

ORTHOFIX INTERNATIONAL N V

Form S-8

September 09, 2008

As filed with the Securities and Exchange Commission on September 9, 2008

Registration No. 333-\_\_\_\_\_

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

ORTHOFIX INTERNATIONAL N.V.

(Exact name of Registrant as specified in its charter)

Netherlands Antilles

(State or other jurisdiction of incorporation or organization)

Not Applicable

(I.R.S. Employer Identification Number)

7 Abraham de Veerstraat

Curacao, Netherlands Antilles

(Address of Principal Executive Offices)

Not Applicable

(Zip Code)

Orthofix International N.V.

Amended and Restated 2004 Long-Term Incentive Plan

and

Orthofix International N.V.

Amended and Restated Stock Purchase Plan

(Full title of the plans)

Orthofix International N.V.

800 Boylston Street

39th Floor

The Prudential Tower

Boston, Massachusetts 02199

(617) 912-9210

(Name, address and telephone number of agent for service)

Copies to:

Jonathan B. Newton  
 Baker & McKenzie LLP  
 Pennzoil Place, South Tower  
 711 Louisiana, Suite 3400  
 Houston, Texas 77002  
 (713) 427-5000

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CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered (1)    | Amount to be Registered | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price (2) | Amount of Registration Fee |
|---|-------------------------|---|---|----------------------------|
| Common Stock, par value \$0.10 per share ("Common Stock") | 800,000 (1)             | \$24.93                                       | \$19,944,000                                  | \$784.37                   |

(1) 300,000 shares of Common Stock are being registered under the Orthofix International N.V. Amended and Restated 2004 Long-Term Incentive Plan, as amended (the "LTIP"). 500,000 shares of Common Stock are being registered under the Orthofix International N.V. Amended and Restated Stock Purchase Plan (the "SPP"). In addition, this Registration Statement, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), shall cover any additional shares of Common Stock that become issuable under the LTIP and SPP 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 shares of Common Stock of Orthofix International N.V. (the "Company").

(2) The Proposed Maximum Offering Price Per Share and the Proposed Maximum Aggregate Offering Price are estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act, on the basis of the average of the high and low prices for the Company's shares of Common Stock reported on the Nasdaq Global Select Market on September 8, 2008.

## EXPLANATORY NOTE

This Registration Statement is filed by the Company to register additional securities issuable pursuant to the LTIP and the SPP and consists of only those items required by General Instruction E to Form S-8.

## INCORPORATION OF DOCUMENTS BY REFERENCE

Of the additional 800,000 shares of Common Stock being registered hereby, 300,000 shares of Common Stock are issuable under the LTIP and 500,000 shares of Common Stock are issuable under the SPP. Both plans were amended as of June 19, 2008, following approval of the Company's shareholders, to, among other things, increase the number of shares of Common Stock available for issuance under the plans. Prior to the SPP amendment, the plan was administered by Orthofix Inc. as the Orthofix Inc. Employee Stock Purchase Plan. In conjunction with the 2008 amendment, the Company assumed the SPP and the SPP is now sponsored and administered by the Company as the Orthofix International N.V. Amended and Restated Stock Purchase Plan. Pursuant to Instruction E of Form S-8, among others, the contents of the Registration Statements on Forms S-8 (Registration Nos. 333-145661 and 333-123353 with respect to the LTIP and Registration Nos. 333-107537, 33-96066 and 33-80910 with respect to the SPP), as amended, of the Company are incorporated herein by reference.

## PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

### Item 8. Exhibits.

Reference is made to the attached Exhibit Index, which is incorporated herein by reference.

### Item 9. Undertakings.

(a) Rule 415 offering.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which any 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 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 20% 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 other material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(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 by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(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.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the Registrant is relying on Rule 430B:

(A) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(ii) If the Registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) Filings Incorporating Subsequent Exchange Act Documents by Reference.

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 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 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) Filing of Registration Statement on Form S-8.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 of 1933 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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

## 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 Boston, State of Massachusetts, on this 9th day of September, 2008.

