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MAIN STREET & MAIN INC
 Form S-8
 May 30, 2003

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MAY 30, 2003
 Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549

FORM S-8
 REGISTRATION STATEMENT
 UNDER
 THE SECURITIES ACT OF 1933

MAIN STREET AND MAIN INCORPORATED
 (Exact Name of Registrant as Specified in its Charter)

DELAWARE
 (State or Other Jurisdiction
 of Incorporation or Organization)

11-2948370
 (I.R.S. Employer
 Identification Number)

5050 NORTH 40TH STREET, SUITE 200
 PHOENIX, ARIZONA 85018
 (Address of Principal Executive Offices) (Zip Code)

MAIN STREET AND MAIN INCORPORATED
 2002 INCENTIVE STOCK PLAN
 (Full Title of the Plan)

BART A. BROWN, JR.
 PRESIDENT AND CHIEF EXECUTIVE OFFICER
 MAIN STREET AND MAIN INCORPORATED
 5050 NORTH 40TH STREET, SUITE 200
 PHOENIX, ARIZONA 85018
 (602)852-9000 (Name, Address, and Telephone Number,
 Including Area Code, of Agent for Service)

COPIES TO:

ROBERT S. KANT, ESQ.
 BRIAN H. BLANEY, ESQ.
 GREENBERG TRAURIG, LLP
 2375 East Camelback Road, Suite 700
 Phoenix, Arizona 85016
 (602) 445-8000

CALCULATION OF REGISTRATION FEE

TITLE OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE	AMOUNT REGISTRATI
Common Stock.....	6,588 shares	\$ 5.81	\$ 38,276	\$ 3.
Common Stock.....	170,000 shares	\$ 4.16	\$ 707,200	\$ 57.
Common Stock.....	5,000 shares	\$ 3.28	\$ 16,400	\$ 1.
Common Stock.....	818,412 shares	\$ 1.67 (2)	\$ 1,366,748 (2)	\$ 110.
Totals.....	1,000,000 shares		\$ 2,128,624	\$ 172.

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- (1) Represents 1,000,000 shares issuable under the 2002 Incentive Stock Plan. This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the 2002 Incentive Stock Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction without receipt of consideration which results in an increase in the number of outstanding shares of Common Stock of Main Street and Main Incorporated.
 - (2) Calculated for purposes of this offering under Rule 457(h) and Rule 457(c) of the Securities Act of 1933, as amended, using the average of the high and low sales prices for the Common Stock of Main Street and Main Incorporated as reported on the Nasdaq National Market on May 28, 2003.
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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

Main Street and Main Incorporated (the "Registrant") hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the "Commission"):

- (a) The Registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") or the latest prospectus filed pursuant to the Securities Act of 1933, as amended (the "Securities Act") that contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed; and
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the documents referred to in (a) above; and
- (c) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A (File No. 0-18668) filed with the Commission on June 29, 1990.

All reports and definitive proxy or information statements filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered 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 filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

The firm of Greenberg Traurig, LLP, Phoenix, Arizona, has acted as counsel for the Registrant in the preparation of this Registration Statement. As of May 29, 2003, certain members of such firm beneficially owned a total of 5,000 shares of the Registrant's Common Stock.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

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The Restated Certificate of Incorporation and Bylaws of the Registrant provide that the Registrant will indemnify and advance expenses, to the fullest extent permitted by the Delaware General Corporation Law, to each person who is or was a director or officer of the Registrant, or who serves or served any other enterprise or organization at the request of the Registrant (an "Indemnatee").

Under Delaware law, to the extent that an Indemnatee is successful on the merits in defense of a suit or proceeding brought against him or her by reason of the fact that he or she is or was a director, officer, or agent of the Registrant, or serves or served any other enterprise or organization at the request of the Registrant, the Registrant shall indemnify him or her against expenses (including attorneys' fees) actually and reasonably incurred in connection with such action.

If unsuccessful in defense of a third-party civil suit or criminal suit, or if such a suit is settled, an Indemnatee may be indemnified under Delaware law against both (i) expenses, including attorneys' fees, and (ii) judgments, fines, and amounts paid in settlement 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 Registrant, and, with respect to any criminal action, had no reasonable cause to believe his or her conduct was unlawful.

II-1

If unsuccessful in defense of a suit brought by or in the right of the Registrant, where the suit is settled, an Indemnatee may be indemnified under Delaware law only against expenses (including attorneys' fees) actually and reasonably incurred in the defense or settlement of the suit 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 Registrant except that if the Indemnatee is adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Registrant, he or she cannot be made whole even for expenses unless a court determines that he or she is fully and reasonably entitled to indemnification for such expenses.

Also under Delaware law, expenses incurred by an officer or director in defending a civil or criminal action, suit, or proceeding may be paid by the Registrant in advance of the final disposition of the suit, action, or proceeding upon receipt of an undertaking by or on behalf of the officer or director to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the Registrant. The Registrant may also advance expenses incurred by other employees and agents of the Registrant upon such terms and conditions, if any, that the Board of Directors of the Registrant deems appropriate.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

Exhibit

Number	Exhibit
-----	-----
5	Opinion of Greenberg Traurig, LLP
10.42	2002 Incentive Stock Plan
23.1	Consent of KPMG LLP, independent auditors
23.2	Notice Regarding Consent of Arthur Andersen LLP
23.3	Consent of Greenberg Traurig, LLP (included in Exhibit 5)
24	Power of Attorney (included in the Signatures section of this

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Registration Statement)

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 of 1933;

(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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no 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.

II-2

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference into 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 of 1933 may be permitted to directors, officers or 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

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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.

II-3

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 Phoenix, State of Arizona, on this 29th day of May, 2003.

MAIN STREET AND MAIN INCORPORATED

By: /s/ Bart A. Brown, Jr.

Bart A. Brown, Jr.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints jointly and severally, Bart A. Brown, Jr. and Michael J. Herron and each of them, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, 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 attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, 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, or any of them, or his 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, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

SIGNATURE -----	POSITION -----	DATE ----
/s/ John F. Antioco ----- John F. Antioco	Chairman of the Board	May 29, 2003
/s/ Bart A. Brown, Jr. ----- Bart A. Brown, Jr.	Chief Executive Officer and Director (Principal Executive Officer)	May 29, 2003
/s/ William G. Shrader ----- William G. Shrader	President, Chief Operating Officer, and Director	May 29, 2003
/s/ Michael Garnreiter ----- Michael Garnreiter	Chief Financial Officer (Principal Financial and Accounting Officer), Vice President, and Treasurer	May 29, 2003

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/s/ Jane Evans ----- Jane Evans	Director	May 29, 2003
/s/ John C. Metz ----- John C. Metz	Director	May 29, 2003
/s/ Debra Bloy ----- Debra Bloy	Director	May 29, 2003
/s/ Wanda Williams ----- Wanda Williams	Director	May 29, 2003
/s/ Kenda B. Gonzalez ----- Kenda B. Gonzalez	Director	May 29, 2003

II-4

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