

MSC INDUSTRIAL DIRECT CO INC

Form S-8

January 22, 2009

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As filed with the Securities and Exchange Commission on January 22, 2009

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**MSC Industrial Direct Co., Inc.**

(Exact name of Registrant as specified in its charter)

**New York**  
(State or other jurisdiction of  
incorporation or organization)

**11-3289165**  
(I.R.S. Employer  
Identification No.)

**75 Maxess Road, Melville, NY 11747**

(Address of Principal Executive Offices)

**MSC Industrial Direct Co., Inc.**

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**Amended and Restated Associate Stock Purchase Plan**

(Full title of the plan)

**David Sandler**

**President and Chief Executive Officer**

**MSC Industrial Direct Co., Inc.**

**75 Maxess Road**

**Melville, NY 11747**

**(516) 812-2000**

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

**Copy to:**

**Jeffrey N. Ostrager, Esq.**

**Curtis, Mallet-Prevost, Colt & Mosle LLP**

**101 Park Avenue**

**New York, New York 10178**

**(212) 696-6000**

(Counsel to the Registrant)

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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 the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

| <b>Title of securities to be registered</b> | <b>Amount to be registered (1)</b> | <b>Proposed maximum offering price per share (2)</b> | <b>Proposed maximum aggregate offering price (2)</b> | <b>Amount of registration fee (2)</b> |
|---|------------------------------------|--|--|---------------------------------------|
| Class A Common Stock, \$0.001 par value     | 350,000 \$                         | 33.755 \$  | 11,814,250 \$  | 464.30                                |

(1) Pursuant to Rule 416 of the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also includes additional shares of Class A Common Stock, \$0.001 par value (the Class A Common Stock) of MSC Industrial Direct Co., Inc. that may be offered or issued as part of any stock split, stock dividend or similar transaction.

(2) Calculated using the average of the high and low sales price of the Class A Common Stock on the New York Stock Exchange on January 21, 2009 pursuant to paragraph (c) and (h) of Rule 457 under the Securities Act.

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**INTRODUCTORY STATEMENT**

This Registration Statement on Form S-8 is being filed by MSC Industrial Direct Co., Inc. (the Company) to register an additional 350,000 shares of the Company's Class A Common Stock reserved for issuance under the MSC Industrial Direct Co., Inc. Amended and Restated Associate Stock Purchase Plan.

Pursuant to General Instruction E of Form S-8, this Registration Statement hereby incorporates by reference the contents of the Company's registration statement on Form S-8, Registration No. 333-70293, filed with the Securities and Exchange Commission (the Commission) on January 8, 1999.

**PART II.**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The Company hereby incorporates by reference the following documents filed with the Commission:

(a) The Company's Annual Report on Form 10-K filed for the fiscal year ended August 30, 2008, filed on October 28, 2008;

(b) The Company's Quarterly Report on Form 10-Q filed for the fiscal quarter ended November 29, 2008, filed on January 8, 2009;

(c) The Company's Current Reports on Form 8-K filed on September 3, 2008, October 17, 2008, December 4, 2008, December 23, 2008 and January 13, 2009.

(d) The description of the Company's Class A Common Stock contained in the Company's Registration Statement on Form 8-A filed with the Commission on December 8, 1995, including any amendment or report filed with the Commission for the purpose of updating such description.

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In addition, all documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act ) (other than portions of such documents deemed not to be filed) after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities registered hereby have been sold or which deregisters all 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.

### **Item 4. Description of Securities.**

Not applicable.

### **Item 5. Interests of Named Experts and Counsel.**

Not applicable.

### **Item 6. Indemnification of Directors and Officers.**

Article EIGHTH of the Company's Certificate of Incorporation, Article 7 of the Company's By-Laws and Section 722 of the New York Business Corporation Law, as amended, the law of the state in which the Company is incorporated, empowers the Company, within certain limitations, to indemnify any person who served in any capacity at the request of the Company, by reason of the fact that he or she, his or her testator or intestate, was a director or officer of the Company, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of

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service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of such entity and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful.

Article SEVENTH of the Company's Certificate of Incorporation, provides that no director of the Company shall be personally liable to the Company or its shareholders for damages for any breach of duty in such capacity, unless a judgment or other final adjudication adverse to him or her establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that his or her acts violated Section 719, or its successor, of the New York Business Corporation Law.

