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

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

KIRBY CORPORATION
(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction of
incorporation or organization)

74-1884980
(I.R.S. Employer
Identification No.)

55 Waugh Drive, Suite 1000
Houston, TX
(Address of principal executive offices)

77007
(Zip Code)

KIRBY CORPORATION 2005 STOCK AND INCENTIVE PLAN
(Full title of the Plan)

David W. Grzebinski
President and Chief Executive Officer
55 Waugh Drive, Suite 1000
Houston, Texas 77007
(Name and address of agent for service)

713-435-1000
(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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This Registration Statement relates solely to the registration of additional securities of the same class as other securities for which registration statements on this form relating to the Kirby Corporation 2005 Stock and Incentive Plan, as amended (the “Plan”) are effective. On March 3, 2021, Kirby Corporation (the “Company”) filed with the Securities and Exchange Commission (the “Commission”) a definitive proxy statement that included a proposal to increase the number of shares of the Company’s Common Stock available for issuance under the Plan by 1,400,000 shares. The proposal was approved by the Company’s shareholders on April 27, 2021. This Registration Statement is filed for the purpose of registering those additional 1,400,000 shares of the Company’s Common Stock.

A Registration Statement 333-129290 on Form S-8 (the “Original Registration Statement”) registering 1,000,000 shares of the Company’s Common Stock to be issued pursuant to the Plan was originally filed on October 28, 2005 with the Commission.) A 2-for-1 split of the Company’s Common Stock was affected on May 31, 2006, which increased the number of shares covered by the Plan and the Original Registration Statement from 1,000,000 to 2,000,000 pursuant to Rule 416 under the Securities Act of 1933. On July 28, 2008, Registration Statement 333-152566 on Form S-8 (the “2008 Registration Statement”) was filed with the Commission which registered an additional 1,000,000 shares of the Company’s Common Stock and increased the number of shares covered by the Plan from 2,000,000 to 3,000,000. On October 26, 2012, Registration Statement 333-184599 on Form S-8 (the “2012 Registration Statement”) was filed with the Commission which registered an additional 2,000,000 shares of the Company’s Common Stock and increased the number of shares covered by the Plan from 3,000,000 to 5,000,000.

Pursuant to General Instruction E to Form S-8, the contents of the Original Registration Statement, the 2008 Registration Statement, and the 2012 Registration Statement (collectively, the “Prior Registration Statements”), together with all exhibits filed therewith or incorporated therein by reference are incorporated by reference into this Registration Statement. Upon effectiveness of this Registration Statement covering an additional 1,400,000 shares, a maximum of 6,400,000 shares may be issued under the Plan.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents of the Company filed with the Commission are incorporated herein by reference:

- (a) The Prior Registration Statements;
- (b) The Company’s Annual Report on [Form 10-K](#) for its fiscal year ended December 31, 2021, filed with the Commission on February 18, 2022, including the portions of the Company’s proxy statement for its 2022 annual meeting of stockholders incorporated by reference therein;
- (c) The Company’s Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2022, filed with the Commission on May 9, 2022
- (d) The Company’s Current Report on [Form 8-K](#) filed February 8, 2022;
- (e) The Company’s Amendment No. 1 to Current Report on [Form 8-K/A](#) filed March 3, 2022;
- (f) The Company’s Amendment No. 2 to Current Report on [Form 8-K/A](#) filed March 3, 2022;
- (g) The Company’s Current Report on [Form 8-K](#) filed April 28, 2022;
- (h) The Company’s Current Report on [Form 8-K](#) filed May 20, 2022;
- (i) The Company’s Current Report on [Form 8-K](#) filed May 25, 2022; and
- (j) A description of the Company’s Common Stock in the Company’s registration statement on [Form 8-A](#) filed with the SEC on September 23, 1996, including any amendment or report filed for the purpose of updating such description, including Exhibit 4.1 to the Company’s Annual Report on Form 10-K for the year ended December 31, 2021, filed with the Commission on February 18, 2022.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), after the date of this Registration Statement and 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 into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document 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 amended, to constitute a part of this Registration Statement. Notwithstanding the foregoing, nothing in this Registration Statement shall be deemed to incorporate any information from Item 2.02 or Item 7.01 of any Form 8-K, or that is otherwise furnished under applicable Commission rules rather than filed, or any exhibits to the extent furnished in connection with such items.

Item 8. Exhibits.

The following documents are filed as a part of this Registration Statement.