## ORTHOFIX INTERNATIONAL N.V.

By: /s/ Alan W. Milinazzo  
 Alan W. Milinazzo  
 President, Chief Executive Officer and Director

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that each of the undersigned directors and officers of Orthofix International N.V. hereby appoints each of Alan W. Milinazzo, Thomas Hein and Raymond C. Kolls, jointly and severally, his true and lawful attorney-in-fact and agent, for him and in his name, place and stead, with full power to act alone, to sign on his behalf and in the capacity set forth below, any and all amendments and post-effective amendments to this Registration Statement on Form S-8 and to file each such amendment and post-effective amendment to this Registration Statement, with all exhibits thereto, and any and all other documents in connection therewith, with the Securities and Exchange Commission, hereby granting unto said attorney-in-fact and agent full power and authority to do and perform any and all acts and things requisite and 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 attorney-in-fact and agent 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 and on the date indicated.

| Name and Signature                         | Title   | Date              |
|--|---|-------------------|
| /s/ Alan W. Milinazzo<br>Alan W. Milinazzo | Director, Chief Executive Officer and Group<br>President<br>(Principal Executive Officer) | September 9, 2008 |
| /s/ Thomas Hein<br>Thomas Hein             | Chief Financial Officer<br>(Principal Financial and Accounting Officer)                   | September 9, 2008 |
| /s/ James F. Gero<br>James F. Gero         | Chairman of the Board of Directors  | September 9, 2008 |
| /s/ Peter J. Hewett<br>Peter J. Hewett     | Deputy Chairman of the Board of Directors   | September 9, 2008 |
| /s/ Jerry C. Benjamin<br>Jerry C. Benjamin | Director  | September 9, 2008 |
| /s/ Charles W. Federico                    | Director  | September 9, 2008 |

Charles W. Federico

|                              |          |                   |
|------------------------------|----------|-------------------|
| /s/ Guy Jordan<br>Guy Jordan | Director | September 9, 2008 |
|------------------------------|----------|-------------------|

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| /s/ Thomas J. Kester<br>Thomas J. Kester | Director | September 9, 2008 |
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| /s/ Maria Sainz<br>Maria Sainz | Director | September 9, 2008 |
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| /s/ Walter von Wartburg<br>Walter von Wartburg | Director | September 9, 2008 |
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| /s/ Kenneth R. Weisshaar<br>Kenneth R. Weisshaar | Director | September 9, 2008 |
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EXHIBIT INDEX

Exhibit  
Number

- 4.1 Certificate of Incorporation of Orthofix International N.V. (filed as an exhibit to the annual report on Form 20-F of Orthofix International N.V. dated June 29, 2001 and incorporated herein by reference).
- 4.2 Articles of Association of Orthofix International N.V., as amended (filed as an exhibit to the quarterly report on Form 10-Q of Orthofix International N.V. for the quarter ended June 30, 2008 and incorporated herein by reference).
- 4.3 Orthofix International N.V. Amended and Restated 2004 Long-Term Incentive Plan (filed as an exhibit to the current report on Form 8-K of Orthofix International N.V. dated June 26, 2007 and incorporated herein by reference).
- 4.4 Amendment No. 1 to Orthofix International N.V. Amended and Restated 2004 Long-Term Incentive Plan (filed as an exhibit to the Company's current report on Form 8-K filed June 20, 2008 and incorporated herein by reference).
- 4.5 Form of Nonqualified Stock Option Agreement under the Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (vesting over 3 years) (filed as an exhibit to the current report on Form 8-K of Orthofix International N.V. dated June 20, 2008 and incorporated herein by reference).
- 4.6 Form of Nonqualified Stock Option Agreement under the Orthofix International N.V. Amended and Restated 2004 Long Term Incentive Plan (3 year cliff vesting) (filed as an exhibit to the current report on Form 8-K of Orthofix International N.V. dated June 20, 2008 and incorporated herein by reference).
- 4.7 Form of Restricted Stock Grant Agreement under the Orthofix International N.V. Amended and Restated 2004 Long-Term Incentive Plan (vesting over 3 years) (filed as an exhibit to the current report on Form 8-K of Orthofix International N.V. dated June 20, 2008 and incorporated herein by reference).
- 4.8 Form of Restricted Stock Grant Agreement under the Orthofix International N.V. Amended and Restated 2004 Long-Term Incentive Plan (3 year cliff vesting) (filed as an exhibit to the current report on Form 8-K of Orthofix International N.V. dated June 20, 2008 and incorporated herein by reference).
- 4.9 Orthofix International N.V. Amended and Restated Stock Purchase Plan (filed as an exhibit to the quarterly report on Form 10-Q of Orthofix International N.V. for the quarter ended June 30, 2008 and incorporated herein by reference).
- 5\* Opinion of STvB Advocaten.
- 23.1\* Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
- 23.2\* Consent of STvB Advocaten (included in Exhibit 5).
- 24\* Power of Attorney (included on signature pages).

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\* Filed herewith

