

BRUSH ENGINEERED MATERIALS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 5/24/2002

Address	17876 ST. CLAIR AVE. CLEVELAND, Ohio 44110
Telephone	216-383-4062
CIK	0001104657
Industry	Metal Mining
Sector	Basic Materials
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BRUSH ENGINEERED MATERIALS INC.

(Exact Name of Registrant as Specified in Its Charter)

OHIO
(State or Other Jurisdiction of
Incorporation or Organization)

34-1919973
(I.R.S. Employer
Identification Number)

17876 St. Clair Avenue
Cleveland, Ohio 44110
(Address of Principal Executive Offices)

BRUSH ENGINEERED MATERIALS INC. SAVINGS AND INVESTMENT PLAN

(Full Title of the Plan)

Michael C. Hasychak
Vice President, Treasurer and Secretary
Brush Engineered Materials Inc.
Cleveland, Ohio 44110
(216) 486-4200

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee (2)
Common Shares, no par value (3)	500,000 shares	\$12.93	\$6,465,000	\$595
Plan Interests (4)	Indeterminate			

(1) This Registration Statement is being filed to register 500,000 additional common shares under the Brush Engineered Materials Inc.

Savings and Investment Plan.

(2) Estimated in accordance with Rule 457(c) and 457(h) under the Securities Act of 1933, as amended ("Securities Act"), solely for the purpose of calculating the registration fee. The fee with respect to the

shares registered herein is based on the average of the high and low prices of the Registrant's common shares as reported on the New York Stock Exchange on May 17, 2002.

(3) Each common share includes an associated right ("Right") to purchase Series A Junior Participating Preferred Stock of Brush Engineered Materials Inc. The terms of the Rights are described in the Form 8-A filed by the Registrant on May 16, 2000.

(4) In addition, pursuant to Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Brush Engineered Materials Inc. Savings and Investment Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of the General Instructions to the Registration Statement on Form S-8 have been sent or given to employees of the Registrant who participate in the Brush Engineered Materials Inc. Savings and Investment Plan as required by Rule 428(b)(1) promulgated under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents, which are on file with the Securities and Exchange Commission, are incorporated herein by reference:

1. Annual Report on Form 10-K for the year ended December 31, 2001, filed by the Registrant on March 27, 2002.
2. Annual Report on Form 11-K for the year ended December 31, 2000, filed by the Registrant on June 29, 2001.
3. Quarterly Report on Form 10-Q for the quarter ended March 29, 2002, filed by the Registrant on April 30, 2002.
4. The description of the Registrant's common shares contained in the Registration Statement on Form S-4, filed by the Registrant on February 1, 2000, including any amendment or report filed for the purpose of updating that description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment, which indicates that all of the securities offered hereby have been sold or which deregisters all such securities remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be part hereof from the date of filing such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not Applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

In general, a director of an Ohio corporation will not be found to have violated his fiduciary duties unless there is proof by clear and convincing evidence that the director (i) has not acted in good faith, (ii) has not acted in a manner he reasonably believes to be in or not opposed to the best interests of the corporation or (iii) has not acted with the care that an ordinarily prudent person in a like position would use under similar circumstances. Monetary damages for any act taken or omission made as a director are generally awarded only if it is proved by clear and convincing evidence that the director undertook such act or omission either with deliberate intent to cause injury to the corporation or with reckless disregard for the best interests of the corporation. Under Ohio law, a corporation must indemnify its directors, officers, employees and agents against expenses reasonably incurred in connection with the successful defense (on the merits or otherwise) of an action, suit or proceeding. A corporation may indemnify such persons in actions, suits and proceedings (including certain derivative suits) if the individual has acted in good faith and in a manner that he believes to be in or not opposed to the best interests of the corporation. In the case of a criminal proceeding, the individual must also have no reasonable cause to believe that his conduct was unlawful. Indemnification may be made only if ordered by a court or if authorized in a specific case upon a determination that the applicable standard of conduct has been met. Such a determination may be made by a majority of the disinterested directors, by independent legal counsel or by the shareholders. Under Ohio law, a corporation may pay the expenses of any indemnified individual as they are incurred, in advance of the final disposition of the matter, if the individual provides an undertaking to repay the amount if it is ultimately determined that he is not entitled to be indemnified. Ohio law generally requires all expenses, including attorney's fees, incurred by a director in defending any action, suit or proceeding to be paid by the corporation as they are incurred if the director agrees (i) to repay such amounts in the event that it is proved by clear and convincing evidence that his action or omission was undertaken with deliberate intent to cause injury to the corporation or with reckless disregard for the best interests of the corporation and (ii) to reasonably cooperate with the corporation concerning the action, suit or proceeding.