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|--|
| 4.1 | Restated Articles of Incorporation of the Company with all amendments to date and the Bylaws of the Company, as amended to date (incorporated by reference to Exhibit 3.1 and 3.2 , respectively, to the Company's Annual Report on Form 10-K for the year ended December 31, 2014 and Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on March 19, 2020). |
| 4.2 | Kirby Corporation 2005 Stock and Incentive Plan, as amended (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on April 29, 2021) |
| 5.1* | Opinion of Norton Rose Fulbright US LLP |
| 23.1* | Consent of Norton Rose Fulbright US LLP (included in the opinion filed as Exhibit 5.1 hereto). |
| 23.2* | Consent of KPMG LLP |
| 24.1* | Power of Attorney (included with signature page of this Registration Statement). |
| 107* | Filing Fee Table |

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 Houston, State of Texas, on June 3, 2022.

KIRBY CORPORATION

By: /s/ DAVID W. GRZEBINSKI

David W. Grzebinski
President, Chief Executive Officer, and
Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints David W. Grzebinski as 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 this 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 each such attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person hereby ratifying and confirming that said attorney-in-fact and agent or his substitutes, 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.

| <u>Signature</u> | <u>Capacity</u> | <u>Date</u> |
|--|---|--------------|
| <u>/s/ JOSEPH H. PYNE</u> Joseph H. Pyne | Chairman of the Board and Director | June 3, 2022 |
| <u>/s/ DAVID W. GRZEBINSKI</u> David W. Grzebinski | President, Chief Executive Officer, and Director (Principal Executive Officer) | June 3, 2022 |
| <u>/s/ RAJ KUMAR</u> Raj Kumar | Executive Vice President and Chief Financial Officer (Principal Financial Officer) | June 3, 2022 |
| <u>/s/ RONALD A. DRAGG</u> Ronald A. Dragg | Vice President, Controller and Assistant Secretary (Principal Accounting Officer) | June 3, 2022 |
| <u>/s/ ANNE-MARIE N. AINSWORTH</u> Anne-Marie N. Ainsworth | Director | June 3, 2022 |
| <u>/s/ RICHARD J. ALARIO</u> Richard J. Alario | Director | June 3, 2022 |

| <u>Signature</u> | <u>Capacity</u> | <u>Date</u> |
|--|-----------------|--------------|
| <hr/> <i>/s/ TANYA S. BEDER</i> Tanya S. Beder | Director | June 3, 2022 |
| <hr/> <i>/s/ BARRY E. DAVIS</i> Barry E. Davis | Director | June 3, 2022 |
| <hr/> <i>/s/ RICHARD R. STEWART</i> Richard R. Stewart | Director | June 3, 2022 |
| <hr/> <i>/s/ WILLIAM M. WATERMAN</i> William M. Waterman | Director | June 3, 2022 |
| <hr/> <i>/s/ SHAWN D. WILLIAMS</i> Shawn D. Williams | Director | June 3, 2022 |

June 3, 2022



Kirby Corporation
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Houston, Texas 77007

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United States

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Re: Registration and Issuance of Securities of Kirby Corporation

Ladies and Gentlemen:

We have acted as special counsel to Kirby Corporation, a Nevada corporation (the “Company”), in connection with the registration under the Securities Act of 1933, as amended (the “Securities Act”), of the offer and sale of an aggregate of 1,400,000 shares (the “Shares”) of the Company’s common stock, \$0.10 par value per share (the “Common Stock”), that are reserved for issuance under the Company’s 2005 Stock and Incentive Plan, as amended (the “Plan”), as described in the Company’s Registration Statement on Form S-8 (the “Registration Statement”) filed with the Securities and Exchange Commission on the date hereof.

For the purposes of giving this opinion, we have examined the Registration Statement, the Restated Articles of Incorporation of the Company, as amended, the Bylaws of the Company, as amended, a specimen certificate representing the Common Stock, and the Plan. We have also examined the originals, or duplicates or certified or conformed copies, of such corporate records, resolutions, agreements, documents, and other instruments and have made such other investigations as we have deemed relevant and necessary in connection with the opinion set forth below. As to questions of fact material to this opinion, we have relied upon certificates or comparable documents of public officials and of officers and representatives of the Company, and have not sought to independently verify such matters.

