

CB RICHARD ELLIS GROUP INC

Form S-8

September 29, 2004

As filed with the Securities and Exchange Commission on September 29, 2004

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CB RICHARD ELLIS GROUP, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of

incorporation or organization)

94-3391143
(I.R.S. Employer

Identification Number)

865 Figueroa Street, Suite 3400

Los Angeles, CA 90017

(213) 438-4880

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

CB Richard Ellis Deferred Compensation Plan

(Full Titles of the Plans)

Laurence H. Midler

Executive Vice President and General Counsel

CB Richard Ellis Group, Inc.

355 South Grand Avenue, 12th Floor

Los Angeles, CA 90071

(213) 613-3588

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

CALCULATION OF REGISTRATION FEE

| | | Proposed Maximum | Proposed | |
|---------------------------------------------|------------------------------------|-------------------------------------|---------------------------|--------------------------|
| | | | Maximum | Amount of |
| Title of Securities to be Registered | Amount to be Registered | Offering Price Per Share | Aggregate | Registration |
| | | | Offering Price | Statement Fee |
| Deferred Compensation Obligations (1) | \$ 40,000,000(2) | 100% | \$ 40,000,000(2) | \$ 5,068.00 |

- (1) The Deferred Compensation Obligations are unsecured obligations of CB Richard Ellis Group, Inc. and its subsidiaries to satisfy deferred compensation obligations under the CB Richard Ellis Group, Inc. Deferred Compensation Plan. In addition, pursuant to Rule 416(c), this registration statement covers an indeterminate amount of interests to be offered or sold pursuant to the CB Richard Ellis Deferred Compensation Plan.
- (2) Estimated solely for the purposes of this offering under Rule 457(h).

The registration statement will become effective upon filing in accordance with Rule 462(a) under the Securities Act.

PART I

INFORMATION REQUIRED IN THE SECTION 10 PROSPECTUS

The document(s) containing the information specified in Part I will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act"). Such documents are not being filed with the Securities and Exchange Commission (the "SEC") either as part of this registration statement ("Registration Statement") or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, 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 SEC requires us to incorporate by reference certain of our publicly-filed documents into this prospectus, which means that information included in those documents is considered part of the prospectus. Information that we file with the SEC after the effective date of this prospectus will automatically update and supersede this information. We incorporate by reference the documents listed below and future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") until we terminate the effectiveness of this Registration Statement.

The following documents filed with the SEC are hereby incorporated by reference:

- (a) Our latest prospectus filed pursuant to Rule 424(b) under the Securities Act, containing audited financial statements for our latest fiscal year ended December 31, 2003. The prospectus is included in the Company's Registration Statement on Form S-1 (No. 333-112867, effective June 10, 2004);
- (b) Our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2004; and
- (c) All other reports filed pursuant to Sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above.

Item 4. Description of the Securities

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The Deferred Compensation Obligations being registered represent our obligations (the Obligations) to pay deferred compensation in the future in accordance with the terms of the CB Richard Ellis Deferred Compensation Plan effective August 1, 2004 (the Plan), which is filed as Exhibit 4.1 to this Registration Statement.

The Obligations are our general unfunded and unsecured obligations, payable from our general assets, and rank equally with all of our other unsecured and unsubordinated indebtedness.

The amount of compensation to be deferred by each participant is determined in accordance with the Plan based on elections by the participant. We may deem the participant's Plan account to be credited with additional amounts of deemed employer contributions based upon such performance or other criteria as we may establish. Amounts in a participant's Plan account may be deemed to be invested in mutual fund crediting options designated by us. The Obligations are payable upon termination of employment or on a date selected by the participant in accordance with the terms of the Plan, subject to limited exceptions for financial hardship, or unscheduled distributions where the participant forfeits 7.5% of the amount distributable had the distribution not been unscheduled. The Obligations are payable in the form of a lump-sum distribution or in installments, at the election of the participant made in accordance with the terms of the Plan. Distributions are in cash.

Participants or beneficiaries may not sell, transfer, anticipate, assign, hypothecate or otherwise dispose of any right or interest in the Plan. A participant may designate one or more beneficiaries to receive any portion of Obligations payable in the event of death.

