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ADAMS GOLF INC
Form S-8
February 09, 2004

As filed with the Securities and Exchange Commission
on February 9, 2004.

Registration No. 333-_____

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

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

ADAMS GOLF, INC.
(Exact name of Registrant as specified in its charter)

Delaware	75-2320087
-----	-----
(State or other jurisdiction of Incorporation)	(I.R.S. Employer Identification No.)
300 Delaware Avenue, Suite 572 Wilmington, Delaware	19801
-----	-----
(Address of Principal Executive Offices)	(Zip Code)

2002 EQUITY INCENTIVE PLAN
(Full title of the plan(s))

Copy to:

Eric Logan
Adams Golf, Ltd.
2801 East Plano Parkway
Plano, Texas 75074
(972) 673-9000
(Name and address of
agent for service)

Joseph A. Hoffman, Esq.
ANDREWS KURTH LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
(214) 659-4593

(302) 427-5892
(Telephone number, including area code,

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of agent for service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock \$0.001 par value	6,653,481 shares (1)	\$0.98 (2)	\$6,520,411 (2)	\$826.14

(1) The securities to be registered represent shares of Common Stock reserved for issuance under the Adams Golf, Inc. 2002 Equity Incentive Plan (the "Plan"). Pursuant to Rule 416, shares of Common Stock issuable pursuant to the exercise of options granted under the Plan in order to prevent dilution resulting from any future stock split, stock dividend or similar transaction are also being registered hereunder.

(2) Estimated pursuant to Rule 457(h) solely for the purpose of calculating the registration fee. The maximum proposed offering price at which unissued options may be exercised under the Plan (6,653,481 shares of Common Stock) is \$6,520,411 calculated on the basis of the average of the high and low sale price per share of Common Stock as quoted on the over-the-counter bulletin board on February 2, 2004, (\$0.98), in accordance with Rule 457(c).

Part I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* Information required by Part I to be contained in the Section 10(a) Prospectus is omitted from the Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "Securities Act"), and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Adams Golf, Inc. (the "Company") hereby incorporates by

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reference in this Registration Statement the following documents previously filed or to be filed with the Securities and Exchange Commission (the "Commission"):

- (a) the Company's Annual Report on Form 10-K for the year ended December 31, 2002, filed with the Commission on April 1, 2003;
- (b) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2003 filed with the Commission on May 7, 2003, the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2003 filed with the Commission on August 6, 2003, and the Company's Quarterly Report on Form 10-Q for the Fiscal Quarter ended September 30, 2003 filed with the Commission on November 12, 2003;
- (c) the description of the Company's common stock, par value \$0.001 per share (the "Common Stock"), contained in the Company's Registration Statement on Form S-1 (File No. 333-51715), including any amendment or report filed for the purpose of updating such description; and
- (d) all documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the date of this Registration Statement shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents until such time as there shall have been filed a post-effective amendment that indicates that all securities offered under the Registration Statement have been sold or that deregisters all securities remaining unsold at the time of the amendment.

Any statement contained herein or 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 the statement contained herein or in any subsequently filed document that also is or is deemed to be incorporated by reference herein, or in any document forming any part of the Section 10(a) Prospectus to be delivered to participants in connection with, 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.

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Item 6. Indemnification of Directors and Officers.

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Article VII of the Company's Certificate of Incorporation provides that the Company shall indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law ("DGCL").

Section 145 of DGCL permits a corporation, under specified circumstances, to indemnify its directors, officers, employees or agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties by reason of the fact that they were or are directors, officers, employees and agents, acted in good faith and in manner they reasonably believe 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. In a derivative action (i.e., one by or in the right of the corporation), indemnification may be made only for expenses actually and reasonably incurred by directors, officers, employees or agents in connection with the defense or settlement of any action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made if such persons have been adjudged liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine upon application that the defendant directors, officers, employees or agent are fairly and reasonably entitled to indemnify for such expenses, despite such adjudication of liability.

Section 102(b)(7) of the DGCL permits a corporation organized under Delaware law to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director subject to certain limitations. Article IX of the Certificate of Incorporation includes the following provision:

"A director of this corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors' 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. If the DGCL is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification."

Article XI of the Company's Bylaws further provides for the indemnification of, and advancement of expenses to, its officers and directors in certain circumstances.

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We maintain liability insurance for our directors and officers covering, subject to certain exceptions, any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by such directors or officers, individually or collectively, in the discharge of their duties in their capacity as directors or officers of our company.

Item 7. Exemption from Registration Claimed.

Not applicable.

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Item 8. Exhibits.

(a) Exhibits.

Exhibit	Description
4.1	Adams Golf 2002 Equity Incentive Plan (the "Plan") (incorporated by reference to Exhibit 10.6 of the Registrant's Current Report on Form 8-K/A filed with the Commission on December 26, 2001).
4.2	Form of Stock Option Agreement under 2002 Equity Incentive Plan of Adams Golf, Inc. (filed herewith).
5.1	Opinion of Andrews & Kurth LLP (filed herewith)
23.1	Consent of Andrews & Kurth LLP (included in their opinion filed as Exhibit 5.1) (filed herewith)
23.2	Consent of KPMG LLP (filed herewith)

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 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; and (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 clauses (i) and (ii) do

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not apply if the information required to be included in a post-effective amendment by those clauses is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) 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.

(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 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.

C. 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.

[Signature Page Follows]

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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 the requirements for filing

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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 Plano in the State of Texas, on February 9, 2004.

ADAMS GOLF, INC.

By: /s/ B.H. (Barney) Adams

B.H. (Barney) Adams
Chairman of the Board

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons and in the capacities indicated on February 9, 2004.

Signature	Title
-----	-----
By: /s/ B.H. (Barney) Adams ----- B. H. (Barney) Adams	Chairman of the Board
By: /s/ Oliver G. Brewer III ----- Oliver G. Brewer III	Chief Executive Officer, President and Director
By: /s/ Eric Logan ----- Eric Logan	Chief Financial Officer (Principal Accounting Officer)
By: /s/ Mark R. Mulvoy ----- Mark R. Mulvoy	Director
By: /s/ Paul F. Brown ----- Paul F. Brown	Director
By: /s/ Stephen R. Patchin ----- Stephen R. Patchin	Director

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EXHIBIT INDEX

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