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CONSTELLATION BRANDS INC

Form S-8

August 22, 2001

As filed with the Securities and Exchange Commission on August 22, 2001  
Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

CONSTELLATION BRANDS, INC.  
(exact name of Registrant as specified in its charter)

DELAWARE  
(State or other jurisdiction  
of incorporation or organization)

16-0716709  
(I.R.S. Employer  
Identification No.)

300 WillowBrook Office Park,  
Fairport, New York  
(Address of Principal Executive Offices)

14450  
(Zip Code)

THE CONSTELLATION BRANDS UK SHARES/SAVE SCHEME  
(Full title of the Plan)

Thomas J. Mullin, Esq.  
Executive Vice President and General Counsel  
Constellation Brands, Inc.  
300 WillowBrook Office Park  
Fairport, New York 14450  
(716) 218-2169  
(Name, address, including zip code, and telephone  
number, including area code, of agent for service)

Copy to:  
Roger W. Byrd, Esq.  
Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604  
(716) 263-1000

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CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered(1) | Amount to be Registered(1) | Proposed Maximum Offering Price Per Share (2) | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|----------------------------|---|---|----------------------------|
| Class A Common Stock                    | 1,000,000                  | \$44.01                                       | \$44,010,000                              | \$11,002                   |

(1) Pursuant to Rule 416(b) under the Securities Act of 1933, this registration statement covers such additional shares of Class A Common Stock as may be issuable pursuant to anti-dilution provisions of the Plan.

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(2) Inserted solely for the purpose of calculating the registration fee pursuant to Rule 457(h)(1).

(3) As instructed by Rule 457(h)(1) and estimated in accordance with Rule 457(c), based upon the average of the high and low prices for the Registrant's Class A Common Stock on the New York Stock Exchange reported as of August 15, 2001.

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### Part II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE.

The following documents which have been filed by Constellation Brands, Inc. (formerly known as Canandaigua Brands, Inc.) (the "Registrant") with the Securities and Exchange Commission are incorporated herein by reference:

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended February 28, 2001, filed pursuant to Section 13 of the Securities Exchange Act of 1934.

(b) All other reports filed by the Registrant pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 since February 28, 2001, including specifically, but not limited to, the Registrant's Current Reports on Form 8-K filed on March 7, 2001, March 14, 2001, April 12, 2001 (reporting the Registrant's results for the three month period and the twelve month period ended February 28, 2001 and announcing our two-for-one stock split), April 12, 2001 (reporting the proposed acquisition of Ravenswood Winery, Inc.), June 20, 2001, June 28, 2001 and July 3, 2001 and the Registrant's Quarterly Report on Form 10-Q for the quarterly periods ending May 31, 2001.

(c) The description of the Registrant's Class A Common Stock contained in the Registrant's registration statement on Form 8-A filed on October 4, 1999 under Section 12 of the Securities and Exchange Act, including all amendments or reports filed for the purpose of updating such 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 subsequent to the date of this Registration Statement 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 remaining unsold shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents.

##### ITEM 4. DESCRIPTION OF SECURITIES.

Not Applicable.

##### ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

James A. Locke III, Esq. serves as a member of the Board of Directors of the Registrant. Mr. Locke is a partner in the law firm Nixon Peabody LLP, which firm has rendered an opinion regarding the legality of the securities offered by the Registration Statement. Mr. Locke owns or has the option to purchase 33,608

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Shares of the Registrant's Class A Common Stock. Mr. Locke also owns 66 shares of the Registrant's Class B Common Stock, and such shares are convertible

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into Class A Common Stock. Certain attorneys of Nixon Peabody LLP may also own shares of the Class A Common Stock of the Registrant. A copy of the Opinion of Nixon Peabody LLP is attached hereto as Exhibit 5.

### ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The General Corporation Law of Delaware (Section 102) allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or to any of its stockholders for monetary damage for a breach of his/her fiduciary duty as a director, except in the case where the director breached his/her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Restated Certificate of Incorporation of the Registrant contains a provision which eliminates directors' personal liability as set forth above.

The General Corporation Law of Delaware (Section 145) gives Delaware corporations broad powers to indemnify their present and former directors and officers and those of affiliated corporations against expenses incurred in the defense of any lawsuit to which they are made parties by reason of being or having been such directors or officers, subject to specified conditions and exclusions; gives a director or officer who successfully defends an action the right to be so indemnified; and authorizes the Registrant to buy directors' and officers' liability insurance. Such indemnification is not exclusive of any other right to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or otherwise.

The Registrant's Restated Certificate of Incorporation provides for indemnification to the fullest extent authorized by Section 145 of the General Corporation Law of Delaware for directors, officers and employees of the Registrant and also to persons who are serving at the request of the Registrant as directors, officers or employees of other corporations (including subsidiaries); provided that, with respect to proceedings initiated by such indemnitee, indemnification shall be provided only if such proceedings were authorized by the Board of Directors. The right of indemnification is not exclusive of any other right which any person may acquire under any statute, bylaw, agreement, contract, vote of stockholders or otherwise.

From time to time the Registrant has and will enter into agreements with underwriters for securities offerings which provide for indemnification of directors, officers and controlling persons of the Registrant for losses, claims, damages, or liabilities resulting from an untrue statement made in a registration statement in reliance upon and in conformity with written information furnished to the Registrant by or on behalf of such underwriters for inclusion in the registration statement.

The Registrant maintains a directors' and officers' liability insurance and corporate reimbursement policy insuring directors and officers against loss arising from claims made arising out of the performance of their duties.

### ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

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Not applicable.

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ITEM 8. EXHIBITS.

See Exhibit Index.

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;

(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 information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 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 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 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) 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 provisions described in Item 6 of the Registration Statement, 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.



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|  |  |                 |
|--|--|-----------------|
| Richard Sands  | Chief Executive<br>Officer (Principal<br>Executive Officer)  |                 |
| -----<br>/s/ Robert Sands<br>-----<br>Robert Sands               | Director, Group President  | August 22, 2001 |
| -----<br>/s/ Thomas S. Summer<br>-----<br>Thomas S. Summer       | Executive Vice President<br>and Chief Financial Officer<br>(Principal Financial and<br>Accounting Officer) | August 22, 2001 |
| -----<br>/s/ George Bresler<br>-----<br>George Bresler           | Director   | August 22, 2001 |
| -----<br>/s/ James A. Locke, III<br>-----<br>James A. Locke, III | Director   | August 22, 2001 |

### EXHIBIT INDEX

| Exhibit No. | Description   | Location   |
|-------------|---|--|
| 4-1         | The Constellation Brands UK<br>Sharesave Scheme, as amended | Filed Herewith   |
| 4-2*        | Restated Certificate of Incorporation<br>of the Registrant  | Contained in Exhibit 3.1<br>to the Registrant's<br>Quarterly Report on Form<br>10-Q for the fiscal<br>quarter ended August 31,<br>2000 and incorporated<br>herein by reference |
| 4-3*        | By-Laws of the Registrant                                   | Contained in Exhibit<br>3.2 to the Registrant's<br>Quarterly Report on<br>Form 10-Q for the fiscal<br>quarter ended August 31,<br>31, and incorporated<br>herein by reference  |
| 5-1         | Legal Opinion of Nixon Peabody LLP                          | Filed Herewith   |
| 23-1        | Consent of Nixon Peabody LLP                                | Contained in opinion<br>filed as Exhibit 5-1<br>to this Registration<br>Statement  |

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Consent of Arthur Andersen LLP,  
independent accountants

Filed Herewith

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\* Incorporated by reference to the indicated filing.