

BOTTOMLINE TECHNOLOGIES INC /DE/
Form S-8
May 12, 2014

As filed with the Securities and Exchange Commission on May 12, 2014

Registration No. 333-

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

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

Bottomline Technologies (de), Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

325 Corporate Drive,
Portsmouth, New Hampshire

02-0433294
(I.R.S. Employer
Identification No.)

03801

(Address of Principal Executive Offices)

(Zip Code)

Andera, Inc. 2010 Stock Option/Stock Issuance Plan

(Full Title of the Plan)

Robert A. Eberle

President and Chief Executive Officer

Bottomline Technologies (de), Inc.

325 Corporate Drive

Portsmouth, New Hampshire 03801

(603) 436-0700

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copy to:

David A. Westenberg

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

Telephone: (617) 526-6000

Telecopy: (617) 526-5000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b of the Exchange Act.

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered (1) | Amount to be Registered (2) | Proposed Maximum Offering Price Per Share | Proposed Maximum Offering Price | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|-----------------------------------|--|---------------------------------------|--|-------------------------------|
| Common Stock, \$0.001 par value per share | 28,462 shares (3) | \$6.89 (4) | \$196,103.18 (4) | \$196,103.18 (4) | \$25.26 |
| Common Stock, \$0.001 par value per share | 9,482 shares (5) | \$30.14 (4) | \$285,787.48 (4) | \$285,787.48 (4) | \$36.81 |
| Total | 37,944 shares | | | | \$62.07 |

- (1) In addition to the number of shares of Bottomline Technologies (de), Inc. (the Company or Registrant) common stock, par value \$0.001 per share (Common Stock) stated above, this Registration Statement (the Registration Statement) covers an indeterminate number of options and other rights to acquire common stock, to be granted pursuant to the Andera, Inc. 2010 Stock Option/Stock Issuance Plan (the Plan).
- (2) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (3) Represents shares subject to issuance upon the exercise of stock options previously granted under the Plan, and assumed by the Registrant on April 3, 2014 pursuant to an Agreement and Plan of Merger by and among the Registrant, Argo Merger Sub Corp., Andera, Inc., the principal stockholders named therein and the Company Equityholder Representative, dated as of March 31, 2014 (the Merger Agreement).
- (4) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) of the Securities Act of 1933, as amended. The price per share and aggregate offering price are calculated on the basis of (a) \$6.89, the weighted average exercise price of the 28,462 shares subject to outstanding stock option grants under the Plan, at prices ranging from \$6.51 to \$7.51, and (b) the average of the high and low sale prices of the Registrant's Common Stock on The Nasdaq Global Market on May 8, 2014, in accordance with Rule 457(c) under the Securities Act of 1933, as amended, for the 9,482 shares issuable under the Plan which are not subject to outstanding options.
- (5) Represents shares subject to issuance but not yet issued under the Plan, and assumed by the Registrant on April 3, 2014 pursuant to the Merger Agreement.

EXPLANATORY NOTE

On March 31, 2014, Bottomline Technologies (de), Inc. (the Registrant), Argo Merger Sub Corp., a wholly-owned subsidiary of the Registrant (Merger Sub), Andera, Inc., which was subsequently converted to a limited liability company named Andera, LLC (Andera), the principal stockholders named in the Merger Agreement and Shareholder Representative Services LLC, as the Company Equityholder Representative, entered into the Merger Agreement, pursuant to which, among other things, Merger Sub was merged with and into Andera, with Andera surviving as a wholly-owned subsidiary of the Registrant (the Merger). In connection with the Merger, the Registrant assumed the Plan and certain options to acquire Andera common stock under the Plan, outstanding as of the effective time of the Merger (the Effective Time), which were converted on April 3, 2014 at the Effective Time into options to purchase shares of Registrant Common Stock. This Registration Statement on Form S 8 registers the aggregate number of shares of Registrant Common Stock that may be issued pursuant to such assumed options and from the remaining shares within the Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The information required by Item 1 is included in documents sent or given to participants in the Plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act).

Item 2. Registrant Information and Employee Plan Annual Information.

The written statement required by Item 2 is included in documents sent or given to participants in the Plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the Commission). The following documents, which are on file with the Commission, are incorporated in this registration statement by reference:

- (a) The Registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act or the latest prospectus filed pursuant to Rule 424(b) under the Securities Act that contains audited financial statements for the Registrant's latest fiscal year for which such statements have been filed.
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (a) above.
- (c) The description of the securities contained in the Registrant's registration statement on Form 8-A dated January 12, 1999 and filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, 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 part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the 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 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale) has opined as to the legality of the securities being offered by this registration statement.

Item 6. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the state of Delaware (DGCL) provides, generally, that a corporation shall have the power to 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 (except actions by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person 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 reasonable cause to believe his or her conduct was unlawful. A corporation may similarly indemnify such person for expenses actually and reasonably incurred by such person in connection with the defense or settlement of any action or suit by or in the right of the corporation, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in the case of claims, issues and matters as to which such person shall have been adjudged liable to the corporation, provided that a court shall have determined, upon application, that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 102(b)(7) of the DGCL provides, generally, that the certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that such provision may 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 shareholders, (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. No such provision may eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision became effective.

Article EIGHTH of the Registrant's Amended and Restated Certificate of Incorporation (the Restated Certificate of Incorporation) provides that no director of the Registrant shall be personally liable for any monetary damages for any breach of fiduciary duty as a director, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breach of fiduciary duty.

