

Edgar Filing: Lender Processing Services, Inc. - Form S-8

Lender Processing Services, Inc.

Form S-8

July 28, 2011

Table of Contents

Registration No. 333

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
FORM S-8
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933
LENDER PROCESSING SERVICES, INC.
(Exact Name of Registrant as Specified in Its Charter)**

Delaware
(State or Other Jurisdiction of Incorporation or Organization)

26-1547801
(I.R.S. Employer Identification No.)

601 Riverside Avenue
Jacksonville, Florida
(Address of Principal Executive Offices)

32204
(Zip Code)

Lender Processing Services, Inc. Amended and Restated 2008 Omnibus Incentive Plan
(Full Title of the Plan)

Todd C. Johnson
Executive Vice President, General Counsel
and Corporate Secretary
601 Riverside Avenue
Jacksonville, Florida 32204

(Name and Address of Agent for Service)

(904) 854-5100

(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, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title Of Securities To Be Registered	Amount To Be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount Of Registration Fee
Common Stock, par value \$0.0001 per share(3)	4,700,000(2)	\$ 20.11(2)	\$ 94,517,000(2)	\$ 10,974

(1) In addition, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers any additional securities to be offered or issued in connection with stock

splits, stock dividends, recapitalization or similar transactions.

- (2) Pursuant to Rules 457(c) and 457(h)(1) under the Securities Act, the offering price is estimated solely for the purpose of calculating the registration fee and is based on the average of the high and the low prices of the Registrant's Common Stock on July 25, 2011, as reported on the New York Stock Exchange.
 - (3) Lender Processing Services, Inc. Amended and Restated 2008 Omnibus Incentive Plan.
-

TABLE OF CONTENTS

<u>EXPLANATORY NOTE</u>	3
<u>PART I INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS</u>	3
<u>PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT</u>	3
<u>Item 3. Incorporation of Documents by Reference</u>	3
<u>Item 4. Description of Securities</u>	4
<u>Item 5. Interests of Named Experts and Counsel</u>	4
<u>Item 6. Indemnification of Directors and Officers</u>	4
<u>Item 7. Exemption From Registration Claimed</u>	5
<u>Item 8. Exhibits</u>	5
<u>Item 9. Undertakings</u>	5
<u>SIGNATURES</u>	7
<u>EXHIBIT INDEX</u>	9
EX-5.1 Opinion of Dewey & LeBoeuf LLP.	9
EX-23.2 Consent of KPMG LLP, Independent Registered Public Accounting Firm.	9
<u>EX-5.1</u>	
<u>EX-23.1</u>	

Table of Contents

EXPLANATORY NOTE

This Registration Statement on Form S-8 registers shares of common stock, par value \$0.0001 per share (the Common Stock), of Lender Processing Services, Inc., a Delaware corporation (the Registrant), which may be issued pursuant to the Lender Processing Services, Inc. Amended and Restated 2008 Omnibus Incentive Plan (the Plan). At the 2011 annual meeting of the shareholders of the Registrant, the shareholders approved amendments, which had been previously adopted by the Registrant's board of directors, to the Plan. The primary purpose of the amendments to the Plan was to increase the authorized shares available for issuance under the Plan by 4,700,000 shares in order to assure that the Registrant has adequate means to provide equity incentive compensation to its employees on a going-forward basis. Prior to the approval of the amendments to the Plan, there were approximately 1,200,000 shares that had been previously authorized under the Plan which remained available for grant.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of this Registration Statement will be sent or given to employees participating in the Plan, as specified by Rule 428(b)(1) promulgated under the Securities Act. In accordance with the instructions to Part I of Form S-8, such documents will not be filed with the SEC either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 promulgated under the Securities Act. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute the prospectus as required by Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed by the Registrant with the SEC are incorporated into this Registration Statement by reference:

- (1) Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2010, filed with the SEC on March 1, 2011;
- (2) The information specifically incorporated by reference into Registrant's Annual Report on Form 10-K from our definitive proxy statement on Schedule 14A, filed with the SEC on April 4, 2011;
- (3) Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, filed on May 5, 2011;
- (4) Registrant's Current Reports on Form 8-K dated March 31, 2011, April 12, 2011, April 12, 2011, May 19, 2011 and July 6, 2011, and filed, respectively, on March 31, 2011, April 13, 2011, April 13, 2011, May 19, 2011 and July 7, 2011; and
- (5) The description of the Registrant's Common Stock, par value \$0.0001 per share, contained in the Registrant's Registration Statement on Form 10, as amended (File No. 1-34005), filed with the SEC on March 27, 2008 under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold

Table of Contents

or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents with the SEC.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein (or in any subsequently filed document which also is incorporated by reference herein or any document which constitutes part of the prospectus relating to the Plan meeting the requirements of Section 10(a) of the Securities Act) 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 hereof.

Item 4. Description of Securities

Not Applicable.

Item 5. Interests of Named Experts and Counsel

Not Applicable.

Item 6. Indemnification of Directors and Officers

The following summary is qualified in its entirety by reference to the complete text of the statutes referred to below, the Registrant's Amended and Restated Certificate of Incorporation (the "Certificate") and Amended and Restated Bylaws (the "Bylaws").

The Registrant is incorporated under the laws of the State of Delaware.

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may 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 whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding 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 corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Section 145 further provides that a corporation similarly may indemnify any such person serving in any such capacity who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor, or a derivative action, by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit 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 corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or such other court in which such action or suit was brought shall determine 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 the Delaware Court of Chancery or such other court shall deem proper.

