

GENESEE & WYOMING INC  
Form S-8  
May 27, 2011

Registration No. 333-

As filed with the Securities and Exchange Commission on May 27, 2011

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

**GENESEE & WYOMING INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**06-0984624**  
(I.R.S. Employer  
Identification Number)

**66 Field Point Road, Greenwich, Connecticut**  
(Address of Principal Executive Offices)

**06830**  
(Zip Code)

**Genesee & Wyoming Inc.**

**Second Amended and Restated 2004 Omnibus Incentive Plan**

(Full title of the plan)

**Allison M. Fergus, Esq.**

**General Counsel and Secretary**

**66 Field Point Road**

**Greenwich, Connecticut 06830**

(Name and address of agent for service)

**(203) 629-3722**

(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.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>TITLE OF SECURITIES TO BE REGISTERED</b>	<b>REGISTERED(1)</b>	<b>PER SHARE(2)</b>	<b>PROPOSED</b>	<b>PROPOSED</b>	<b>AMOUNT OF REGISTRATION FEE(2)</b>
			<b>MAXIMUM</b>	<b>MAXIMUM</b>	
			<b>OFFERING PRICE</b>	<b>AGGREGATE</b>	
Class A Common Stock, \$0.01 par value per share	2,500,000	\$57.01	\$142,525,000	\$16,548	

- (1) In addition to the shares of Class A Common Stock set forth in the table, pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), the number of shares of Class A Common Stock registered includes an indeterminable number of shares of Class A Common Stock issuable under the Genesee & Wyoming Inc. Second Amended and Restated 2004 Omnibus Incentive Plan, as this amount may be adjusted as a result of stock splits, stock dividends and anti-dilution provisions set forth therein.
- (2) Pursuant to Rule 457(c) and Rule 457(h) under the Securities Act, the proposed maximum offering price per share, the proposed maximum aggregate offering price and the amount of registration fee have been computed on the basis of the average high and low prices per share of Class A Common Stock on the New York Stock Exchange on May 23, 2011.

**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 2,500,000 shares of Class A common stock, \$0.01 par value per share (the **Common Stock** ) of Genesee & Wyoming Inc. (the **Company** ), available for the grant of awards under the **Company** 's Second Amended and Restated 2004 Omnibus Incentive Plan (the **Plan** ). These additional shares of Common Stock are additional securities of the same class as other securities for which an original registration statement (File Number 333-120558) on Form S-8 was filed with the Securities and Exchange Commission (the **Commission** ) on November 16, 2004, as amended by Post-Effective Amendment No.1 filed with the Commission on June 4, 2007 (together, the **Initial Registration Statement** ).

Pursuant to General Instruction E to Form S-8, the contents of such earlier registration statement is incorporated by reference into this Registration Statement, except that the provisions contained in Part II of such earlier registration statement are modified as set forth in this Registration Statement.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents of the **Company** previously filed with the Securities and Exchange Commission are incorporated herein by reference:

- (a) the **Company** 's Annual Report on Form 10-K for the fiscal year ended December 31, 2010;
- (b) the **Company** 's Quarterly Report on Form 10-Q for the quarter ended March 31, 2011;
- (c) the **Company** 's Current Reports on Form 8-K or 8-K/A filed with the Commission on February 15, 2011, April 14, 2011, April 28, 2011 (Item 8.01 only) and May 27, 2011;
- (d) the description of the Common Stock under **Description of Our Capital Stock** **Class A Common Stock and Class B Common Stock** contained in the **Company** 's Registration Statement on Form S-3ASR (Registration No. 333-156808), filed with the Commission on January 20, 2009.

All documents filed by the **Company** pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement 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 which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 8. Exhibits.**

For a list of exhibits, see the Exhibit Index in this Registration Statement, which is incorporated into this Item 8 by reference.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Company 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 Greenwich, State of Connecticut, on May 27, 2011.

GENESEE & WYOMING INC.

By: /s/ John C. Hellmann  
 Name: John C. Hellmann  
 Title: Chief Executive Officer and President

**POWER OF ATTORNEY**

Each individual whose signature appears below constitutes and appoints each of John C. Hellmann and Timothy J. Gallagher such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person and in such person's 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 all documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Date</b>	<b>Title</b>	<b>Signature</b>
May 27, 2011	Chief Executive Officer,	/s/ John C. Hellmann
	President and Director	John C. Hellmann
May 27, 2011	Chief Financial Officer	/s/ Timothy J. Gallagher Timothy J. Gallagher
May 27, 2011	Chief Accounting Officer	/s/ Christopher F. Liucci
	and Global Controller	Christopher F. Liucci
May 27, 2011	Chairman of the Board	/s/ Mortimer B. Fuller III Mortimer B. Fuller III

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May 27, 2011	Director	/s/ David C. Hurley David C. Hurley
May 27, 2011	Director	/s/ Øivind Lorentzen III Øivind Lorentzen III
May 27, 2011	Director	/s/ Robert M. Melzer Robert M. Melzer
May 27, 2011	Director	/s/ Michael Norkus Michael Norkus
May 27, 2011	Director	/s/ Philip J. Ringo Philip J. Ringo
May 27, 2011	Director	/s/ Peter O. Scannell Peter O. Scannell
May 27, 2011	Director	/s/ Mark A. Scudder Mark A. Scudder

**EXHIBIT INDEX**

Exhibit No.	Description
4.1	Restated Certificate of Incorporation (incorporated herein by reference to Annex II to the Company's Definitive Proxy Statement on Schedule 14A dated April 15, 2011).
4.2	Amended By-laws (incorporated herein by reference to Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004).
4.3	Specimen stock certificate representing shares of Class A Common Stock (incorporated herein by reference to Exhibit 4.1 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (Registration No. 333-03972)).
4.4	Second Amended and Restated 2004 Omnibus Incentive Plan (incorporated herein by reference to Annex I to the Company's Definitive Proxy Statement on Schedule 14A dated April 15, 2011)
5.1*	Opinion of Simpson Thacher & Bartlett LLP
23.1*	Consent of PricewaterhouseCoopers LLP
24.1*	Power of Attorney (included on the signature page to this Registration Statement).

\* Filed herewith