The Obligations are not convertible into any other security of CB Richard Ellis Group, Inc. The Obligations will not have the benefit of a negative pledge or any other affirmative or negative covenant on our part. No trustee has been appointed to take action with respect to the Obligations and each participant in the Plan will be responsible for enforcing his or her own rights with respect to the Obligations.

We reserve the right to amend or terminate the Plan at any time and for any reason, including an amendment that would accelerate or delay the payment of Obligations.

Obligations in an aggregate principal amount of \$40 million are being registered under the Plan. Further amounts may be registered and issued as new or existing plan participants elect to defer portions of their compensation in subsequent years.

Item 5. Interests of Named Experts and Counsel

The validity of the securities being registered hereby has been passed upon by Dean E. Miller, our Senior Vice President and Assistant General Counsel. Mr. Miller holds shares of our common stock and is eligible to participate in the Plan.

Item 6. Indemnification of Directors and Officers

Delaware law authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties. Our certificate of incorporation includes a provision that eliminates the personal liability of directors for monetary damages for actions taken as a director, except for liability:

for breach of duty of loyalty;

for acts or omissions not in good faith or involving intentional misconduct or knowing violation of law;

under Section 174 of the Delaware General Corporation Law, which generally applies to unlawful dividends; or

for transactions from which the director derived improper personal benefit.

Our certificate of incorporation and bylaws also provide that we must indemnify our directors and officers to the fullest extent authorized by Delaware law. We are also expressly authorized to carry directors' and officers' insurance providing indemnification for our directors, officers and certain employees for some liabilities.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See Exhibit Index.

Item 9. Undertakings

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;

(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 a twenty percent (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 material change to such information in the Registration Statement; provided, however, that paragraphs (1)(i) and (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 with or furnished to the Commission by the registrant pursuant to Section 13 or 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 herein, 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. 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 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.

5. 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 SEC 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.

SIGNATURE

Pursuant to the requirements of the Securities Act, 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 Los Angeles, State of California, on September 28, 2004.

CB Richard Ellis Group, Inc.

By: /s/ Laurence H. Midler

Name: **Laurence H. Midler**

Title: **Executive Vice President and General Counsel**

POWERS OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Laurence H. Midler and Kenneth J. Kay, and each of them, individually, as his true and lawful attorneys-in-fact and agents, with full 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 this registration statement and any and all amendments to this registration statement, including post-effective amendments, and registrations filed pursuant to Rule 462 under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and does grant unto said attorneys-in-fact and agents, 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their 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 indicated on September 28, 2004.

Signature

Title

/s/ Ray Wirta

Director and Chief Executive Officer

(Principal Executive Officer)

Ray Wirta

Chief Financial Officer

/s/ Kenneth J. Kay

(Principal Financial Officer)

Kenneth J. Kay

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|------------------------------|--------------------------------|
| <hr/> | |
| <hr/> | Global Controller |
| /s/ Gil Borok | (Principal Accounting Officer) |
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| Gil Borok | |
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| /s/ Brett White | Director and President |
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| Brett White | |
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| /s/ Richard C. Blum | Chairman of the Board |
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| Richard C. Blum | |
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| /s/ Jeffrey A. Cozad | Director |
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| Jeffrey A. Cozad | |
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| /s/ Patrice Marie Daniels | Director |
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| /s/ Michael Kantor | Director |
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| /s/ Frederic V. Malek | Director |
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| /s/ Jeffrey S. Pion | Director |
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| Jeffrey S. Pion | |

PLAN SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the CB Richard Ellis Group, Inc. Deferred Compensation Plan has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Angeles, State of California, on September 28, 2004.

By: /s/ Ray Wirta

Name: Ray Wirta

Title: Chief Executive Officer

EXHIBIT INDEX

| Exhibit Number | Exhibit |
|---------------------------|--------------------------------------------------------------------------------|
| 4.1 | CB Richard Ellis Deferred Compensation Plan effective as of August 1, 2004 |
| 5.1 | Opinion of Dean E. Miller, Senior Vice President and Assistant General Counsel |
| 23.1 | Consent of Counsel (included in Exhibit 5.1) |
| 23.2 | Consent of KPMG LLP |
| 23.3 | Consent of Ernst & Young, LLP |
| 23.4 | Consent of Deloitte & Touche LLP |
| 24 | Powers of Attorney (included on signature pages to the Registration Statement) |