The code of regulations of Brush Engineered Materials Inc. provides for indemnification that is coextensive with that permitted under Ohio law. In addition, Brush Engineered Materials Inc. may enter into agreements that indemnify its directors and certain of its officers to the maximum extent permitted by applicable law. The indemnification so granted is not limited to the indemnification specifically authorized by the Ohio General Corporation Law. Each agreement represents a contractual obligation of Brush Engineered Materials Inc. that cannot be altered unilaterally. Brush Engineered Materials Inc. has a directors' and officers' liability insurance policy, pursuant to which the directors and officers of Brush Engineered Materials are insured against certain liabilities.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

The Exhibits to this Registration Statement are listed in the Exhibit Index on page 6 and are incorporated herein by reference.

The Registrant will submit or has submitted the Brush Engineered Materials Inc. Savings and Investment Plan and any amendment thereto to the Internal Revenue Service ("IRS") in a timely manner and has made or will make all changes required by the IRS in order to qualify the plan.

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 the 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 the Registration Statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

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 Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the 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.

(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 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange 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 Securities Act may be permitted to directors, officers, and 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 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, 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 Cleveland, State of Ohio, on May 24, 2002.

BRUSH ENGINEERED MATERIALS INC.

By: /s/ Michael C. Hasychak

Michael C. Hasychak, Vice President, Treasurer
and Secretary

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on May 24, 2002.

Signature	Title
/s/ Gordon D. Harnett* ----- Gordon D. Harnett	President, Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)
/s/ John D. Grampa* ----- John D. Grampa	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Albert C. Bersticker* ----- Albert C. Bersticker	Director
/s/ Charles F. Brush, III* ----- Charles F. Brush, III	Director
/s/ David H. Hoag* ----- David H. Hoag	Director
/s/ Joseph P. Keithley* ----- Joseph P. Keithley	Director
/s/ William P. Madar* ----- William P. Madar	Director
/s/ N. Mohan Reddy Ph.D.* ----- N. Mohan Reddy Ph.D.	Director
/s/ William R. Robertson* ----- William R. Robertson	Director
/s/ John Sherwin, Jr* ----- John Sherwin, Jr.	Director

* By Michael C. Hasychak, attorney-in-fact.

Pursuant to the requirements of the Securities Act, the administrator of the Brush Engineered Materials Inc. Savings and Investment Plan has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cleveland, State of Ohio, on May 24, 2002.

BRUSH ENGINEERED MATERIALS INC. SAVINGS AND INVESTMENT PLAN

By: */s/ Michael C. Hasychak*

 Vice President, Treasurer and Secretary for the
 Administrator, Brush Engineered Materials Inc.

BRUSH ENGINEERED MATERIALS INC.

INDEX TO EXHIBITS

EXHIBIT NO.	DESCRIPTION
4(a)	Amended and Restated Articles of Incorporation of Registrant (included as Annex B to the Registration Statement on Form S-4 filed by the Registrant on February 1, 2000, as amended, and incorporated herein by reference).
4(b)	Amended and Restated Code of Regulations of Registrant (included as Exhibit 4(b) to the Current Report on Form 8-K filed by Brush Wellman Inc. on May 16, 2000 and incorporated herein by reference).
4(c)	Rights Agreement, dated as of May 10, 2000, by and between Registrant and National City Bank, N.A. as Rights Agent (included as Exhibit 4(a) to the Current Report on Form 8-K filed by the Registrant on May 16, 2000 and incorporated herein by reference).
5	Opinion of Thompson Hine LLP as to the legality of the securities being registered.
23(a)	Consent of Independent Auditors.
23(b)	Consent of Thompson Hine LLP (included as part of Exhibits 5).
24	Power of Attorney.

