

FORTUNE BRANDS HOME & SECURITY, INC.

FORM 8-K (Current report filing)

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) September 6, 2011

Fortune Brands Home & Security, Inc.

(Exact name of registrant as specified in its charter)

Delaware
**(State or Other Jurisdiction
of Incorporation)**

1-35166
**(Commission
File Number)**

62-1411546
**(I.R.S. Employer
Identification No.)**

520 Lake Cook Road
Deerfield, IL 60015
(Address of principal executive offices) (Zip Code)

(847) 484-4400
Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Agreement.

On September 6, 2011, the board of directors of Fortune Brands Home & Security, Inc. (the “Company”) adopted a stockholders rights agreement and declared a dividend distribution of one right (a “Right”) for each outstanding share of common stock of the Company, par value \$0.01 per share (“Common Stock”), to stockholders of record at the close of business on October 10, 2011 (the “Record Date”). Each Right entitles the holder thereof (except as described below) to purchase from the Company one one-thousandth of a share of Series A Junior Participating Preferred Stock, par value \$0.01 per share (the “Series A Preferred Stock”), of the Company at a price (the “Exercise Price”) of \$65.00 per one one-thousandth of a preferred share, subject to adjustment. The terms of the Rights are set forth in a Rights Agreement dated as of September 6, 2011 (the “Rights Agreement”) between the Company and Wells Fargo Bank, N.A., as rights agent.

The Rights will attach to all shares of Common Stock that are outstanding on the Record Date or that become outstanding after the Record Date and prior to the earlier of the Distribution Date (as defined below) and the expiration date of the Rights. The Rights expire on October 3, 2012.

Exercisability; Distribution Date. The Rights become exercisable upon the earlier to occur of:

- 10 days after the first public announcement that any person has become an acquiring person (as defined below) (the date of such first public announcement being referred to as the “Stock Acquisition Date”); and
- 10 business days (unless delayed by the Company’s board of directors) after the commencement by any person of a tender or exchange offer if, upon the consummation thereof, that person would become an acquiring person.

The earlier of the dates described in the preceding sentence is called the “Distribution Date.”

An “acquiring person” is any person who or which, together with its affiliates and associates, at any time after the close of business on October 17, 2011, is or becomes a beneficial owner of 15% or more of the outstanding shares of Common Stock, but does not include the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any such subsidiary or any person organized, appointed or established by the Company for or pursuant to the terms of any such plan, program, or arrangement. In addition, an “acquiring person” does not include any person who, as of the close of business on October 17, 2011, beneficially owns 15% or more of the outstanding shares of Common Stock solely as a result of the distribution by Fortune Brands, Inc. (“FO”) of shares of Common Stock with respect to shares of FO common stock beneficially owned by such person as of immediately prior to the first public announcement of the adoption of the Rights Agreement. Notwithstanding the foregoing, such person would be an “acquiring person” if such person, at any time after the close of business on October 17, 2011, beneficially owns any shares of Common Stock (with certain

exceptions) in addition to the shares of Common Stock received by such person as a result of the distribution by FO of shares of Common Stock with respect to shares of FO common stock beneficially owned by such person as of immediately prior to the first public announcement of the adoption of the Rights Agreement, whether such person beneficially owns such additional shares as a result of the distribution by FO of shares of Common Stock in the spin-off of the Company, purchases in the “when-issued” market prior to the spin-off of the Company or otherwise.

Transferability. Until the Rights become exercisable, they will not trade independently, but only with the associated shares of Common Stock. If the Rights become exercisable as described above, separate certificates representing the Rights will be delivered to the then record holders of the outstanding shares of the Company’s Common Stock; and the Rights will then trade independently from the Common Stock.

“Voiding” of Certain Rights. All Rights which are, or (under certain circumstances specified in the Rights Agreement) were, beneficially owned by an acquiring person, an associate or affiliate of an acquiring person, or specified transferees therefrom will be void.

The Flip-In Feature. If any person becomes an acquiring person after the Rights are no longer redeemable, each Right (other than Rights that have become void) will entitle the registered holder thereof to receive, upon payment of the then current Exercise Price, the number of shares of Common Stock which, at the time of the occurrence of such event, will have a market value equal to two times the then current Exercise Price.

