCO GROUP PROFIT SHARING AND SAVINGS PLAN
(Full title of the plan)

KATHERINE P. ELLIS
SENIOR VICE PRESIDENT,
GENERAL COUNSEL AND SECRETARY
2950 NORTH LOOP WEST, 7TH FLOOR
HOUSTON, TEXAS 77092

(Name and address of agent for service)

(713) 683-9292

(Telephone number, including area code, of agent for service)

Copies to:

William E. Joor III
Vinson & Elkins L.L.P.
2300 First City Tower, 1001 Fannin Street
Houston, Texas 77002
(713) 758-2222

CALCULATION OF REGISTRATION FEE

TITLE OF SECURITIES TO BE REGISTERED	MAXIMUM AMOUNT TO BE REGISTERED (1) (2)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE (3)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (3)	AMOUNT OF REGISTRATION FEE
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Common Stock, \$.01 par value...	850,640 Shares	\$6.475	\$5,507,894	\$445.88
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- (1) Pursuant to Rule 416(c) of 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 NATCO Group Profit Sharing and Savings 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 the Registrant's outstanding shares of Common Stock.
- (2) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended, this registration statement also covers an indeterminate amount of interests in the NATCO Group Profit Sharing and Savings Plan to be offered and sold pursuant hereto.
- (3) Estimated in accordance with Rule 457(h) under the Securities Act of 1933 solely for the purpose of calculating the registration fee. Specifically, the offering price per share is based on the average of the high and low prices of NATCO Group Inc. Common Stock reported on the New York Stock Exchange as of December 15, 2003.

PART I

INFORMATION REQUIRED IN SECTION 10(A) PROSPECTUS

ITEM 1. PLAN INFORMATION.*

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.*

- * Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this registration statement in accordance with Rule 428 under the Securities Act and the Note to Part I of Form S-8.

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PART II

INFORMATION REQUIRED IN THIS REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents previously filed with the Securities and Exchange Commission by NATCO Group Inc. are incorporated by reference and made a part of this prospectus.

- the description of our capital stock contained in our registration statement on Form 8-A filed with the Commission on January 5, 2000, including any amendment to that form that we may have filed in the past, or may file in the future, for the purpose of updating the description of our capital stock;
- our annual report on Form 10-K for the year ended December 31, 2002;

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- the NATCO Group Profit Sharing and Savings Plan annual report on Form 11-K for the year ended December 31, 2002;
- our quarterly reports on Form 10-Q for the quarters ended March 31, 2003, June 30, 2003 and September 30, 2003; and
- our current reports on Form 8-K filed with the Securities and Exchange Commission on February 25, 2003, March 7, 2003, March 14, 2003, March 27, 2003, May 29, 2003 and September 9, 2003;

All documents we have filed pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") subsequent to the effective date of this registration statement, prior to the filing of a post-effective amendment which indicates that all securities offered by this prospectus have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference of this prospectus and to be a part of this prospectus from the date of filing of such documents. Any statement contained herein or in any document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in any other subsequently filed document that also is or is deemed to be incorporated 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, except as so modified or superseded.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Our Restated Certificate of Incorporation, as amended, provides that, to the fullest extent permitted by the Delaware General Corporation Law as the same exists or may be hereafter amended (the "DGCL"), no director of NATCO Group shall be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty by

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such a director as a director. Article VI of our Amended and Restated Bylaws, as amended, also provides that we may maintain insurance, at our own expense, to protect us and any director, officer, employee or agent of us or of another entity against any expense, liability, or loss, regardless of whether we would have power to indemnify such person against such expense, liability or loss under the DGCL.

Section 145 of the DGCL authorizes, inter alia, a corporation 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), by reason of the fact that the person is or was an officer or director of such corporation, or is or was serving at the request of that 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 such person in connection with

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such action, suit or proceeding, if he acted in good faith and in a manner he 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 conduct was unlawful. A Delaware corporation may indemnify past or present officers and directors of that corporation or of another corporation or other enterprise at the former corporation's request, in an action by or in the right of the corporation to procure a judgment in its favor under the same conditions, except that no indemnification is permitted without judicial approval if that person is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in defense of any action referred to above, or in defense of any action referred to above, or in defense of any claim, issue or matter therein, the corporation must indemnify him against the expenses (including attorneys' fees) which he actually and reasonably incurred in connection therewith. Section 145 further provides that any indemnification shall be made by the corporation only as authorized in each specific case upon a determination by (i) the stockholders, (ii) the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, (iii) a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iv) independent counsel if a quorum of disinterested directors so directs. Section 145 provides that indemnification pursuant to its provision is not exclusive of other rights of indemnification to which a person may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

Section 145 of the DGCL also empowers us to purchase and maintain insurance on behalf of any person who is or was an officer or director of NATCO Group against liability asserted against or incurred by him in any such capacity, whether or not we would have the power to indemnify such officer or director against such liability under the provisions of Section 145.

