

CONSTELLATION BRANDS, INC.
Form S-8
February 27, 2006

As filed with the Securities and Exchange Commission on February 27, 2006
Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

CONSTELLATION BRANDS, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other
jurisdiction
of incorporation or
organization)

16-0716709
(I.R.S. Employer
Identification No.)

370 Woodcliff Drive,
Suite 300,
Fairport, New York
(Address of Principal
Executive Offices)

14450
(Zip Code)

CONSTELLATION BRANDS, INC. LONG-TERM STOCK INCENTIVE PLAN
(Full title of the Plan)

Thomas J. Mullin, Esq.
Executive Vice President and General Counsel
Constellation Brands, Inc.
370 Woodcliff Drive, Suite 300
Fairport, New York 14450
(585) 218-3600
(Name, address, and telephone
number, including area code, of agent for service)

Copy to:
James A. Locke III, Esq.
Nixon Peabody LLP
1300 Clinton Square

Rochester, New York 14604
(585) 263-1000

CALCULATION OF REGISTRATION FEE

| Title of Securities to be <u>Registered (1)</u> | Amount to be <u>Registered (1)</u> | Proposed Maximum Offering <u>Price Per Share (2)</u> | Proposed Maximum Aggregate <u>Offering Price</u> | Amount of <u>Registration Fee</u> |
|---|------------------------------------|--|--|-----------------------------------|
| Class A Common Stock, par value \$01 per share | 3,219,356 | \$27.235 | \$87,679,160.66 | \$9,381.67 |
| | 73,860 | \$30.52 | \$2,254,207.20 | \$241.20 |
| | 12,515 | \$27.96 | \$349,919.40 | \$37.44 |
| | 65,900 | \$24.92 | \$1,642,228.00 | \$175.72 |
| | 32,450 | \$26.22 | \$850,839.00 | \$91.04 |
| | 50,000 | \$26.15 | \$1,307,500.00 | \$139.90 |
| | 20,545,919 | \$25.53 | \$524,537,312.07 | \$56,125.49 |
| | (3) | | | |
| <i>Total</i> | <u>24,000,000</u> | | <u>\$618,621,166.33</u> | <u>\$66,192.46</u> |

- (1) Pursuant to Rule 416(b) under the Securities Act of 1933, this registration statement covers such additional shares of Class A Common Stock as may be issuable pursuant to anti-dilution provisions of the Plan.
- (2) Inserted solely for the purpose of calculating the registration fee pursuant to Rule 457(h)(1).
- (3) As instructed by Rule 457(h)(1) and estimated in accordance with Rule 457(c), based upon the average of the high and low prices for the Registrant's Class A Common Stock on the New York Stock Exchange reported as of February 22, 2006.

EXPLANATORY NOTE

Constellation Brands, Inc. (formerly known as Canandaigua Brands, Inc. and Canandaigua Wine Company, Inc.) (the "Company") filed a Registration Statement on Form S-8 on November 22, 1994 (Reg. No. 33-56557), Post-Effective Amendment No. 1 to such Registration Statement on November 29, 1994, and a Registration Statement on Form S-8 on October 4, 1999 (Reg. No. 333-88391) (collectively, the "Prior Registration Statements") relating to the registration of shares of the Company's Class A Common Stock.

On September 1, 1997, the Company changed its name from Canandaigua Wine Company, Inc. to Canandaigua Brands, Inc. and on September 19, 2000, the Company changed its name from Canandaigua Brands, Inc. to Constellation Brands, Inc. Pursuant to General Instruction E of Form S-8, this Registration Statement on Form S-8 (the "Registration Statement") registers an additional 24,000,000 shares of the Company's Class A Common Stock which may be acquired under the Company's Long-Term Stock Incentive Plan.

The contents of the Prior Registration Statements are incorporated herein by reference.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 5. Interests of Named Experts and Counsel.

James A. Locke III, Esq. serves as a member of the Board of Directors of the Registrant. Mr. Locke is a partner in the law firm Nixon Peabody LLP, which firm has rendered an opinion regarding the legality of the securities offered by this Registration Statement. As a member of the Company's Board of Directors, Mr. Locke is eligible to receive awards under the Plan. Mr. Locke presently owns, and has options to acquire, securities of the Company.

Certain attorneys of Nixon Peabody LLP may also own shares of the Class A Common Stock of the Company. A copy of the opinion of Nixon Peabody LLP is attached hereto as Exhibit 5.

Item 6. Indemnification of Directors and Officers.

The General Corporation Law of Delaware (Section 102) allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or to any of its stockholders for monetary damage for a breach of his/her fiduciary duty as a director, except in the case where the director breached his/her duty of loyalty, failed to act in good

faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Restated Certificate of

- 3 -

Incorporation of the Registrant contains a provision which eliminates directors' personal liability as set forth above.

The General Corporation Law of Delaware (Section 145) gives Delaware corporations broad powers to indemnify their present and former directors and officers and those of affiliated corporations against expenses incurred in the defense of any lawsuit to which they are made parties by reason of being or having been such directors or officers, subject to specified conditions and exclusions; gives a director or officer who successfully defends an action the right to be so indemnified; and authorizes the Registrant to buy directors' and officers' liability insurance. Such indemnification is not exclusive of any other right to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or otherwise.

