

WHIRLPOOL CORP /DE/
Form S-8
November 15, 2006

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

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

WHIRLPOOL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

38-1490038

(IRS Employer
Identification No.)

2000 North M-63, Benton Harbor, Michigan

(Address of principal executive offices)

49022-2962

(Zip Code)

**WHIRLPOOL 401(k) RETIREMENT
PLAN**

(Full title of the Plan)

**Robert T. Kenagy, Esq., Associate
General Counsel and Secretary,
Whirlpool Corporation, Law Department,
Mail Drop 2200, 2000 North M-63
Benton Harbor, Michigan 49022-2962**
(Name and address of agent for service)

(269) 923-3910

(Telephone number, including area code, of agent for service)

Copy to:

**Ian Kopelman, Esq.
DLA Piper US LLP
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601
(312) 368-4000**

CALCULATION OF REGISTRATION FEE

| Title of each class of securities to be registered(1) | Amount to be Registered | Proposed maximum offering price per share(2) | Proposed maximum aggregate offering price(2) | Amount of registration fee |
|---|-------------------------|--|--|----------------------------|
| Common Stock, par value \$1.00 per share | 1,000,000 | \$ 88.57 | \$ 88,570,000 | \$ 9,477 |

(1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933 this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

(2) Pursuant to Rule 457(c) and 457(h), the registration fee has been calculated on the basis of \$88.57 per share, the average of the high and low sale prices of the common stock on November 10, 2006, as reported on the New York Stock Exchange.

The plan to which this registration statement relates is currently designated the Whirlpool 401(k) Plan; effective January 1, 2007, the plan will be renamed the Whirlpool 401(k) Retirement Plan.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents By Reference.

The following documents are incorporated by reference herein and shall be deemed to be part of this Registration Statement:

- (a) (i) Annual Report of Whirlpool Corporation (the Company) on Form 10-K for the year ended December 31, 2005.
- (ii) Annual Report of Whirlpool 401(k) Plan (the Plan) on Form 11-K for the year ended December 31, 2005.
- (b) All other reports by the Company pursuant to Sections 13(a) or 15(d) of the Exchange Act of 1934 (the Exchange Act) since the end of the fiscal year covered by the document referred to in (a) above; and
- (c) Description of Common Stock of the Company contained in the Company's report on Form 8-K dated April 23, 1996.
- (d) Description of the Preferred Stock Purchase Rights contained in the Registration Statement on Form 8-A filed by the Company on April 27, 1998.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 subsequent to the date hereof 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 in this registration statement and to be a part hereof from the date of filing of 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.

The Delaware General Corporation Law and the Certificate of Incorporation of the Company provide for the indemnification of any person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding by reason of the fact that such individual is or was a director or officer of the Company or serves or served another enterprise (including the plan) at the request of the Company against all expense, liability, and loss (including attorney's fees,

judgments, fines, Employee Retirement Income Security Act of 1974 (ERISA) excise taxes or penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered in connection therewith, to the fullest extent authorized by the Delaware General Corporation Law, and also generally provides for mandatory advancement by the Company of defense-related expenses. Furthermore, pursuant to Section 102(b)(7) of the Delaware General Corporation Law, the Company has included in its Certificate of Incorporation a provision eliminating or limiting the personal liability of a director to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except in cases where the director breached his duty of loyalty to the Company or its stockholders, failed to act in good faith, engaged in intentional misconduct or a knowing violating of the law, willfully or negligently authorized the unlawful payment of a dividend or approved an unlawful stock redemption or repurchase or obtained an improper personal benefit.

Both the Delaware General Corporation Law and the Certificate of Incorporation of the company provide that the Company may maintain insurance to cover losses incurred pursuant to liability of directors and officers of the Company. The Company has obtained directors' and officers' insurance coverage, which insurance covers certain liabilities of directors and officers of the Company arising under the Securities Act.

