

INSIGNIA SYSTEMS INC/MN
Form S-8
August 08, 2018

As filed with the Securities and Exchange Commission on August 8, 2018.

Registration no. 333-_____

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

INSIGNIA SYSTEMS, INC.
(Exact name of registrant as specified in its charter)

Minnesota 41-1656308
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

8799 Brooklyn Blvd., Minneapolis, MN 55445
(Address of principal executive offices)

Insignia Systems, Inc. 2018 Equity Incentive Plan
Insignia Systems, Inc. Employee Stock Purchase Plan
(Full title of the plan(s))

Jeffrey A. Jagerson
Chief Financial Officer
Insignia Systems, Inc.
8799 Brooklyn Blvd., Minneapolis, MN 55445
(Name and address of agent for service)

(763) 392-6200
(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.
Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act

CALCULATION OF REGISTRATION FEE

TITLE OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)(2)	PROPOSED MAXIMUM OFFERING PRICE PER SHARE (3)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (3)	AMOUNT OF REGISTRATION FEE (4)
Common Stock, par value \$.01 per share	1,200,000 shares	\$1.845	\$2,214,000	\$275.65

(1)

As described in the Explanatory Note in this registration statement, the number of shares of common stock, \$0.01 par value per share (“Common Stock”), registered hereby consists of 900,000 and 300,000 shares being registered for the first time pursuant to Insignia Systems, Inc. 2018 Equity Incentive Plan and Insignia Systems, Inc. Employee Stock Purchase Plan, respectively.

(2)

Pursuant to Rule 416 of the Securities Act of 1933, this Registration Statement includes an indeterminate number of additional shares of common stock as may be issuable pursuant to a stock split, stock dividend or similar adjustment of the outstanding common stock of the Company and additional shares of common stock that may become issuable pursuant to anti-dilution provisions of the Plan.

(3)

Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, based on the average of the high and low sales price per share reported on the Nasdaq Capital Market on August 2, 2018.

(4)

The Registrant is paying registration fees solely with respect to the 1,200,000 shares of Common Stock newly registered hereby. Pursuant to Rule 457(p) under the Securities Act, the Registrant hereby offsets the registration fee required in connection with this registration statement by \$47.93 previously paid in connection to the 151,921 shares of Common Stock upon filing of the Registration Statement on Form S-8 filed with the Securities and Exchange Commission on July 30, 2015 (Registration Statement No. 333-205961), and no further registration fee is required. Accordingly, the filing fee wired to the Commission in connection with this registration statement is \$227.72.

EXPLANATORY NOTE

On July 20, 2018, the stockholders of Insignia Systems, Inc. (the “Company”) approved (i) the Company’s 2018 Equity Incentive Plan (the “2018 Plan”), which is filed as Exhibit 99.1 to this S-8, whereby 900,000 shares of the Company’s common stock may be the subject of awards and issued to employees, consultants, and advisors of the Company or any subsidiary, as well as non-employee directors of the Company, plus the number of shares remaining for future grants under the Company’s existing 2013 Omnibus Stock and Incentive Plan and (ii) the amendment and restatement to the Company’s Employee Stock Purchase Plan (the “Stock Plan”), which is filed as Exhibit 99.2 to this S-8, to increase the number of shares issuable under the Stock Plan by 300,000 shares of common stock. This Registration Statement on Form S-8 is being filed for the purpose of registering 900,000 and 300,000 shares of the Company’s common stock to be issued pursuant to its 2018 Plan and Stock Plan, respectively.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Part I of Form S-8 is not required to be filed with the Securities and Exchange Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to the introductory Note to Part I of Form S-8 and Rule 424 under the Securities Act. The information required in the Section 10(a) prospectus is included in the documents being maintained and delivered by the Company as required by Part I of Form S-8 and by Rule 428 under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents of the Company, filed with the Securities and Exchange Commission (the “Commission”) pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are, as of their respective dates, incorporated herein by reference and made a part hereof:

(1)

The Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2017 (File No. 001-13471), which incorporates by reference certain portions of the Company’s definitive proxy statement for its 2018 Annual Meeting of Stockholders;

(2)

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 Annual Report referred to in (1) above (other than information deemed to have been “furnished” rather than “filed” in accordance with the Commission’s rules);

(3)

The descriptions of the Company’s Common Stock contained in registration statements filed pursuant to the Exchange Act, together with any amendments or reports filed for the purpose of updating those descriptions.