In addition, we have entered into indemnification agreements with our directors and officers. These indemnification agreements, among other things, indemnify our directors and officers for certain expenses (including attorneys' fees), judgments, fines, and settlement payments incurred by such person in any action, including in some circumstances an action by or in the right of us, in connection with the good faith performance of their duties as a director or officer. The indemnification agreements also provide for the advance payment by us of defense expenses incurred by the director or officer; however, the affected director or officer must undertake to repay such amounts if it is ultimately determined that such director or officer is not entitled to be indemnified.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

Unless otherwise indicated below as being incorporated by reference to another filing of NATCO Group Inc. with the Securities and Exchange Commission, each of the following exhibits is filed with this registration statement:

- 4.1 Restated Certificate of Incorporation of NATCO Group Inc., as amended (filed as Exhibit 3.1 to our registration statement on Form S-1 (No. 333-48851) and incorporated in this registration statement by reference).
- 4.2 Composite Amended and Restated Bylaws of NATCO Group Inc., as amended (filed as Exhibit 3.3 to our Quarterly Report on Form 10-Q for the period ended March 31, 2003 and incorporated in this registration statement by reference).

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- 4.3 Certificate of Designation of Series A Junior Participating Preferred Stock (filed as Exhibit 3.2 to our registration statement on Form S-1 (No. 333-48851) and incorporated in this registration statement by reference).
- 4.4 Specimen Common Stock certificate (filed as Exhibit 4.1 to our registration statement on Form S-1 (No. 333-48851) and incorporated in this registration statement by reference).
- 4.5 Certificate of Designations of Series B Convertible Preferred Stock (filed as Exhibit 3.1 to our Current Report on Form 8-K filed on March 27, 2003 and incorporated in this registration statement by reference).
- 4.6 NATCO Group Profit Sharing and Savings Plan (as amended and restated effective January 1, 2002).
- 4.7 First Amendment to NATCO Group Profit Sharing and Savings Plan (as amended and restated effective January 1, 2002).
- 5.1 Opinion of Vinson & Elkins L.L.P.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of Vinson & Elkins L.L.P. (included in Exhibit 5.1).
- 24.1 Powers of Attorney (included on the signature page to this registration statement).

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UNDERTAKING REGARDING STATUS OF FAVORABLE DETERMINATION LETTER COVERING THE PLAN

We have submitted the NATCO Group Profit Sharing and Savings Plan (as amended and restated effective January 1, 2002) (the "Plan") to the Internal Revenue Service (the "IRS") in a timely manner and obtained a favorable determination letter regarding the Plan's qualified status. Since this determination letter was obtained, we adopted the First Amendment to the NATCO Group Profit Sharing and Savings Plan (as Amended and restated effective January 1, 2002) (the "First Amendment"). We will submit the First Amendment to the IRS in a timely manner to request its determination on the continued qualification of the Plan as amended by the First Amendment, and we will make all changes required by the IRS to qualify the Plan as amended by the First Amendment.

ITEM 9. UNDERTAKINGS

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:

- (a) To include any prospectus required by Section 10(a)(3) of the Securities Act;

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(b) 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% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(c) 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 (1)(a) and (1)(b) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed 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.

(4) 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 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 this 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.

(5) 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

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expressed in the Securities Act and will be governed by the final adjudication of such issue.

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SIGNATURES

The Registrant. 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 Houston, State of Texas, on the 17th day of December, 2003.

NATCO Group Inc.

By: /s/ Nathaniel A. Gregory

Nathaniel A. Gregory
Chief Executive Officer and Chairman of the Board

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Nathaniel A. Gregory, Richard W. FitzGerald and Katherine P. Ellis as his or her true and lawful attorney-in-fact and agent, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and anything appropriate or necessary to be done, as fully and for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agent or their substitute or 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 capacities indicated below on the 17th day of December, 2003.

Table with 2 columns: SIGNATURE and TITLE. Rows include Nathaniel A. Gregory (Chairman of the Board and Chief Executive Officer), Richard W. FitzGerald (Senior Vice President and Chief Financial Officer), Ryan S. Liles (Vice President and Controller), and Keith K. Allan (Principal Accounting Officer).

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Keith K. Allan	Director

/s/ Thomas R. Bates, Jr.	

Thomas R. Bates, Jr.	Director

/s/ John U. Clarke	

John U. Clarke	Director

/s/ George K. Hickox, Jr.	

George K. Hickox, Jr.	Director

/s/ Patrick M. McCarthy	

Patrick M. McCarthy	Director and President

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SIGNATURE	TITLE
-----	-----
/s/ Herbert S. Winokur, Jr.	

Herbert S. Winokur, Jr.	Director

The Plan. Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the NATCO Group Profit Sharing and Savings Plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas, on the 17th day of December, 2003.

NATCO Group Profit Sharing and Savings Plan

By: /s/ Richard W. FitzGerald

Richard W. FitzGerald
Senior Vice President and Chief Financial
Officer, NATCO Group Inc., and NATCO Group
Employee Benefits Administration Committee
Member

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