The Company has entered into indemnification agreements with each of its non-employee directors providing for the indemnification of such directors. The indemnification agreements provide for indemnification by the Company of each person subject to an indemnification agreement to the fullest extent permitted by law against expenses and damages if the person is, or is threatened to be made, a party to or participant in a legal proceeding by reason of his or her status as a director or officer of the Company or by reason of the fact that he or she is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibits filed with this Amendment

4.1 Restated Certificate of Incorporation of Whirlpool Corporation (filed as Exhibit 3(i) to Whirlpool Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1993, Commission File No. 1-3932, and incorporated herein by reference)

4.2 By-laws of the Company, as amended and restated August 17, 1999 (filed as Exhibit 3(ii) to Whirlpool Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1999, Commission File No. 1-3932, and incorporated herein by reference)

4.3 Rights Agreement, dated April 21, 1998, between Whirlpool Corporation and First Chicago Trust Company of New York, (incorporated by reference to the Registrant's Form 8-K filed on April 27, 1998)

5.1 Opinion of Robert T. Kenagy, Associate General Counsel and Corporate Secretary

23.1 Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm of Whirlpool Corporation

23.2 Consent of Robert T. Kenagy, Associate General Counsel and Corporate Secretary (contained in Exhibit 5.1)

24.1 Power of Attorney

The undersigned Registrant hereby undertakes that the Whirlpool 401(k) Retirement Plan has been submitted or will be submitted to the Internal Revenue Service (IRS) in a timely manner and any changes required by the IRS in order to qualify such plan have been or will be made.

Item 9. Undertakings.

The undersigned registrant hereby undertakes (i) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement 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; (ii) that for the purpose of determining any liability under the Securities Act of 1933, 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 (iii) 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.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) 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.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 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 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 Benton Harbor, State of Michigan on November 15, 2006.

Whirlpool Corporation

By: /s/ Daniel F. Hopp
Name: Daniel F. Hopp
Title: Senior Vice President,
Corporate Affairs and
General Counsel

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities indicated as of November 15, 2006.

| Signature | Title | Date |
|---|---|-------------------|
| JEFF M. FETTIG* Jeff M. Fettig | Director Chairman of the Board and Chief Executive Officer (Principal Executive Officer) | November 15, 2006 |
| DAVID L. SWIFT* David L. Swift | Director and President, Whirlpool North America | November 15, 2006 |
| MICHAEL A. TODMAN* Michael A. Todman | Director and President, Whirlpool International | November 15, 2006 |
| ROY W. TEMPLIN* Roy W. Templin | Executive Vice President and Chief Financial Officer (Principal Financial Officer) | November 15, 2006 |

| Signature | Title | Date |
|--|---|-------------------|
| LARRY M VENTURELLI* Larry M. Venturelli | Vice President and Controller (Principal Accounting Officer) | November 15, 2006 |
| HERMAN CAIN* Herman Cain | Director | November 15, 2006 |
| GARY T. DICAMILLO* Gary T. DiCamillo | Director | November 15, 2006 |
| ALLAN D. GILMOUR* Allan D. Gilmour | Director | November 15, 2006 |
| KATHLEEN J. HEMPEL * Kathleen J. Hempel | Director | November 15, 2006 |
| WILLIAM T. KERR* William T. Kerr | Director | November 15, 2006 |
| ARNOLD G. LANGBO* Arnold G. Langbo | Director | November 15, 2006 |

| Signature | Title | Date |
|---------------------------------------|---|-------------------|
| MILES L. MARSH* Miles L. Marsh | Director | November 15, 2006 |
| PAUL G. STERN* Paul G. Stern | Director | November 15, 2006 |
| JANICE D. STONEY* Janice D. Stoney | Director | November 15, 2006 |
| MICHAEL D. WHITE* Michael D. White | Director | November 15, 2006 |
| *By: /s/ Daniel F. Hopp | Individually and as Attorney-in-fact | November 15, 2006 |

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the trustees have only caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized, in the city of Benton Harbor, state of Michigan, on November 15, 2006.