In making such examination and rendering the opinion set forth below, we have assumed, without verification, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the authenticity of the originals of such documents submitted to us as copies, the conformity to originals of all documents submitted to us as copies, the due authorization, execution, and delivery by the parties thereto other than the Company of all documents examined by us, that the persons identified to us as officers of the Company are actually serving as such, and that any certificates representing the Shares will be properly executed by one or more such persons, and the legal capacity of all individuals executing any of the foregoing documents. We have further assumed: (i) the compliance in the future with the terms of the Plan by the Company and its employees, officers, the board of directors of the Company, and any committee appointed to administer the Plan; (ii) that the resolutions authorizing the Company to issue or deliver and sell the Shares pursuant to the Plan will be in full force and effect at all times at which the Shares are issued or delivered or sold by the Company, and the Company will take no action inconsistent with such resolutions; (iii) that each award under the Plan will be approved by the board of directors of the Company or an authorized committee thereof; (iv) that any conditions to the issuance of the Shares pursuant to the Plan and the awards made thereunder have been or will be satisfied in full at the time of each issuance of Shares pursuant to the Plan; (v) that no event

Norton Rose Fulbright US LLP is a limited liability partnership registered under the laws of Texas.

Norton Rose Fulbright US LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP and Norton Rose Fulbright South Africa Inc are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss Verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at nortonrosefulbright.com.

occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the number of then unissued Shares; and (vi) that, at the time of issuance of each of the Shares pursuant thereto, the Plan will remain in effect and will not have been amended or modified in any manner that affects adversely the validity of the Shares upon issuance under the terms of the Plan, and none of the awards nor the agreements, documents, or instruments governing the award, offer, or sale of the Shares pursuant to the Plan (collectively, the "Award Documents") will contain any provision inconsistent with such opinion.

Based on the foregoing, and subject to the assumptions, qualifications, and limitations set forth herein, we are of the opinion that the Shares, upon issuance and delivery against payment therefor of an amount of cash or other legal consideration having a value of not less than the aggregate par value of such Shares in accordance with the terms of the Plan and the terms of the applicable Award Documents, will be validly issued, fully paid, and nonassessable.

We hereby consent to be named in the Registration Statement and in the related prospectus contained therein as the attorneys who passed upon the legality of the Shares and to the filing of a copy of this opinion as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder. We assume no obligation to advise you or any other person, or to make any investigations, as to any legal developments or factual matters arising subsequent to the date hereof that might affect the opinion expressed herein.

Respectfully submitted,

/s/ Norton Rose Fulbright US LLP

NORTON ROSE FULBRIGHT US LLP

Consent of Independent Registered Public Accounting Firm

We consent to the use of our reports dated February 18, 2022, with respect to the consolidated financial statements of Kirby Corporation, and the effectiveness of internal control over financial reporting, incorporated herein by reference.

/s/ KPMG LLP

Houston, Texas
June 3, 2022

Calculation of Filing Fee Table

Form S-8
(Form Type)

Kirby Corporation
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

| <u>Security Type</u> | <u>Security Class Title</u> | <u>Fee Calculation Rule</u> | <u>Amount Registered (1)</u> | <u>Proposed Maximum Offering Price Per Share (2)</u> | <u>Maximum Aggregate Offering Price (2)</u> | <u>Fee Rate</u> | <u>Amount of Registration Fee</u> |
|------------------------|--|-----------------------------|------------------------------|--|---|-----------------|-----------------------------------|
| Equity | Common Stock, par value \$0.10 per share | 457(h) | 1,400,000 | \$ 66.13 | \$ 92,582,000 | 0.0000927 | \$ 8,582 |
| Total Offering Amounts | | | | | \$ 92,582,000 | | \$ 8,582 |
| Total Fee Offsets | | | | | | | \$ — |
| Net Fee Due | | | | | | | \$ 8,582 |

- (1) Consists of 1,400,000 shares of common stock of Kirby Corporation (the “Company”), par value \$0.10 per share (“Common Stock”), reserved for issuance to employees of the Company and its subsidiaries pursuant to the Kirby Corporation 2005 Stock and Incentive Plan, as amended (the “Plan”) as well as options and other rights to purchase or acquire shares of the Company’s Common Stock under the Plan. In addition, if, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this Registration Statement changes, the provisions of Rule 416 under the Securities Act of 1933, as amended, shall apply to this Registration Statement, and this Registration Statement shall be deemed to cover the additional securities resulting from the split of, or dividend on, the securities covered by this Registration Statement.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and 457(h) under the Securities Act of 1933, as amended. The offering price per share and aggregate offering price are based upon the average of the high and low prices reported on the New York Stock Exchange on May 26, 2022.