

KEYSTONE AUTOMOTIVE INDUSTRIES INC
Form S-8
February 19, 2003

As filed with the Securities and Exchange Commission on February 19, 2003

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

Under

The Securities Act of 1933

KEYSTONE AUTOMOTIVE INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction
of incorporation or organization)

95-2920557
(IRS Employer
Identification No.)

700 East Bonita Avenue

Pomona, California 91767

(909) 624-8041

(Address of principal executive offices) (Zip Code)

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Keystone Automotive Industries Non-Qualified Stock Option Agreements With Timothy McQuay

Keystone Automotive Industries Non-Qualified Stock Option Agreements With Al Ronco

Keystone Automotive Industries Non-Qualified Stock Option Agreements With George Seebart

Keystone Automotive Industries Non-Qualified Stock Option Agreements With Keith Thompson

(Full title of the Plans)

James C. Lockwood

Vice President General Counsel

Keystone Automotive Industries, Inc.

700 East Bonita Avenue

Pomona, California 91767

(909) 624-8041

(Name and address of agent for service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(2)	Proposed Maximum Offering Price per Share(3)	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee
Common Stock, no par value(1)	75,000 shares	\$ 14.53	\$ 1,089,925	\$ 101.00

- (1) Each share of Keystone's common stock, no par value (Common Stock) being registered hereunder, if issued prior to the termination by Keystone of its Rights Agreement, will include one preferred share purchase right (a Right). Prior to the occurrence of certain events, the Rights will not be exercisable or evidenced separately from the Common Stock.
- (2) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers an indeterminate number of additional shares of Common Stock that may be issued in accordance with the provisions of each of the Non-Qualified Stock Option Agreements with Messrs. McQuay, Ronco, Seebart and Thompson (collectively referred to herein as the Plans), respectively, including by reason of any stock dividend, stock split, recapitalization or other similar transaction or adjustment under the Plans effected without Keystone's receipt of consideration, which results in an increase in the number of the outstanding shares of Keystone's common stock.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) of the Securities Act.

PART I

Item 1. PLAN INFORMATION.

Not required to be filed with the Securities and Exchange Commission as part of this Registration Statement.

Item 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.

Not required to be filed with the Securities and Exchange Commission as part of this Registration Statement.

PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference

Keystone Automotive Industries, Inc. hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

- (a) Keystone's Annual Report on Form 10-K for the fiscal year ended March 29, 2002, filed with the Commission on June 27, 2002;
- (b) Keystone's Quarterly Report on Form 10-Q for the fiscal quarter ended June 28, 2002, filed with the Commission on August 12, 2002;
- (c) Keystone's Quarterly Report on Form 10-Q for the quarter ended September 27, 2002, filed with the Commission on November 12, 2002;
- (d) Keystone's Quarterly Report on Form 10-Q for the quarter ended December 27, 2002, filed with the Commission on February 10, 2003;
- (e) Keystone's Current Report on Form 8-K, filed with the Commission on August 14, 2002;

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(f) Keystone's Current Report on Form 8-K, filed with the Commission on January 14, 2003; and

(g) The description of Keystone's common stock contained in Keystone's Registration Statement on Form 8-A, as declared effective by the Commission on June 20, 1996, pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the 1934 Act), including any subsequent amendment or report filed for the purpose of amending such description.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 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 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 subsequently filed document which also 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 4. Description of Securities

The Common Stock is registered pursuant to Section 12 of the 1934 Act, and, therefore, the description of securities is incorporated by reference pursuant to Item 3 herein.

Item 5. Interests of Named Experts and Counsel

Not Applicable.

Item 6. Indemnification of Directors and Officers

Section 204 of the General Corporation Law of the State of California (the California Law) permits the limitation of the personal liability of a director for monetary damages in an action brought by or in the right of the corporation for breach of a director's duties to the corporation and its shareholders under certain conditions and subject to certain limitations.

Section 317 of the California Law (i) permits indemnification of directors, officers, employees and other agents of the corporation under certain conditions and subject to certain limitations and (ii) provides that the corporation has the power to purchase and maintain insurance on behalf of its directors, officers, employees and other agents against any liability asserted against or incurred by them in such capacity or arising out of their status as such.

Article Seven of the Amended and Restated Articles of Incorporation of the Registrant provides as follows:

SEVEN: The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Law) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Law, subject only to the applicable limits set forth in Section 204 of the California Law with respect to actions for breach of duty to the corporation and its shareholders. This corporation is authorized to purchase and maintain insurance on behalf of its agents against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such from a company, the shares of which are owned in whole or in part by this corporation, provided that any policy issued by such company is limited to the extent required by applicable law. Any repeal or modification of the foregoing provisions of this Article Seven by the shareholders of this corporation shall not adversely affect any right or protection of an agent of this corporation existing at the time of that repeal or modification.

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Section 3.16 of the Amended and Restated Bylaws of the Registrant provides as follows:

SECTION 3.16 Indemnification of Directors, Officers, Employees, and Other Agents.

