

NEW YORK TIMES CO
Form S-8
December 29, 2008

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As filed with the Securities and Exchange Commission on December 29, 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**

THE NEW YORK TIMES COMPANY

(Exact Name of Registrant as Specified in its Charter)

New York
(State or other Jurisdiction
of Incorporation or Organization)

13-1102020
(I.R.S. Employer
Identification No.)

**620 Eighth Avenue
New York, New York 10018
(212) 556-1234**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**The New York Times Companies Supplemental
Retirement and Investment Plan**

(Full title of the plan)

KENNETH A. RICHIERI, ESQ.
Senior Vice President, General Counsel and Secretary
The New York Times Company
620 Eighth Avenue
New York, New York 10018
(212) 556-1234

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

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
☐

Smaller reporting
company ☐

(Do not check if a
smaller reporting
company)

CALCULATION OF REGISTRATION FEE

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Title of securities to be registered	Amount to be Registered(1)	Proposed maximum offering price per share(2)	Proposed maximum aggregate offering price(2)	Amount of registration fee(2)
Class A Common Stock, par value \$0.10 per share	5,500,000	\$6.57	\$36,135,000	\$1,421
Interests in The New York Times Companies Supplemental Retirement and Investment Plan	(3)	(3)	(3)	(3)

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of Class A Common Stock which become issuable under the above-named 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 outstanding shares of Class A Common Stock.
- (2) Calculated pursuant to Rule 457(h) of the Securities Act, solely for the purpose of computing the registration fee, based on the average of the high and low sales price of the registrant's Class A Common Stock, as reported by the New York Stock Exchange on December 22, 2008.
- (3) Pursuant to Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of plan interests to be offered or sold pursuant to the employee benefit plan described herein. No registration fee is payable with respect to such interests, in accordance with Rule 457(h)(2).
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PART 1

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

*

The documents containing the information specified in Part I will be delivered in accordance with Rule 428(b)(1) under the Securities Act. Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the "Commission"), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by The New York Times Company (the "Registrant") with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are hereby incorporated by reference in this Registration Statement:

- (1) Annual Report on Form 10-K for the fiscal year ended December 30, 2007;
- (2) Quarterly Reports on Form 10-Q for the fiscal quarters ended March 30, 2008, June 29, 2008, and September 28, 2008;
- (3) Current Reports on Form 8-K filed with the Commission on February 12, 2008, March 17, 2008, September 8, 2008, October 23, 2008 (Item 5.02 only), and amended Form 8-K filed with the Commission on December 2, 2008; and
- (4) The description of the Registrant's Class A common stock contained in its registration statement on Form 10 filed under Section 12 of the Exchange Act on April 28, 1967, including any amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement, but 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 herein and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Pursuant to the New York Business Corporation Law (the "NYBCL"), the Registrant has the power to indemnify certain persons, including its officers and directors, under stated circumstances and subject to certain limitations in connection with services performed in good faith for the Registrant.

Pursuant to Article Ninth of its amended and restated certificate of incorporation, no director of the Registrant shall be personally liable to the Registrant or its stockholders for damages for any breach of duty as a director; provided that Article Ninth shall neither eliminate nor limit liability: (a) if a judgment or other final adjudication adverse to such director 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 of misconduct violated Section 719 of the NYBCL; or (b) for any act or omission prior to the effectiveness of Article Ninth. Any repeal of or modification to the provisions of Article Ninth shall not adversely affect any right or protection of a director of the Registrant existing pursuant to Article Ninth immediately prior to such repeal or modification.

Under the Registrant's by-laws, any person made or threatened to be made a party to any civil or criminal action or proceeding by reason of the fact that he or she or his or her testator or intestate is or was a director or officer of the Registrant, or served any other corporation or entity of any type or kind, domestic or foreign, in any capacity, at the request of the Registrant, shall be indemnified against judgments, fines, amounts paid in settlement, taxes or penalties and expenses, including attorneys' fees, to the full extent permitted by law; provided that no indemnification may be made in any case if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

The Registrant's by-laws provide that such right to indemnification is not intended to limit any right to indemnification to which any officer or director would be entitled by law in the absence of such by-law provision, nor shall it be deemed exclusive of any other rights such a person may have under law, any provision of its certificate of incorporation or by-laws, any agreement approved by the Registrant's board of directors or a resolution of stockholders or directors.