The Company has obtained insurance for the protection of its directors and officers against any liability asserted against them in their official capacities.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

| Exhibit No. | Exhibit  | Form | Incorporated by Reference |             | Exhibit No. | Filed Herewith |
|-------------|--|------|---------------------------|-------------|-------------|----------------|
|             |  |      | File No.                  | Filing Date |             |                |
| 4.01        | Registrant's Certificate of Incorporation  | S-1  | 33-98832                  | 11/1/1995   | 3.01        |                |
| 4.02        | Amended and Restated By-Laws of the Registrant, as amended on September 14, 2007   | 8-K  | 001-14130                 | 9/18/2007   | 3.1         |                |
| 4.03        | Specimen of Class A Common Stock Certificate   | S-1  | 33-98832                  | 11/1/1995   | 4.01        |                |
| 4.04        | Amended and Restated Associate Stock Purchase Plan of the Registrant, as amended and restated effective November 1, 2008 | 8-K  | 001-14130                 | 1/13/2009   | 10.01       |                |
| 5.01        | Opinion of Curtis, Mallet-Prevost, Colt & Mosle LLP as to the legality of the shares being registered.                   |      |                           |             |             | X              |
| 23.01       | Consent of Curtis, Mallet-Prevost, Colt & Mosle LLP (included in Exhibit 5.01).  |      |                           |             |             | X              |
| 23.02       | Consent of Ernst & Young, LLP, Independent Registered Public Accounting Firm.  |      |                           |             |             | X              |
| 24.01       | Power of Attorney (included on the signature page to this Registration Statement on Form S-8).                           |      |                           |             |             | X              |



**Item 9.**

**Undertakings.**

The undersigned Company hereby undertakes:

(a) (1) To file, during any period in which offers or sales of the securities registered hereby 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, as amended (the Securities Act );

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(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; 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 clauses (i) and (ii) do not apply if 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 Company 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 Company 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 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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.



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**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 Town of Melville, State of New York, on this 22nd day of January, 2009.

**MSC INDUSTRIAL DIRECT CO., INC.**

By: /s/ David Sandler  
David Sandler  
President and Chief Executive Officer

**POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated. Each person whose signature appears below constitutes and appoints David Sandler, Charles Boehlke, and Shelley Boxer each or any of them, his true and lawful attorney-in-fact and agent, each acting alone, with full power of substitution and resubstitution, for him and in his name, place, and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all the exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises as fully, 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, each acting alone, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

| <b>SIGNATURE</b>                           | <b>TITLE</b>   | <b>DATE</b>      |
|--|--|------------------|
| /s/ David Sandler<br>David Sandler         | President, Chief Executive Officer and Director<br>(Principal Executive Officer)   | January 16, 2009 |
| /s/ Charles Boehlke<br>Charles Boehlke     | Executive Vice President,<br>Chief Financial Officer and Director<br>(Principal Financial Officer and Principal<br>Accounting Officer) | January 22, 2009 |
| /s/ Shelley Boxer<br>Shelley Boxer         | Vice President, Finance and Accounting   | January 15, 2009 |
| /s/ Mitchell Jacobson<br>Mitchell Jacobson | Chairman of the Board  | January 22, 2009 |
| /s/ Roger Fradin                           |  | January 22, 2009 |

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|                                    |          |                  |
|------------------------------------|----------|------------------|
| Roger Fradin                       | Director |                  |
| /s/ Louise Goeser<br>Louise Goeser | Director | January 20, 2009 |
| /s/ Denis Kelly<br>Denis Kelly     | Director | January 22, 2009 |
| /s/ Philip Peller<br>Philip Peller | Director | January 17, 2009 |

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| <b>Exhibit<br/>No.</b> | <b>Exhibit</b>   | <b>Form</b> | <b>Incorporated by Reference</b> |                        | <b>Exhibit<br/>No.</b> | <b>Filed<br/>Herewith</b> |
|------------------------|--|-------------|----------------------------------|------------------------|------------------------|---------------------------|
|                        |  |             | <b>File No.</b>                  | <b>Filing<br/>Date</b> |                        |                           |
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| 5.01                   | Opinion of Curtis, Mallet-Prevost, Colt & Mosle LLP as to the legality of the shares being registered.                   |             |                                  |                        |                        | X                         |
| 23.01                  | Consent of Curtis, Mallet-Prevost, Colt & Mosle LLP (included in Exhibit 5.01).  |             |                                  |                        |                        | X                         |
| 23.02                  | Consent of Ernst & Young, LLP, Independent Registered Public Accounting Firm.  |             |                                  |                        |                        | X                         |
| 24.01                  | Power of Attorney (included on the signature page to this Registration Statement on Form S-8).                           |             |                                  |                        |                        | X                         |