The Registrant's Certificate provides for the indemnification of directors, officers and certain authorized representatives of the Registrant to the fullest extent permitted by the DGCL, except that the Certificate provides for indemnification in a derivative action or suit initiated by a director, officer or authorized representative of the corporation only if the Registrant's board of directors authorized the initiation of that action or suit. In addition, as permitted by the DGCL, the Certificate provides that the Registrant's directors shall have no personal liability to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except (1) for any

Table of Contents

breach of the director's duty of loyalty to the Registrant or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (3) under Section 174 of the DGCL or (4) for any transaction from which a director derived an improper personal benefit.

The Contribution and Distribution Agreement, dated as of June 13, 2008, between Fidelity National Information Services, Inc. (FIS) and the Registrant obligates FIS to indemnify, hold harmless and defend the Registrant and each of its subsidiaries, affiliates and representatives from and against all liabilities arising out of or resulting from any untrue statement of, or omission to state, a material fact in any of the Registrant's public filings about FIS to the extent it was as a result of information that FIS furnished to the Registrant or which was contained in FIS' public filings.

In addition to the indemnification provided for in the Registrant's Certificate and Bylaws, the Registrant has purchased directors' and officers' liability insurance that would insure the Registrant's directors and officers against certain liabilities that might be incurred in connection with the performance of their duties.

Item 7. Exemption From Registration Claimed

Not Applicable.

Item 8. Exhibits

The following exhibits are filed herewith or incorporated by reference as part of this Registration Statement:

Exhibit Number	Description
4.1	Amended and Restated Certificate of Incorporation of Lender Processing Services, Inc. (incorporated by reference to Exhibit 4.1 to the Lender Processing Services, Inc. Registration Statement on Form S-8 filed on July 8, 2008).
4.2	Amended and Restated Bylaws of Lender Processing Services, Inc. (incorporated by reference to Exhibit 4.2 to the Lender Processing Services, Inc. Registration Statement on Form S-8 filed on July 8, 2008).
4.3	Specimen Certificate of Common Stock of Lender Processing Services, Inc. (incorporated by reference to Exhibit 4.3 to the Lender Processing Services, Inc. Registration Statement on Form S-8 filed on July 8, 2008).
5.1	Opinion of Dewey & LeBoeuf LLP
10.1	Lender Processing Services, Inc. Amended and Restated 2008 Omnibus Incentive Plan (incorporated by reference to Annex A to the Registrant's Schedule 14A filed on April 4, 2011).
23.1	Consent of Dewey & LeBoeuf LLP (included in Exhibit 5.1).
23.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included on the signature pages of this Registration Statement).

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;
 - (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

Table of Contents

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; 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 (a)(1)(i) and (a)(1)(ii) 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 SEC 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.
- (b) 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.
- (c) 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 SEC 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.

Table of Contents

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act, 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 City of Jacksonville, State of Florida, on July 28, 2011.

LENDER PROCESSING SERVICES,
INC.

/s/ Lee A. Kennedy
Lee A. Kennedy
Executive Chairman, President and
Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

We, the undersigned directors and officers of Lender Processing Services, Inc., hereby severally appoint Lee A. Kennedy and Thomas L. Schilling, and each of them individually, with full powers of substitution and resubstitution, our true and lawful attorneys, with full powers to them and each of them to sign for us, in our names and in the capacities indicated below, any and all amendments to such Registration Statement (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the United States Securities and Exchange Commission, granting unto such attorneys, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as each of them might or could do in person, and hereby ratifying and confirming all that such attorneys, and each of them, or their substitute or substitutes, shall do or cause to be done by virtue of this Power of Attorney.

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 date indicated.

Signature	Title	Date
/s/ Lee A. Kennedy Lee A. Kennedy	Executive Chairman, President and Chief Executive Officer, Director (Principal Executive Officer)	July 28, 2011
/s/ Thomas L. Schilling Thomas L. Schilling	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	July 28, 2011
/s/ Alvin R. Carpenter Alvin R. Carpenter	Director	July 28, 2011
/s/ John F. Farrell, Jr. John F. Farrell Jr.	Director	July 28, 2011

Table of Contents

Signature	Title	Date
/s/ James K. Hunt James K. Hunt	Director	July 28, 2011
/s/ Philip G. Heasley Philip G. Heasley	Director	July 28, 2011
/s/ David K. Hunt David K. Hunt	Director	July 28, 2011
/s/ Susan E. Lester Susan E. Lester	Director	July 28, 2011

Table of Contents

EXHIBIT INDEX

Exhibit Number	Description
4.1	Amended and Restated Certificate of Incorporation of Lender Processing Services, Inc. (incorporated by reference to Exhibit 4.1 to the Lender Processing Services, Inc. Registration Statement on Form S-8 filed on July 8, 2008).
4.2	Amended and Restated Bylaws of Lender Processing Services, Inc. (incorporated by reference to Exhibit 4.2 to the Lender Processing Services, Inc. Registration Statement on Form S-8 filed on July 8, 2008).
4.3	Specimen Certificate of Common Stock of Lender Processing Services, Inc. (incorporated by reference to Exhibit 4.3 to the Lender Processing Services, Inc. Registration Statement on Form S-8 filed on July 8, 2008).
5.1	Opinion of Dewey & LeBoeuf LLP.
10.1	Lender Processing Services, Inc. Amended and Restated 2008 Omnibus Incentive Plan (incorporated by reference to Annex A to the Registrant's Schedule 14A filed on April 4, 2011).
23.1	Consent of Dewey & LeBoeuf LLP (included in Exhibit 5.1).
23.2	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included on the signature pages of this Registration Statement).