The Registrant maintains directors' and officers' liability insurance which insures against liabilities that directors, or officers of the Registrant may incur in such capacities.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Exhibit
4	The New York Times Companies Supplemental Retirement and Investment Plan (the "Plan").
5	Opinion of Morgan, Lewis & Bockius LLP as to the legality of the securities being registered.
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm.
23.2	Consent of Deloitte & Touche LLP, independent registered public accounting firm.
23.3	Consent of Morgan, Lewis & Bockius LLP (included in the opinion filed as Exhibit 5).
24	Powers of Attorney (included on signature page hereto).

The Registrant undertakes that it will submit or has submitted the Plan and any amendments thereto to the Internal Revenue Service ("IRS") in a timely manner and has made or will make all changes required by the IRS in order to qualify the Plan.

Item 9. Undertakings.

(a)

The 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;

(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 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;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission 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.

(b)

The undersigned Registrant hereby undertakes that, for 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 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 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 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.

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 New York, New York on December 29, 2008.

THE NEW YORK TIMES COMPANY

By: /s/ KENNETH A. RICHIERI

Kenneth A. Richieri
Senior Vice President, General Counsel
and Secretary

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Kenneth A. Richieri and James M. Follo and each of them, his or her true and lawful attorney-in-fact and agent, with power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any amendments to this Registration Statement, and to file the same, with all exhibits 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 and about the premises, as fully to 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 agents, or any of them, or their, his or her substitutes or substitute, 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 indicated on this 29th day of December, 2008.

Signature	Title
<u>/s/ ARTHUR SULZBERGER, JR.</u> Arthur Sulzberger, Jr.	Chairman and Director
<u>/s/ JANET L. ROBINSON</u> Janet L. Robinson	Chief Executive Officer, President and Director (principal executive officer)
<u>/s/ JAMES M. FOLLO</u> James M. Follo	Senior Vice President and Chief Financial Officer (principal financial officer)
<u>/s/ R. ANTHONY BENTEN</u> R. Anthony Bente	Senior Vice President, Finance and Corporate Controller (principal accounting officer)
<u>/s/ MICHAEL GOLDEN</u> Michael Golden	Vice Chairman and Director

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Signature	Title
<u>/s/ RAUL E. CESAN</u>	Director
Raul E. Cesan	
<u>/s/ DANIEL H. COHEN</u>	Director
Daniel H. Cohen	
<u>/s/ ROBERT E. DENHAM</u>	Director
Robert E. Denham	
<u>/s/ LYNN G. DOLNICK</u>	Director
Lynn G. Dolnick	
<u>/s/ SCOTT GALLOWAY</u>	Director
Scott Galloway	
<u>/s/ WILLIAM E. KENNARD</u>	Director
William E. Kennard	
<u>/s/ JAMES A. KOHLBERG</u>	Director
James A. Kohlberg	
<u>/s/ DAWN G. LEPORE</u>	Director
Dawn G. Lepore	
<u>/s/ DAVID E. LIDDLE</u>	Director
David E. Liddle	
<u>/s/ ELLEN R. MARRAM</u>	Director
Ellen R. Marram	
<u>/s/ THOMAS MIDDELHOFF</u>	Director
Thomas Middelhoff	
<u>/s/ DOREEN A. TOBEN</u>	Director
Doreen A. Toben	

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The Plan. Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the employee benefit plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York on December 29, 2008.

THE NEW YORK TIMES COMPANIES
SUPPLEMENTAL
RETIREMENT AND INVESTMENT PLAN

By: /s/ SUSAN L. MURPHY

Susan L. Murphy
Plan Administrator

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24	Powers of Attorney (included on signature page hereto).

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