

SABA SOFTWARE INC
Form S-8
August 05, 2003

As filed with the Securities and Exchange Commission on August 5, 2003

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

SABA SOFTWARE, INC.

(Exact name of the Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

94-3267638
(I.R.S. employer
identification no.)

2400 Bridge Parkway

Redwood Shores, California 94065

(Address of principal executive offices)

Saba Software, Inc. 2000 Stock Incentive Plan

Saba Software, Inc. 2000 Employee Stock Purchase Plan

(Full title of the plans)

Peter E. Williams III

Vice President

Saba Software, Inc.

2400 Bridge Parkway

Redwood Shores, California 94065

(650) 696-3840

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

Copy to:

Paul Chip Lion III, Esq.

Morrison & Foerster LLP

755 Page Mill Road

Palo Alto, CA 94304-1018

(650) 813-5600

CALCULATION OF REGISTRATION FEE

| Title of Securities | Amount | Proposed | Proposed | Amount of |
|----------------------------|---------------|-------------------------|-----------------|-------------------------|
| To Be Registered | To Be | Maximum Offering | Maximum | Registration Fee |

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| | Registered (1) | Price | Aggregate | |
|---------------------------------|----------------|---------------------|--------------------|-----------|
| | | Price Per Share (2) | Offering Price (2) | |
| Common Stock, \$0.001 par value | 662,215(3) | \$ 4.47 | \$ 2,960,101.05 | \$ 239.47 |
| Common Stock, \$0.001 par value | 264,886(4) | \$ 4.47 | \$ 1,184,040.42 | \$ 95.79 |
| TOTAL: | 927,101 | | \$ 4,144,141.47 | \$ 335.26 |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this registration statement includes an indeterminate number of additional shares which may be offered and issued to prevent dilution from stock splits, stock dividends or similar transactions as provided in the referenced plans.
- (2) Estimated solely for purposes of calculating the registration fee. Pursuant to Rule 457(h) and Rule 457(c) of the Securities Act of 1933, as amended, the proposed maximum offering price per share and the proposed maximum aggregate offering price have been determined on the basis of the average of the high and low prices per share of registrant's Common Stock as reported on the Nasdaq National Market on July 30, 2003.
- (3) Represents shares automatically reserved on June 1, 2003 under the terms of Registrant's 2000 Stock Incentive Plan. Shares issuable under the 2000 Stock Incentive Plan were initially registered on a registration statement on Form S-8 filed with the Securities and Exchange Commission on April 6, 2000 (Registration No. 333-34170).
- (4) Represents shares automatically reserved on June 1, 2003 under the terms of Registrant's 2000 Employee Stock Purchase Plan. Shares issuable under the 2000 Employee Stock Purchase Plan were initially registered on a registration statement on Form S-8 filed with the Securities and Exchange Commission on April 6, 2000 (Registration No. 333-34168).

PART I

INFORMATION REQUIRED IN THE

SECTION 10(a) PROSPECTUS

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Pursuant to General Instruction E to Form S-8 under the Securities Act of 1933, as amended, this registration statement is filed to register 662,215 additional shares of the registrant's common stock, par value \$0.001 per share, reserved for issuance under the terms of the Saba Software, Inc. 2000 Stock Incentive Plan, as amended and restated, and to register 264,886 additional shares of the registrant's common stock, par value \$0.001 per share, reserved for issuance under the terms of the Saba Software, Inc. Employee Stock Purchase Plan, as amended and restated. The contents of the Registration Statement on Form S-8 filed by the registrant with the Securities and Exchange Commission on July 19, 2002 (File No. 333-96809), the contents of the Registration Statement on Form S-8 filed by the registrant with the Securities and Exchange Commission on April 6, 2000 (File No. 333-34168) and the contents of the Registration Statement on Form S-8 filed by the registrant on April 6, 2000 (File No. 333-34170) are hereby incorporated by reference in this registration statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. *Incorporation of Documents by Reference.*

The following documents filed by Saba Software, Inc. (the Registrant) with the Commission are incorporated by reference herein:

1. The Registrant's Annual Report on Form 10-K for the fiscal year ended May 31, 2002, filed pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the Exchange Act).
2. The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on April 5, 2000.
3. All other reports filed by Registrant pursuant to Section 13(a) or 15(d) of the Exchange Act, since the end of the fiscal year covered by the Annual Report described in 1. above.

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All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after 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 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.

Any statement contained in a document incorporated by reference herein 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 other subsequently filed document which also is or is deemed to be 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 8. Exhibits.

| Exhibit | |
|----------------|---|
| Number | Document |
| 5.1 | Opinion of Morrison & Foerster LLP |
| 23.1 | Consent of Morrison & Foerster LLP (contained in Exhibit 5.1) |
| 23.2 | Consent of Ernst & Young LLP, Independent Auditors |
| 24.1 | Power of Attorney (see Signature Page) |

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Douglas C. Allred

/s/ CLIFTON T. WEATHERFORD

Director

August 5, 2003

Clifton T. Weatherford

/s/ JOE E. KIANI

Director

August 5, 2003

Joe E. Kiani

Director

Michael J. Moritz

INDEX TO EXHIBITS

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