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LABRANCHE & CO INC
Form S-8
March 15, 2001

Registration No. 333-

As filed with the Securities and Exchange Commission on March 15, 2001

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

LABRANCHE & CO INC.

(Exact name of registrant as specified its charter)

DELAWARE

13-4064735

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer Identification No.)

LABRANCHE & CO INC.
ONE EXCHANGE PLAZA
NEW YORK, NEW YORK 10006-3008
(212) 425-1144

(Address, including zip code, of principal executive offices)

OPTIONS TO PURCHASE SHARES OF ROBB PECK MCCOOEY FINANCIAL SERVICES, INC.
COMMON STOCK
(Full title of the plan)

GEORGE M.L. LABRANCHE, IV
LABRANCHE & CO INC.
ONE EXCHANGE PLAZA
NEW YORK, NEW YORK 10006-3008
(212) 425-1144

(Name, address and telephone number, including area code,
of agent for service)

Copies of all communications, including all communications sent to the agent
for service, should be sent to:

JEFFREY M. MARKS, ESQ.
STEVEN I. SUZZAN, ESQ.
FULBRIGHT & JAWORSKI L.L.P.
666 FIFTH AVENUE
NEW YORK, NEW YORK 10103

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(212) 318-3000
FACSIMILE: (212) 318-3400

CALCULATION OF REGISTRATION FEE

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CALCULATION OF REGISTRATION FEE

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| 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 (2) |
|--|-----------------------------|---|---|
| Common Stock, par value \$0.01 per share | 2,775,662 shares | Not Applicable | Not Applicable |

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- (1) Plus such additional indeterminable number of shares as may be required in the event of a stock dividend, stock split, recapitalization or other similar change in the Common Stock.
- (2) Calculated solely for the purposes of this offering under Rule 457(h) under the Securities Act of 1933, as amended, on the basis of the weighted average exercise price of the outstanding options.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed by the Registrant are incorporated herein by reference:

(i) The Registrant's Prospectus filed under Rule 424(b) of the Securities Act on March 1, 2001 forming part of the Registrant's Registration Statement on Form S-4 (File No. 333-55862).

(ii) The Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2000.

(iii) The Registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2000.

(iv) The Registrant's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2000.

(v) The Registrant's Current Report on Form 8-K filed on February 8, 2000.

(vi) The Registrant's Current Report on Form 8-K filed on March 17, 2000.

(vi) The Registrant's Current Report on Form 8-K/A filed on

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May 17, 2000.

(viii) The Registrant's Current Report on Form 8-K filed on October 23, 2000.

(ix) The Registrant's Current Report on Form 8-K filed on January 19, 2001.

(x) The description of the Registrant's Common Stock contained in its Registration Statement on Form 8-A (File No. 001-15251).

In addition to the foregoing, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment indicating that all of the securities offered hereunder have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference in this Registration Statement 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 that is also incorporated by reference herein modifies or supersedes such statement. Any 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.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145(a) of the General Corporation Law of the State of Delaware ("DGCL") provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he 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 cause to believe his conduct was unlawful.

Section 145(b) of the DGCL provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted under similar standards, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to

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the corporation unless and only to the extent that the court in which such action or suit was brought shall determine that despite the adjudication of liability, such person is fairly and reasonably entitled to be indemnified for such expenses which the court shall deem proper.

Section 145 of the DGCL further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) and (b) or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and that the corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the corporation would have the power to indemnify him against such liabilities under such Section 145.

Section 102(b)(7) of the DGCL provides that a certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director provided that such provision shall not eliminate or limit the liability of a director: (i) for any 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) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit.

Article Tenth of the certificate of incorporation of the Registrant states that to the fullest extent permitted by the DGCL, no director of the Registrant shall be personally liable to the Registrant, any of its stockholders or any other person or entity for monetary damages for breach of fiduciary duty owed to the Registrant, its stockholders or such other person or entity owing to such director's position as a director of the Registrant.

Article Eleventh of the Registrant's certificate of incorporation contains substantially the same provisions for indemnification as those contained in Section 145 of the DGCL.

The Registrant has entered into indemnification agreements with its current directors and executive officers. The Registrant has agreed to insure its directors and officers against losses arising from any claim against them as such for wrongful acts or omission, subject to certain limitations.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not Applicable.

ITEM 8. EXHIBITS

| | | |
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| 5.1 | -- | Opinion of Fulbright & Jaworski L.L.P. |
| 23.1 | -- | Consent of Arthur Andersen LLP |

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| | | |
|------|----|--|
| 23.2 | - | Consent of PricewaterhouseCoopers LLP |
| 23.3 | -- | Consent of Fulbright & Jaworski L.L.P. (included in Exhibit 5.1) |
| 24.1 | -- | Power of Attorney (included on signature page) |
| 99.1 | - | Form of RPM Option Agreement |
| 99.2 | - | Form of Amendment to RPM Option Agreement |

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, as amended (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;

(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 on Form 10-K pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended (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 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

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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, 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 New York, State of New York, on the 15th day of March, 2001.

LABRANCHE & CO INC.

By: /s/ George M.L. LaBranche, IV

George M.L. LaBranche, IV
Chairman and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints George M.L. LaBranche, IV and Harvey S. Traison, or either of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and any registration statement relating to the offering hereunder pursuant to Rule 462 under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Table with 2 columns: SIGNATURE and TITLE. Row 1: /s/ George ML. LaBranche, IV; Chairman, Chief Executive Officer, and President (Principal Executive Officer). Row 2: /s/ S. Lawrence Prendergast; Executive Vice President, Finance and Director.

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|---|---|
| /s/ Harvey S. Traison ----- Harvey S. Traison | Senior Vice President, Chief Financial Officer and Director (Principal Financial Officer) |
| /s/ Thomas E. Dooley ----- Thomas E. Dooley | Director |
| /s/ E. Margie Filter ----- E. Margie Filter | Director |
| /s/ James G. Gallagher ----- James G. Gallagher | Director |
| /s/ Alfred O. Hayward, Jr. ----- Alfred O. Hayward, Jr. | Director |
| /s/ Todd Graber ----- Todd Graber | Controller (Principal Accounting Officer) |

INDEX TO EXHIBITS

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|-------------------------|--|
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