All reports and other documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all of the securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in and a part of this Registration Statement from the date of 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 purposes of this Registration Statement to the extent that a statement contained herein or incorporated herein by reference or in any other subsequently filed document that 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.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Section 302A.521 of Minnesota Statutes requires the Company to indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person with respect to the Company, against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if such person (1) has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions; (2) acted in good faith; (3) received no improper personal benefit, and statutory procedure has been followed in the case of any conflict of interest by a director; (4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and (5) in the case of acts or omissions occurring in the person's performance in the official capacity of director or, for a person not a director, in the official capacity of officer, committee member or employee, reasonably believed that the conduct was in the best interests of the Company, or, in the case of performance by a director, officer or employee of the Company as a director, officer, partner, trustee, employee or agent of another organization or employee benefit plan, reasonably believed that the conduct was not opposed to the best interests of the Company. In addition, Section 302A.521, subd. 3, requires payment by the Company, upon written request, of reasonable expenses in advance of final disposition in certain instances. A decision as to required indemnification is made by a disinterested majority of the Board of Directors present at a meeting at which a disinterested quorum is present, or by a designated committee of the Board, by special legal counsel, by the shareholders or by a court. The Company's Bylaws provide for indemnification of officers, directors, employees, and agents to the fullest extent provided by Section 302A.521. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the provisions referenced in Item 6 of this Registration Statement or otherwise, the Company has been advised that in the opinion of the 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 hereunder, the Company 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.

The Company has historically maintained directors' and officers' liability insurance.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibit Number	Description	Method of Filing
5.1	<u>Opinion of Faegre Baker Daniels LLP</u>	Filed Electronically
23.1	<u>Consent of Baker Tilly Virchow Krause, LLP, independent registered public accounting firm</u>	Filed Electronically
23.2	<u>Consent of Faegre Baker Daniels LLP</u>	Contained in Exhibit 5.1
24.1	<u>Powers of Attorney</u>	(included on signature page)
99.1	<u>Insignia Systems, Inc. 2018 Equity Incentive Plan</u>	Filed Electronically
99.2	<u>Insignia Systems, Inc. Employee Stock Purchase Plan, as amended and restated May 21, 2018</u>	Filed Electronically

Item 9. Undertakings.

A.

The Company 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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective 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) above do not apply if the Registration Statement is on Form S-8, and 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 Company 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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Section 13(a) or 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 herein, 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 Company pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company 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 Minneapolis, Minnesota, on August 8, 2018.

INSIGNIA SYSTEMS, INC.

By: /s/ Kristine A. Glancy
Kristine A. Glancy
President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below also constitutes and appoints Jeffrey A. Jagerson, his true and lawful attorney-in-fact and agent with full powers of substitution and resubstitution for and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent 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 indicated on August 8, 2018:

Signature	Title
/s/ Kristine A. Glancy Kristine A. Glancy	President, Chief Executive Officer and Director (Principal Executive Officer)
/s/ Jeffrey A. Jagerson Jeffrey A. Jagerson	Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)
/s/ Jacob J. Berning Jacob J. Berning	Director and Chairman of the Board
/s/ Suzanne L. Clarridge Suzanne L. Clarridge	Director
/s/ Loren A. Unterseher Loren A. Unterseher	Director
/s/ Rachael B. Vegas	Director

Rachael B. Vegas

/s/ Steven R. Zenz
Steven R. Zenz

Director