(a) The corporation shall, to the maximum extent and in the manner permitted by the California Corporations Code (Code), indemnify each of its directors against expenses (as defined in Section 317(a) of the Code), judgments, fines, settlements, and other amounts actually

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and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 3.16, a director of the corporation includes any person (i) who is or was a director of the corporation, (ii) who is or was serving at the request of the corporation as a director of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

(b) The corporation shall have the power, to the extent and in the manner permitted by the Code, to indemnify each of its officers, employees and agents against expenses (as defined in Section 317(a) of the Code), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of the fact that such person is or was an officer, employee or agent of the corporation. For purposes of this Section 3.16, an officer, employee or agent of the corporation includes any person (i) who is or was an officer, employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as an officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an officer, employee or agent of the corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

(c) Expenses incurred in defending any civil or criminal action or proceeding for which indemnification is required pursuant to Section 3.16(a) shall be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Section 3.16.

Expenses incurred in defending any civil or criminal action or proceeding for which indemnification is permitted pursuant to Section 3.16(b) may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Section 3.16.

(d) The indemnification provided by this Section 3.16 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the Articles of Incorporation.

(e) The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was an agent of the corporation against any liability asserted against or incurred by such person in such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Section 3.16.

(f) No indemnification or advance shall be made under this Section 3.16, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the Articles of Incorporation, these Bylaws, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in

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approving a settlement.

The Registrant has entered into indemnification agreements with certain of its directors and executive officers which require the Registrant to indemnify such persons to the fullest extent permitted by applicable law.

The Registrant maintains an insurance policy pursuant to which the directors and officers of the Registrant are insured, within the limits and subject to the limitations of the policy, against certain expenses in connection with the defense of certain claims, actions, suits or proceedings, and certain liabilities which might be imposed as a result of such claims, actions, suits or proceedings, which may be brought against them by reason of their being or having been such directors and officers.

Item 7. Exemption from Registration Claimed

Not Applicable.

Item 8. Exhibits

<u>Number</u>	<u>Exhibit</u>
+5.1	Opinion of James C. Lockwood
+23.1	Consent of Ernst & Young LLP, Independent Accountants
+23.2	Consent of James C. Lockwood is contained in Exhibit 5.1
+24.1	Power of Attorney (reference is made to page S-1 of this Registration Statement)
+99.1	Non-Qualified Stock Option Agreement with Timothy McQuay dated August 26, 1997
+99.2	Non-Qualified Stock Option Agreement with Timothy McQuay dated August 31, 1998
+99.3	Non-Qualified Stock Option Agreement with Timothy McQuay dated August 24, 1999
+99.4	Non-Qualified Stock Option Agreement with Timothy McQuay dated August 23, 2000
+99.5	Non-Qualified Stock Option Agreement with Timothy McQuay dated August 23, 2001
+99.6	Non-Qualified Stock Option Agreement with Al Ronco dated August 31, 1998
+99.7	Non-Qualified Stock Option Agreement with Al Ronco dated August 24, 1999
+99.8	Non-Qualified Stock Option Agreement with Al Ronco dated August 23, 2001
+99.9	Non-Qualified Stock Option Agreement with George Seebart dated August 26, 1997
+99.10	Non-Qualified Stock Option Agreement with George Seebart dated August 31, 1998
+99.11	Non-Qualified Stock Option Agreement with George Seebart dated August 24, 1999
+99.12	Non-Qualified Stock Option Agreement with George Seebart dated August 23, 2001
+99.13	Non-Qualified Stock Option Agreement with Keith Thompson dated August 24, 1999
+99.14	Non-Qualified Stock Option Agreement with Keith Thompson dated August 23, 2000
+99.15	Non-Qualified Stock Option Agreement with Keith Thompson dated August 23, 2001

+ Filed herewith.

Item 9. Undertakings

A. 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 this

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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 this 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 this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference into 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; and (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 1934 Act that is incorporated by reference into this 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 or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 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

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 Pomona, State of California on this 19th day of February, 2003.

**KEYSTONE AUTOMOTIVE
INDUSTRIES, INC.**

By: /s/ CHARLES J.
HOGARTY

Charles J. Hogarty

President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned officers and directors of Keystone Automotive Industries, Inc., a California corporation, do hereby constitute and appoint Charles J. Hogarty and John M. Palumbo and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms that all said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature

Title

Date

/s/ CHARLES J. HOGARTY

President, Chief Executive Officer and Director
(Principal Executive Officer)

February 19, 2003

Charles J. Hogarty

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<i>/s/</i> JOHN M. PALUMBO <hr/> John M. Palumbo	Vice President, Treasurer and Chief Financial Officer (Principal Financial and Accounting Officer)	February 19, 2003
<i>/s/</i> RONALD G. BROWN <hr/> Ronald G. Brown	Director	February 13, 2003
<hr/> Timothy C. McQuay	Director	February __, 2003
<i>/s/</i> AL A. RONCO <hr/> Al A. Ronco	Director	February 16, 2003
<i>/s/</i> GEORGE E. SEEBART <hr/> George E. Seebart	Director	February 13, 2003
<hr/> Ronald G. Foster	Director	February __, 2003
<i>/s/</i> KEITH M. THOMPSON <hr/> Keith M. Thompson	Director	February 13, 2003

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C.

EXHIBITS

TO

FORM S-8

UNDER

SECURITIES ACT OF 1933, AS AMENDED

KEYSTONE AUTOMOTIVE INDUSTRIES, INC.

EXHIBIT INDEX

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