The Flip-Over Feature. If, on or after the Stock Acquisition Date, any of the following transactions occur, each Right (other than Rights that have become void) will entitle the registered holder thereof to receive, upon payment of the then current Exercise Price, the number of shares of common stock of the acquiring person (or of another person affiliated therewith) which, at the time of consummation of such transaction, will have a market value equal to two times the then current Exercise Price:

- the Company consolidates with or merges with and into any other entity and the Company is not the continuing or surviving corporation,
- any entity engages in a share exchange with or consolidates with, or merges with or into, the Company, and the Company is the continuing or surviving corporation and, in connection with such share exchange, consolidation or merger, all or part of the outstanding shares of Common Stock are changed into or exchanged for stock or other securities of any other entity or cash or any other property or
- the Company sells or otherwise transfers (i) more than 50% of the assets or (ii) the assets generating more than 50% of the operating income or cash flow, in each case, of the Company and its subsidiaries (taken as a whole),

Redemption of Rights. At any time prior to the earlier of:

- 10 days after the Stock Acquisition Date or

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- October 3, 2012,

the board of directors may redeem the Rights in whole, but not in part, at the redemption price of \$0.01 per Right, adjusted to reflect any stock split, stock dividend or similar transaction that occurs after the Record Date (the “Redemption Price”). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Company’s board of directors, in its sole discretion, may establish.

Exchange of Common Shares for Rights. At any time after any person has become an acquiring person and prior to the time that any person, together with its affiliates and associates, has become the beneficial owner of 50% or more of the outstanding shares of Common Stock, the Company’s board of directors may direct that all or any part of the outstanding Rights (other than Rights that have become void) be exchanged for shares of Common Stock at the exchange rate of one share of Common Stock per Right, subject to adjustment.

Amendments. The Company and the rights agent may from time to time amend or supplement the Rights Agreement without the consent of the holders of the Rights. After the Stock Acquisition Date, however, no amendment can materially adversely affect the interests of the holders of the Rights (other than the acquiring person or any affiliate or associate thereof).

Series A Preferred Stock. Pursuant to a Certificate of Designations of Series A Junior Participating Preferred Stock, which sets forth the rights, preferences and privileges of the Series A Preferred Stock, there are 750,000 shares of Series A Preferred Stock authorized for issuance. Each share of Series A Preferred Stock will entitle the holder thereof:

- to receive a preferential quarterly dividend equal to the greater of (i) \$1.00 and (ii) 1,000 times the aggregate per share amount of all cash dividends, plus 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends and other distributions (other than in shares of Common Stock), declared on the Common Stock during such quarter, adjusted to give effect to any dividend on the Common Stock payable in shares of Common Stock or any subdivision, combination or reclassification of the Common Stock after the Record Date (a “dilution event”);
- to 1,000 votes on all matters submitted to a vote of the stockholders of the Company, voting together as a single class with the holders of the Common Stock and the holders of any other class of capital stock having general voting rights, adjusted to give effect to any dilution event; and, if (and so long as) dividends on the shares of Series A Preferred Stock are in arrears for six quarters, the holders of the Company preferred stock with dividends in arrears for six quarters (including the Series A Preferred Stock), voting as a single class without regard to series, will be entitled to elect two directors; and
- to receive upon any liquidation of the Company a preferential liquidation payment equal to the greater of (i) \$1,000 and (ii) 1,000 times the aggregate per share

amount to be distributed to the holders of the Common Stock, adjusted to give effect to any dilution event, plus an amount equal to accrued and unpaid dividends and distributions on such share of Series A Preferred Stock, whether or not declared, to the date of such payment.

In the event of any merger, consolidation or other transaction in which the outstanding shares of Common Stock are exchanged for or converted into other capital stock, securities, cash or other property, each share of Series A Preferred Stock will be similarly exchanged or converted into 1,000 times the aggregate per share amount applicable to the Common Stock, adjusted to give effect to any dilution event.

* * * *

The Rights will have certain anti-takeover effects. The Rights will cause a substantial dilution to any person or group that attempts to acquire the Company without the approval of the Company's board of directors. As a result, the overall effect of the Rights may be to render more difficult or discourage any attempt to acquire the Company even if such acquisition may be favorable to the interests of the Company's stockholders. Because the Company's board of directors can redeem the Rights and amend the Rights Agreement in any respect prior to a person or group becoming an acquiring person, the Rights should not interfere with a merger or other business combination approved by the board of directors of the Company.