Whirlpool 401(k) Retirement Plan

By: /s/ John C. Anderson
Trustee and Chairman of the Individual Trustees

EXHIBIT INDEX

Exhibit No.

- 4.1 Restated Certificate of Incorporation of Whirlpool Corporation (filed as Exhibit 3(i) to Whirlpool Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1993, Commission File No. 1-3932, and incorporated herein by reference)
- 4.2 By-laws of the Company, as amended and restated August 17, 1999 (filed as Exhibit 3(ii) to Whirlpool Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1999, Commission File No. 1-3932, and incorporated herein by reference)

As of December 31, 2010, the Plan has a total of 263 participants participating in the Plan solely in the United Kingdom.

Investments — All employee and employer contributions were converted into U.S. dollars and then invested in shares of the Company's common stock generally on the 15th day of each month (or if that date is not a business day, the preceding business day). Sales of the Company's common stock for distributions generally are made on two specified dates in each month and subsequently converted into the applicable local currencies for payment to employees. Any dividends on shares of the Company's common stock are invested in additional shares of the Company's common stock.

Vesting — In general, participants were immediately vested in all shares of the Company's common stock credited to their respective Plan accounts.

Payment of Benefits — Prior to the Merger Agreement, distributions of account balances were made when the employment of a participant ceased, unless upon retirement the participant's account was credited with at least 100 shares of the Company's common stock, and the participant elected to defer payment. If an election was made to defer the distribution, retirees could have made up to two requests a year for distributions of all or a portion of their account balance.

For those retirees who do not elect to defer payment and for all other participants who terminate employment for reasons other than retirement, a distribution of the participant's account was made in the form of a lump-sum payment.

All distributions were made in cash, unless the participant (or beneficiary, in the event of a participant's or retiree's death) elected to receive the account balance in the form of shares of the Company's common stock.

While employed, participants could have elected to take up to two in-service withdrawals from their account balances during a calendar year. Effective October 1, 2005, upon a change in control of the Plan sponsor, all shares in the Plan became mature and immediately available for sale. Since then participants have been able to elect cash, share certificate, or electronic transfer of shares to the ISOP for both in-service and termination withdrawals. Only whole shares were processed for in-service withdrawals.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting — The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America.

Use of Estimates — The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and changes therein and disclosure of contingent assets and liabilities. Actual results could differ from those estimates.

The Plan invests in common stock of the Company which represents a concentration in investments. Investment securities, in general, are exposed to various risks, such as interest rate risk, credit risk, and overall market volatility. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the values of investment securities will occur in the near term and such changes could materially affect the amounts reported in the financial statements.

Investment Valuation and Income Recognition — The Plan's investments in common stock are stated at fair value. Quoted market prices are used to value these investments.

Purchases and sales of securities are recorded on a trade-date basis. Dividends are recorded on the ex-dividend date, net of any U.S. withholding taxes. Realized gains and losses are based upon the identified cost method.

Administrative Expenses — Brokerage commissions, fees, and other investment transaction costs are paid by participants as part of the purchase and sale of the Company's common stock.

Costs relating to the administration of the Plan are paid by the Company.

Payment of Benefits — Benefits are recorded when paid.

New Accounting Standards Adopted — The accounting standards initially adopted in the 2010 financial statements described below affected the reporting of certain assets in the statements of net assets available for plan benefits. The accounting standards initially adopted in the 2009 financial statements described below affected certain note disclosures but did not impact the statements of net assets available for plan benefits or the statement of changes in net assets available for plan benefits.

Subsequent Events — In May 2009, the Financial Accounting Standards Board (FASB) issued Accounting Standards Codification (ASC) 855, Subsequent Events, to establish general standards of accounting for and disclosing events that occur after the balance sheet date, but prior to the issuance of financial statements. ASC 855 provides guidance on when financial statements should be adjusted for subsequent events and requires companies to disclose subsequent events and the date through which subsequent events have been evaluated. ASC 855 is effective for periods ending after June 15, 2009.