EXHIBIT 5

OPINION OF THOMPSON HINE LLP

May 24, 2002

Brush Engineered Materials Inc.
17876 St. Clair Avenue
Cleveland, Ohio 44110

Re: Brush Engineered Materials Inc. Registration Statement on Form S-8 - Brush Engineered Materials Inc. Savings and Investment Plan

Ladies and Gentlemen:

Brush Engineered Materials Inc. ("Brush") is filing with the Securities and Exchange Commission a Registration Statement on Form S-8 (the "Registration Statement") for the registration, under the Securities Act of 1933, as amended, of 500,000 common shares, with no par value, of Brush ("Common Shares") to be issued from time to time pursuant to the terms of the Brush Engineered Materials Inc. Savings and Investment Plan (the "Plan").

Item 601 of Regulation S-K and the instructions to Form S-8 require

that an opinion of counsel concerning the legality of the securities to be registered be filed as an exhibit to a Form S-8 registration statement if the securities are original issue shares. This opinion is provided in satisfaction of that requirement as it relates to the Registration Statement.

In rendering this opinion, we have examined (a) the Amended and Restated Articles of Incorporation and Amended and Restated Code of Regulations of Brush, (b) the Plan and (c) such records and documents as we have deemed advisable in order to render this opinion. As a result of the foregoing, we are of the opinion that:

- (1) Brush is a corporation validly organized and existing and in good standing under the laws of the State of Ohio.
- (2) When issued, the Common Shares which are the subject of the Registration Statement will be legally issued, fully paid and non-assessable.

We hereby consent to the use and filing of this opinion in connection with the Registration Statement.

Very truly yours,

/s/ Thompson Hine LLP

Thompson Hine LLP

EXHIBIT 23(a)

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Brush Engineered Materials Inc. Savings and Investment Plan of our report dated January 22, 2002, with respect to the consolidated financial statements of Brush Engineered Materials Inc. incorporated by reference in its Annual Report (Form 10-K) for the year ended December 31, 2001 filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

*Cleveland, Ohio
May 24, 2002*

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned officers and/or directors of Brush Engineered Materials Inc., an Ohio corporation ("the Company"), hereby constitutes and appoints Gordon D. Harnett, John D. Grampa and Michael C. Hasychak, and each of them, as true and lawful attorney or attorneys-in-fact for the undersigned, with full power of substitution and revocation, for him and in his name, place and stead, to sign on his behalf as an officer or director of the Company a Registration Statement or Registration Statements on Form S-8 pursuant to the Securities Act of 1933 concerning certain shares of Common Stock of the Company to be offered in connection with the Brush Engineered Materials Inc. Savings and Investment Plan and to sign any and all amendments or post-effective amendments to such Registration Statement(s), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission or any state regulatory authority, granting unto said attorneys or attorneys-in-fact, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as they might or could do in person, hereby ratifying and confirming all that said attorney or attorneys-in-fact or any of them or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

This Power of Attorney may be executed in multiple counterparts, each of which shall be deemed an original with respect to the person executing it.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the 7th day of May, 2002.

/s/ Gordon D. Harnett

Gordon D. Harnett
President, Chairman of the Board, Chief Executive
Officer and Director (principal executive officer)

/s/ John D. Grampa

John D. Grampa
Vice President and Chief Financial Officer
(principal financial and accounting officer)

/s/ Albert C. Bersticker

Albert C. Bersticker
Director

/s/ Charles F. Brush, III

Charles F. Brush, III
Director

/s/ David H. Hoag

David H. Hoag
Director

/s/ Joseph P. Keithley

Joseph P. Keithley
Director

/s/ William P. Madar

William P. Madar
Director

/s/ N. Mohan Reddy Ph.D.

N. Mohan Reddy Ph.D.
Director

/s/ William R. Robertson

William R. Robertson
Director

/s/ John Sherwin, Jr.

John Sherwin, Jr.
Director

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