Article NINTH of the Restated Certificate of Incorporation provides that a director or officer of the Registrant (a) shall be indemnified by the Registrant against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred in connection with any litigation or other legal proceeding (other than an action by or in the right of the Registrant) brought against him by virtue of his position as a director or officer of the Registrant 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 Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful and (b) shall be

indemnified by the Registrant against all expenses (including attorneys' fees) and amounts paid in settlement incurred in connection with any action by or in the right of the Registrant brought against him by virtue of his position as a director or officer of the Registrant 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 Registrant, except that no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable to the Registrant, unless a court determines that, despite such adjudication but in view of all of the circumstances, he is entitled to indemnification of such expenses.

Notwithstanding the foregoing, to the extent that a director or officer has been successful, on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, he is required to be indemnified by the Registrant against all expenses (including attorneys' fees) incurred in connection therewith. Expenses shall be advanced to a director or officer at his request, provided that he undertakes to repay the amount advanced if it is ultimately determined that he is not entitled to indemnification for such expenses.

Indemnification is required to be made unless the Registrant determines that the applicable standard of conduct required for indemnification has not been met. In the event of a determination by the Registrant that the director or officer did not meet the applicable standard of conduct required for indemnification, or if the Registrant fails to make an indemnification payment within 60 days after such payment is claimed by such person, such person is permitted to petition the court to make an independent determination as to whether such person is entitled to indemnification. As a condition precedent to the right of indemnification, the director or officer must give the Registrant notice of the action for which indemnity is sought and the Registrant has the right to participate in such action or assume the defense thereof.

Article NINTH of the Restated Certificate of Incorporation further provides that the indemnification provided therein is not exclusive, and provides that in the event that the DGCL is amended to expand the indemnification permitted to directors or officers the Registrant must indemnify those persons to the fullest extent permitted by such law as so amended.

The Registrant has purchased directors' and officers' liability insurance which would indemnify its directors and officers against damages arising out of certain kinds of claims which might be made against them based on their negligent acts or omissions while acting in their capacity as such.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

Item 9. Undertakings.

1. Item 512(a) of Regulation S-K. 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;

(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 paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference 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.

2. Item 512(b) of Regulation S-K. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of 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.

3. Item 512(h) of Regulation S-K. 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 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 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 Town of Portsmouth, State of New Hampshire, on this 12th day of May, 2014.

BOTTOMLINE TECHNOLOGIES (de), INC.

By: /s/ Kevin M. Donovan
 Kevin M. Donovan
 Chief Financial Officer and Treasurer

POWER OF ATTORNEY AND SIGNATURES

We, the undersigned officers and directors of Bottomline Technologies (de), Inc., hereby severally constitute and appoint Joseph L. Mullen, Robert A. Eberle and Kevin M. Donovan, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, the registration statement on Form S-8 filed herewith and any and all subsequent amendments to said registration statement, and generally to do all such things in our names and on our behalf in our capacities as officers and directors to enable Bottomline Technologies (de), Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

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.

| Signature | Title | Date |
|--------------------------|--|--------------|
| /s/ Robert A. Eberle | President, Chief Executive | May 12, 2014 |
| Robert A. Eberle | Officer and Director (Principal Executive Officer) | |
| /s/ Kevin M. Donovan | Chief Financial Officer and | May 12, 2014 |
| Kevin M. Donovan | Treasurer (Principal Financial and Accounting Officer) | |
| /s/ Joseph L. Mullen | Chairman of the Board | May 12, 2014 |
| Joseph L. Mullen | | |
| /s/ Joseph L. Barry, Jr. | Director | May 12, 2014 |

Joseph L. Barry, Jr.

| | | |
|-----------------------|----------|--------------|
| /s/ Michael J. Curran | Director | May 12, 2014 |
| Michael J. Curran | | |
| /s/ Jennifer M. Gray | Director | May 12, 2014 |
| Jennifer M. Gray | | |
| /s/ Jeffrey C. Leathe | Director | May 12, 2014 |
| Jeffrey C. Leathe | | |
| /s/ James L. Loomis | Director | May 12, 2014 |
| James L. Loomis | | |
| /s/ Daniel M. McGurl | Director | May 12, 2014 |
| Daniel M. McGurl | | |
| /s/ James W. Zilinski | Director | May 12, 2014 |
| James W. Zilinski | | |

INDEX TO EXHIBITS

| Number | Description |
|--------|--|
| 4.1(1) | Amended and Restated Certificate of Incorporation of the Registrant |
| 4.2(2) | Amended and Restated By-Laws of the Registrant |
| 5 | Opinion of Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Registrant |
| 23.1 | Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5) |
| 23.2 | Consent of Ernst & Young LLP, independent registered public accounting firm |
| 24 | Power of attorney (included on the signature pages of this registration statement) |
| 99.1 | Andera, Inc. 2010 Stock Option/Stock Issuance Plan |

- (1) Previously filed with the Securities and Exchange Commission as an Exhibit to the Registrant's Current Report on Form 8-K filed January 18, 2013 (File No. 000-25259) and incorporated herein by reference.
- (2) Previously filed with the Securities and Exchange Commission as an Exhibit to the Registrant's Annual Report on Form 10-K for the year ended June 30, 2007 (File No. 000-25259) and incorporated herein by reference.