Updates to Fair Value Measurements and Disclosures — In 2009, FASB Staff Position 157-4, Disclosures Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly, was issued and later codified into ASC 820, which expanded disclosures and required that each major category for debt and equity securities in the fair value hierarchy table be determined on the basis of the nature and risks of the investments.

Fair Value Measurements and Disclosures —In January 2010, the FASB issued Accounting Standards Updates (ASU) No. 2010-06, Fair Value Measurements and Disclosures, which amends ASC 820, adding new disclosure requirements for Levels 1 and 2, separate disclosures of purchases, sales, issuances, and settlements relating to Level 3 measurements and clarification of existing fair value disclosures. ASU No. 2010-06 is effective for periods beginning after December 15, 2009, except for the requirement to provide Level 3 activity of purchases, sales, issuances, and settlements on a gross basis, which is effective for fiscal years beginning after December 15, 2010.

3. FAIR VALUE MEASUREMENTS

ASC 820 establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy under ASC 820 are described as follows:

- Level 1 Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the plan has the ability to access.
- Level 2 Inputs to the valuation methodology include
- quoted prices for similar assets or liabilities in active markets;
 - quoted prices for identical or similar assets or liabilities in inactive markets;
 - inputs other than quoted prices that are observable for the asset or liability;
 - inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.
- Level 3 Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

All investments are measured following a Level 1 valuation technique.

4. INVESTMENTS

The Plan's investment in Company common stock experienced a net depreciation in value as follows for the years ended December 31, 2010, 2009 and 2008:

| | 2010 | 2009 | 2008 |
|--|-------------|--------------|----------------|
| The Procter & Gamble Company common stock: | | | |
| Net appreciation/(depreciation)* | \$ (19,314) | \$ (378,722) | \$ (9,993,451) |

*Excludes unrealized (depreciation)/appreciation on transferred stock.

The realized gain on sales of Company common stock for the years ended December 31, 2010, 2009 and 2008, was determined using an average cost method as follows:

| | 2010 | 2009 | 2008 |
|-----------------------------|------------|------------|--------------|
| Proceeds on sales of shares | \$ 649,413 | \$ 986,253 | \$ 8,789,910 |
| Cost | 453,689 | 761,222 | 6,464,213 |
| Realized gain on sales | \$ 195,724 | \$ 225,031 | \$ 2,325,697 |

5. RELATED PARTY TRANSACTIONS

At December 31, 2010 and 2009, the Plan held 45,073 and 54,414 shares, respectively, of Company common stock with a cost basis of \$1,937,684 and \$2,317,945, respectively. Contributions to the Plan were frozen effective January 1, 2008.

During the years ended December 31, 2010, 2009 and 2008, the Plan recorded dividend income from Company common stock of \$77,730, \$309,380 and \$506,583, respectively.

During the years ended December 31, 2010, 2009 and 2008, the Plan incurred administrative expenses of approximately \$10,000, \$10,000 and \$50,000, respectively. The costs were paid by companies within the group headed by The Procter & Gamble Company, and not reimbursed by the Plan.

6. PLAN TERMINATION

The Company has the right under the Plan to discontinue its contributions at any time and to terminate the Plan subject to the provisions of the Plan.

7. FEDERAL INCOME TAX STATUS

The Plan is not qualified under Section 401(a) of the Internal Revenue Code and is exempt from the provisions of Title I of ERISA pursuant to Section 4(b)(4) thereof. The Company believes that the fiduciary should be viewed as a directed custodian and that, for U.S. tax purposes, the participating employees should be treated as the owners of the shares of the Company's common stock held for their account under the Plan.

The Company has received a private letter ruling from the Internal Revenue Service confirming that the participating employees should be treated as the beneficial owners of the shares of the Company's common stock held for their account under the Plan for U.S. tax purposes and that, subject to certain procedural conditions, the information provided by the employees may be relied upon in determining the applicable U.S. tax withholding rate on dividends paid by the Company with respect to these shares.