The Registrant's Restated Certificate of Incorporation provides for indemnification to the fullest extent authorized by Section 145 of the General Corporation Law of Delaware for directors, officers and employees of the Registrant and also to persons who are serving at the request of the Registrant as directors, officers or employees of other corporations (including subsidiaries); provided that, with respect to proceedings initiated by such indemnitee, indemnification shall be provided only if such proceedings were authorized by the Board of Directors. The right of indemnification is not exclusive of any other right which any person may acquire under any statute, bylaw, agreement, contract, vote of stockholders or otherwise.

The Registrant maintains a directors' and officers' liability insurance and corporate reimbursement policy insuring directors and officers against loss arising from claims made arising out of the performance of their duties.

Item 8. Exhibits.

| <u>Exhibit No.</u> | <u>Description</u> | <u>Location</u> |
|--------------------|---|--|
| 5 | Opinion of Nixon Peabody LLP | Filed Herewith |
| 10.1 | Long-Term Stock Incentive Plan, which amends and restates the Canandaigua Wine Company, Inc. Stock Option and Stock Appreciation Right Plan | Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended May 31, 1997 and incorporated herein by reference * |
| 10.2 | Amendment Number One to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 1997 and incorporated herein by reference * |

| | | |
|------|--|---|
| 10.3 | Amendment Number Two to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 1999 and incorporated herein by reference* |
| 10.4 | Amendment Number Three to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 2000 and incorporated herein by reference * |
| 10.5 | Amendment Number Four to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the fiscal year ended February 28, 2001 and incorporated herein by reference |
| 10.6 | Amendment Number Five to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 2004 and incorporated herein by reference |
| 10.7 | Amendment Number Six to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended November 30, 2004 and incorporated herein by reference |
| 23.1 | Consent of Nixon Peabody LLP | Contained in opinion filed as Exhibit 5 to this Registration Statement |
| 23.2 | Consent of KPMG LLP, independent accountants | Filed Herewith |
| 24 | Power of Attorney | |

Included on the signature
page to this Registration
Statement

* The Company's Commission File No. is 001-08495. For filings prior to October 4, 1999,
use Commission File No. 000-07570.

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 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 Town of Perinton, State of New York, on the 27th day of February, 2006.

CONSTELLATION BRANDS, INC.

By: /s/ Richard Sands
 Richard Sands
 Chairman of the Board and
 Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Richard Sands, Robert Sands and Thomas S. Summer, and each of them, 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 the 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 or necessary fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or any of them, or their or his 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.

| | | |
|---|--|-------------------|
| <u>/s/ Richard Sands</u> Richard Sands | Director, Chairman of the Board and Chief Executive Officer (principal executive officer) | February 27, 2006 |
| <u>/s/ Thomas S. Summer</u> Thomas S. Summer | Executive Vice President and Chief Financial Officer (principal financial officer and principal accounting officer) | February 27, 2006 |
| <u>/s/ Jeananne K. Hauswald</u> Jeananne K. Hauswald | Director | February 27, 2006 |
| <u>/s/ James A. Locke III</u> James A. Locke III | Director | February 27, 2006 |
| <u>/s/ Thomas C. McDermott</u> Thomas C. McDermott | Director | February 27, 2006 |
| <u>/s/ Robert Sands</u> Robert Sands | Director | February 27, 2006 |
| <u>/s/ Paul L. Smith</u> | Director | February 27, 2006 |

Paul L. Smith

EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description</u> | <u>Location</u> |
|--------------------|---|--|
| 5 | Opinion of Nixon Peabody LLP | Filed Herewith |
| 10.1 | Long-Term Stock Incentive Plan, which amends and restates the Canandaigua Wine Company, Inc. Stock Option and Stock Appreciation Right Plan | Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended May 31, 1997 and incorporated herein by reference * |
| 10.2 | Amendment Number One to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 1997 and incorporated herein by reference * |
| 10.3 | Amendment Number Two to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 1999 and incorporated herein by reference * |
| 10.4 | Amendment Number Three to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 2000 and incorporated herein by reference * |
| 10.5 | Amendment Number Four to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.9 to the Company's Annual Report on Form 10-K for the fiscal year ended February 28, 2001 and incorporated herein by reference |
| 10.6 | Amendment Number Five to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.8 to the Company's Quarterly |

Report on Form 10-Q for
the fiscal quarter ended
August 31, 2004 and
incorporated herein by
reference

| | | |
|------|--|---|
| 10.7 | Amendment Number Six to the Company's Long-Term Stock Incentive Plan | Filed as Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended November 30, 2004 and incorporated herein by reference |
| 23.1 | Consent of Nixon Peabody LLP | Contained in opinion filed as Exhibit 5 to this Registration Statement |
| 23.2 | Consent of KPMG LLP, independent accountants | Filed Herewith |
| 24 | Power of Attorney | Included on the signature page to this Registration Statement |

* The Company's Commission File No. is 001-08495. For filings prior to October 4, 1999, use Commission File No. 000-07570.