

NCI BUILDING SYSTEMS INC

Form 425

September 10, 2009

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**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**FORM 8-K**  
**CURRENT REPORT**  
**PURSUANT TO SECTION 13 OR 15(d) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**Date of Report (Date of earliest event reported): September 10, 2009**  
**NCI BUILDING SYSTEMS, INC.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

1-14315  
(Commission File Number)

76-0127701  
(IRS Employer  
Identification No.)

10943 North Sam Houston Parkway West  
Houston, Texas  
(Address of principal executive offices)

77064  
(Zip Code)

Registrant's telephone number, including area code: (281) 897-7788

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 8.01. Other Events.**

NCI Building Systems, Inc. (the Company) expects to commence today an offer (the Exchange Offer) by the Company to acquire all of the Company's existing 2.125% convertible notes due 2024 in exchange for a combination of cash and shares of common stock, par value \$0.01 per share, of the Company (the Common Stock). The Exchange Offer is subject to a number of conditions, including the tender of at least 95% of the aggregate principal amount of such convertible notes.

The Exchange Offer is one of a series of transactions contemplated by the Company's proposed financial restructuring to address an immediate need for liquidity in light of a potentially imminent default under, and acceleration of, its senior secured credit facility, which may occur as early as November 6, 2009 (which may, in turn, also potentially lead to a default under, and acceleration of, the Company's other indebtedness, including the outstanding \$180.0 million in principal amount of the convertible notes), and the high likelihood that the Company will be required to repurchase the convertible notes on November 15, 2009, the first scheduled mandatory repurchase date under the indenture governing the convertible notes. A description of the proposed financial restructuring is attached hereto as Exhibit 99.2 and incorporated herein by reference.

The consolidated financial statements of the Company for the fiscal year ended November 2, 2008 are attached as Exhibit 99.1 hereto and are incorporated herein by reference.

\* \* \*

**Important Information About the Exchange Offer and this Communication**

This current report and its contents are communication is not an offer to sell or purchase or an offer to exchange or a solicitation of acceptance of an offer to sell or purchase or offer to exchange. **Any such offer or solicitation shall be made solely by means of a prospectus, related letter of transmittal and other offer documents, as described below.**

In connection with the commencement of the Exchange Offer by the Company to acquire all of the Company's outstanding 2.125% Convertible Senior Subordinated Notes due 2024 (the convertible notes), issued under that indenture, dated as of November 16, 2004, between the Company and The Bank of New York, as trustee, in exchange for cash and shares of Company common stock, the Company will file today with the U.S. Securities and Exchange Commission (the SEC) a registration statement on Form S-4 (which will include a preliminary prospectus), a tender offer statement on Schedule TO and related documents and materials. **Investors and security holders are strongly urged to carefully review the registration statement, the preliminary prospectus, the tender offer statement and the other related documents and materials filed with the SEC, including the final prospectus described below, when available, as well as any amendments and supplements thereto, when available, because they will contain important information about the Company, the proposed exchange offer and related transactions and are the sole means by which any offer to exchange or sell, or any solicitation of any such offers, will be made.**

The registration statement will contain a preliminary prospectus and related transmittal materials that will be mailed today to holders of the convertible notes. Investors and security holders may obtain a free copy of the registration statement, preliminary prospectus and transmittal materials, as well as other documents filed by the Company with the SEC, at the SEC's web site, [www.sec.gov](http://www.sec.gov). Prior to the completion of the exchange offer, the registration statement must become effective under the securities laws, and after effectiveness, the Company will file with the SEC the final prospectus. Investors and security holders are strongly urged to carefully review the final prospectus when it is available. Free copies of NCI's filings with the SEC may also be obtained from the Company's Investor Relations Department at P.O. Box 692055, Houston, Texas 77269-2055 or by phone at (281) 897-7788.

**Forward Looking Statements**

This Current Report on Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act. These statements and other statements identified by words such as guidance, potential, expect, should and similar expressions are forward looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to a number of risks and uncertainties that may



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cause the Company's actual performance to differ materially from that projected in such statements. Among the factors that could cause actual results to differ materially are: the occurrence of any event, change or other circumstance that could give rise to the termination of the investment agreement with Clayton, Dubilier & Rice Fund VIII, L.P.; the inability to complete the transactions contemplated by the investment agreement due to failure to satisfy conditions to such transactions (including with respect to the refinancing of the senior credit facility and the convertible notes); the failure of the transactions discussed herein to close for any reason; the outcome of any legal proceedings that may be instituted against the Company and others following the announcement of the investment agreement, the transactions contemplated thereby, including the convertible notes exchange offer; risks that the proposed transactions disrupt current plans and operations and the potential difficulties in employee retention; industry cyclicality and seasonality and adverse weather conditions; ability to service the Company's debt; fluctuations in customer demand and other patterns; raw material pricing and supply; competitive activity and pricing pressure; general economic conditions affecting the construction industry; the current financial crisis and U.S. recession; changes in laws or regulations; the volatility of the Company's stock price; the potential dilution associated with the convertible notes exchange offer; the Company's ability to comply with the financial tests and covenants in its existing and future debt obligations; the significant demands on the Company's liquidity while current economic and credit conditions are severely affecting its operations; and the uncertainty surrounding the transactions described herein, including the Company's ability to retain employees, customers and vendors. Item 1A "Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended November 2, 2008, identifies other important factors, though not necessarily all such factors, that could cause future outcomes to differ materially from those set forth in the forward-looking statements. The Company expressly disclaims any obligation to release publicly any updates or revisions to these forward-looking statements to reflect any changes in its expectations.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

| Exhibit No. | Description of Exhibit  |
|-------------|---|
| 23.1        | Consent of Independent Registered Public Accounting Firm  |
| 99.1        | Consolidated Financial Statements and Related Schedule of NCI Building Systems, Inc. for the Fiscal Year Ended November 2, 2008 |
| 99.2        | Supplemental Information related to the Restructuring   |

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**NCI BUILDING SYSTEMS, INC.**

By: */s/ Todd R. Moore*  
Name: Todd R. Moore  
Title: Executive Vice President,  
Secretary & General Counsel

Date: September 10, 2009

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