The foregoing description of the Rights Agreement, the Rights and the Series A Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, the Certificate of Designations and the form of Rights certificate, which have been filed as exhibits to our Registration Statement on Form 8-A filed with the Securities and Exchange Commission on September 6, 2011 and are incorporated herein by this reference.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in Items 1.01 and 5.03 of this Current Report is incorporated into this Item 3.03 by this reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

In connection with the adoption of the Rights Agreement, on September 6, 2011, FO, as the sole stockholder of the Company, approved an amendment to Article FOURTH of the Certificate of Incorporation of the Company (the "Charter Amendment") to increase the total number of shares of capital stock that the Company is authorized to issue from 100,000 to 850,000, consisting of 100,000 shares of common stock and 750,000 shares of preferred stock. A copy of the Charter Amendment has been filed as Exhibit 3.1 to this Current Report and is incorporated herein by this reference.

Also in connection with the adoption of the Rights Agreement, the Company's board of directors approved a Certificate of Designations of Series A Junior Participating Preferred Stock, which designates the rights, preferences and privileges of 750,000 shares of a series of the

Company's preferred stock, \$0.01 par value per share, designated as Series A Junior Participating Preferred Stock. The Certificate of Designations was filed with the Delaware Secretary of State and became effective on September 6, 2011. A copy of that Certificate of Designations has been filed as Exhibit 3.2 to this Current Report and is incorporated herein by this reference.

Item 8.01. Other Events.

On September 6, 2011, the Company issued a press release announcing the adoption of the Rights Agreement. A copy of that press release is filed as Exhibit 99.1 to this Current Report and incorporated herein by this reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment to Certificate of Incorporation, dated September 6, 2011
3.2	Certificate of Designations of Series A Junior Participating Preferred Stock, dated September 6, 2011 (incorporated by reference to Exhibit 2 to the Company's Registration Statement on Form 8-A, filed with the Securities and Exchange Commission on September 6, 2011, File No. 1-35166).
4.1	Rights Agreement, dated as of September 6, 2011, between the Company and Wells Fargo Bank, N.A., as rights agent (which includes the Form of Rights Certificate as Exhibit B) (incorporated by reference to Exhibit 1 to the Company's Registration Statement on Form 8-A, filed with the Securities and Exchange Commission on September 6, 2011, File No. 1-35166).
99.1	Press Release, dated September 6, 2011.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FORTUNE BRANDS HOME & SECURITY, INC.

Date: September 6, 2011

By: /s/ Lauren S. Tashma
Name: Lauren S. Tashma
Title: Assistant Secretary

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment to Certificate of Incorporation, dated September 6, 2011
3.2	Certificate of Designations of Series A Junior Participating Preferred Stock, dated September 6, 2011 (incorporated by reference to Exhibit 2 to the Company's Registration Statement on Form 8-A, filed with the Securities and Exchange Commission on September 6, 2011, File No. 1-35166).
4.1	Rights Agreement, dated as of September 6, 2011, between the Company and Wells Fargo Bank, N.A., as rights agent (which includes the Form of Rights Certificate as Exhibit B) (incorporated by reference to Exhibit 1 to the Company's Registration Statement on Form 8-A, filed with the Securities and Exchange Commission on September 6, 2011, File No. 1-35166).
99.1	Press Release, dated September 6, 2011.

CERTIFICATE OF AMENDMENT
TO
THE CERTIFICATE OF INCORPORATION
OF
FORTUNE BRANDS HOME & SECURITY, INC.

Fortune Brands Home & Security, Inc. (the “Corporation”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “DGCL”), does hereby certify:

FIRST: That at a meeting of the Board of Directors, resolutions were duly adopted approving a proposed amendment (the “Amendment”) to the Certificate of Incorporation of the Corporation and directing that the Amendment be submitted to the sole stockholder of the Corporation for consideration thereof. The resolution set forth the Amendment as follows:

RESOLVED, that pursuant to a Certificate of Amendment in the form approved by an officer of the Company, as evidenced by such officer’s signature thereon, Article FOURTH of the Company’s certificate of incorporation is hereby amended and restated to read in its entirety as follows:

“FOURTH: The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 850,000 shares, consisting of 100,000 shares of common stock, par value \$0.01 per share (“Common Stock”), and 750,000 shares of preferred stock, par value \$0.01 per share (“Preferred Stock”). The Board of Directors is expressly authorized to issue from time to time the Preferred Stock in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors. The Board of Directors is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions and to set forth in a certification of designation filed pursuant to the DGCL the powers, designations, preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, of any wholly unissued series of Preferred Stock, including, without limitation, dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including, without limitation, sinking fund provisions), redemption price or prices and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or

any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series of Preferred Stock, the number of which was fixed by it, subsequent to the issuance of shares of such series then outstanding, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, stated in this Certificate of Incorporation or the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series of Preferred Stock is so decreased, then the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.”

