

INGRAM MICRO INC
Form S-8
May 30, 2003

As filed with the Securities and Exchange Commission on May 30, 2003

Registration No. 333-_____

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

FORM S-8

**REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

INGRAM MICRO INC.

(Exact name of issuer as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

5045
(Primary Standard Industrial
Classification Code Number)

62-1644402
(I.R.S. Employer Identification No.)

**1600 E. St. Andrew Place
Santa Ana, CA 92705
(714) 566-1000**

**INGRAM MICRO INC.
2003 Equity Incentive Plan**

(Full title of the plan)

James E. Anderson, Jr., Esq.
Senior Vice President, Secretary and General Counsel
Ingram Micro Inc.

**1600 E. St. Andrew Place
Santa Ana, CA 92705
(714) 566-1000**

(Name and Address of Agent For Service)

Telephone Number, Including Area Code, of Agent For Service: (714) 566-1000

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Copy to:

Winthrop B. Conrad, Jr., Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered ⁽¹⁾ | Proposed Maximum Offering Price per Share ⁽²⁾ | Proposed Maximum Aggregate Offering Price ⁽²⁾ | Amount of Registration Fee |
|--|--|--|--|----------------------------|
| Class A Common Stock, par value \$0.01 per share | 20,000,000 shares ⁽³⁾ | \$11.075 | \$221,500,000 | \$17,919.35 |

- (1) Plus an indeterminate number of additional shares which may be offered and issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Estimated pursuant to Rule 457(c) under the Securities Act of 1933, as amended, solely for the purpose of computing the registration fee, based upon the average of the high and low prices of the securities being registered hereby on the New York Stock Exchange Composite Transaction Tape on May 27, 2003.
- (3) This registration statement also includes 7,598,547 shares which have been previously registered and registration fees paid under Registration Statements on Forms S-8, dated March 27, 1997 (File No: 333-23825), May 15, 1998 (File No. 333-52807) and June 21, 2000 (File No. 333-39780).
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PART I

The following documents listed under this Part I and the documents incorporated by reference under Item 3 of Part II to this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended (the "1933 Act"), and are incorporated herein by reference.

ITEM 1. PLAN INFORMATION

This information required to be provided to participants pursuant to this Item is set forth in the prospectus for the Ingram Micro Inc. 2003 Equity Incentive Plan, attached to the prospectus as Exhibit A thereto.

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION

The written statement required to be provided to participants pursuant to this Item is set forth in the prospectus referenced in Item 1 above.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Ingram Micro Inc. (the "registrant") hereby files this registration statement with the Securities and Exchange Commission (the "Commission") on Form S-8 to register under the Act 20,000,000 shares of the registrant's Class A Common Stock, par value \$.01 per share (Class A Common Stock), for issuance pursuant to the registrant's 2003 Equity Incentive Plan (the "Plan") and such indeterminate number of additional shares which may be offered and issued to prevent dilution resulting from stock splits, stock dividends or similar transactions pursuant to the Plan.

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed with the Commission pursuant to the Securities and Exchange Act of 1934, as amended (the 1934 Act), (Commission 1934 Act File Number 001-12203) are incorporated by reference herein:

- (1) The registrant's Annual Report on Form 10-K for the fiscal year ended December 28, 2002.
- (2) The registrant s Quarterly Report on Form 10-Q for the quarter ended March 29, 2003.
- (3) All other reports filed with the Commission by the registrant pursuant to Section 13(a), 13(c), 14 and 15(d) of the 1934 Act subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered herein have been sold or which deregisters all securities then remaining unsold.
- (4) The description of the registrant s Class A Common Stock contained in the registrant s 1934 Act registration statement on Form 8 -A dated September 19, 1996, filed with the Commission pursuant to Section 13 of the 1934 Act, including any amendment thereto or report filed for the purpose of updating such description.

Any statement contained herein or made 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 is also incorporated or 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

Not applicable, see Item 3(3) above.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

James E. Anderson, Jr., the registrant s general counsel, owns directly and indirectly securities of the registrant, and options to purchase such securities, with a fair market value in excess of \$50,000.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Reference is made to section 102(b)(7) of the Delaware General Corporation Law (the DGCL), which enables a corporation in its certificate of incorporation to eliminate or limit the personal liability of a director for violations of the director s fiduciary duty, except (i) for breach of the director s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit. The registrant s certificate of incorporation eliminates the liability of directors to the fullest extent permitted by Delaware Law.

Reference is made to section 145 of the DGCL which provides that a corporation may indemnify directors and officers as well as other employees and agents against expenses (including attorneys fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal,

administrative or investigative (other than an action by or in the right of the corporation) if they act in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. The registrant's certificate of incorporation provides for indemnification of its directors, officers, employees and agents to the fullest extent permitted by Delaware law.

In addition, the registrant has purchased and maintains directors and officers liability insurance.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

| Exhibit Number | Exhibit |
|----------------|--|
| 4.01 | Form of Certificate of Incorporation of the registrant (incorporated herein by reference to Exhibit 3.01 to the registrant's 1933 Act Registration Statement on Form S-1, File No. 333-08453).* |
| 4.02 | Certificate of Amendment of the Certificate of Incorporation of the registrant dated as of June 5, 2001 (incorporated by reference to Exhibit 3.2 to the registrant's 1933 Registration Statement on Form S-4, File No. 333-69816).* |
| 4.03 | Amended and Restated Bylaws of the registrant (incorporated herein by reference to Exhibit 3.02 to the registrant's Quarterly Report on Form 10-K for the quarter ended June 28, 2002).* |
| 5.01 | Opinion of General Counsel of the registrant. |
| 23.01 | Consent of Independent Public Accountants PricewaterhouseCoopers LLP. |
| 23.02 | Consent of General Counsel of the registrant (included in opinion filed as Exhibit 5.01). |
| 24.01 | Powers of Attorney (included on the signature page of this registration statement). |
| 99.01 | Ingram Micro Inc. 2003 Equity Incentive Plan. |

* Incorporated by reference.

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 of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of this 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

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volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in this registration statement; and

- (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;

3

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and 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 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 1933 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 1933 Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act (and where applicable, each filing of the employee benefit plan's annual report pursuant to Section 15(d) of the 1934 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.
 - (c) Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the 1933 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 1933 Act and will be governed by the final adjudication of such issue.

EXPERTS

The financial statements incorporated in this Form S-8 by reference to the Annual Report on Form 10-K of Ingram Micro Inc. for the year ended December 28, 2002, have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

LEGAL MATTERS

The validity of the Class A Common Stock offered hereunder has been passed upon by the registrant's general counsel.

4

SIGNATURES

Martha R. Ingram

5

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--------------|--------------|
| <u>/s/ Orrin H. Ingram</u> Orrin H. Ingram | Director | May 30, 2003 |
| <u>/s/ Dale R. Laurance</u> Dale R. Laurance | Director | May 30, 2003 |
| <u>/s/ Gerhard Schulmeyer</u> Gerhard Schulmeyer | Director | May 30, 2003 |
| <u>/s/ Michael T. Smith</u> Michael T. Smith | Director | May 30, 2003 |
| <u>/s/ Joe B. Wyatt</u> Joe B. Wyatt | Director | May 30, 2003 |

6

INDEX TO EXHIBITS

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| 4.02 | | * |

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Certificate of Amendment of the Certificate of Incorporation of the registrant dated as of June 5, 2001 (incorporated by reference to Exhibit 3.2 to the registrant's 1933 Registration Statement on Form S-4, File No. 333-69816).*

| | | |
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