SECOND: That thereafter, acting by written consent pursuant to Section 228 of the DGCL, the sole stockholder of the Corporation adopted the Amendment.

THIRD: The Amendment was duly adopted in accordance with the provisions of Section 242 of the DGCL.

* * * * *

IN WITNESS WHEREOF , the undersigned has executed this Certificate of Amendment this 6th day of September, 2011.

FORTUNE BRANDS HOME & SECURITY, INC.

By: /s/ Christopher J. Klein

Christopher J. Klein
Chief Executive Officer



NEWS RELEASE
NEWS RELEASE
NEWS RELEASE

Fortune Brands, Inc., 520 Lake Cook Road, Deerfield, IL 60015

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(847) 444-7690

FORTUNE BRANDS HOME & SECURITY ADOPTS STOCKHOLDER RIGHTS PLAN

Deerfield, Illinois, September 6, 2011 – Fortune Brands Home & Security, Inc., an operating unit of Fortune Brands, Inc. (NYSE: FO), today announced that its board of directors adopted a Stockholder Rights Agreement in advance of the company’s anticipated spin-off on October 3, 2011.

The board of directors declared a dividend of one preferred stock purchase right for each share of company common stock outstanding on October 10, 2011. The preferred stock purchase rights would only be activated if triggered by the Rights Agreement. The rights will expire on October 3, 2012, unless earlier redeemed or exchanged by the company.

“Adopting a shareholder rights plan is an appropriate step for Fortune Brands Home & Security to protect the interests of shareholders as the company becomes an independent business and realizes its upside potential as the U.S. housing market recovers,” said Chris Klein, president and chief executive officer of Fortune Brands Home & Security.

Stockholder Rights Agreements are designed to protect a company’s stockholders against any coercive, unfair or inadequate tender offers and other abusive takeover tactics that may or may not occur and to preserve a company’s long-term value for the benefit of its stockholders.

Effective following the close of business on October 17, 2011, if any person or group is or becomes a beneficial owner of 15% or more of the outstanding shares of company common stock, there would be a triggering event under the Rights Agreement resulting in significant dilution in the ownership interest of such person or group in company stock. There is a limited exception specified in the Rights Agreement for any person or group that owned 15% or more of the outstanding shares of Fortune Brands immediately prior to the issuance of this press release.

Stockholders are not required to take any action to receive the preferred stock purchase rights. Until the rights become exercisable, they will not be evidenced by separate certificates and will trade automatically with such shares of company common stock.

(more)
www.fortunebrands.com

FORTUNE BRANDS HOME & SECURITY ADOPTS STOCKHOLDER RIGHTS PLAN, PAGE 2

Additional information regarding the Rights Agreement will be contained in a Current Report on Form 8-K and in a Registration Statement on Form 8-A that the Company is filing with the Securities and Exchange Commission.

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About Fortune Brands Home & Security

The Company is a leading home and security products company that competes in attractive long-term growth markets in its categories. Its major brands include Moen faucets, Aristokraft, Omega, Diamond and Kitchen Craft cabinetry, Therma-Tru door systems, Simonton windows, Master Lock security products and Waterloo storage and organization products.

In connection with the spin-off of the Company by Fortune Brands, it is anticipated that trading in shares of the Company's common stock will begin on a when-issued basis on or about September 16, 2011 and will continue up to and including the date on which Fortune Brands distributes shares of the Company's common stock owned by Fortune Brands to its stockholders. On the first trading day following the distribution date, any when-issued trading in respect of the Company's common stock will end and regular way trading in shares of the Company's common stock will begin. The New York Stock Exchange has approved the Company's common stock for listing under the symbol "FBHS."

Forward-Looking Statements

This press release contains statements relating to future events, which are forward-looking statements. Readers are cautioned that these forward-looking statements speak only as of the date hereof. The Company does not assume any obligation to update, amend or clarify them to reflect events, new information or circumstances occurring after the date of this release. Actual plans, actions and results may differ materially from current expectations as a result of certain risks and uncertainties, including the risks and uncertainties described from time to time in the Company's Securities and Exchange Commission filings, including its Registration Statement on Form 10. There can be no assurance that the proposed spin-off will be completed as anticipated or at all.

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