

EnerSys
Form S-8
August 10, 2010

As filed with the Securities and Exchange Commission on August 10, 2010.

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

UNDER

THE SECURITIES ACT OF 1933

ENERSYS

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

23-3058564
(I.R.S. Employer
Identification Number)

2366 Bernville Road
Reading, Pennsylvania
(Address of Principal Executive Offices)

19605
(Zip Code)

EnerSys 2010 Equity Incentive Plan
(Full title of the plan)

Joseph G. Lewis, Esq.
Vice President & General Counsel
EnerSys
2366 Bernville Road
Reading, Pennsylvania 19605

(Name and address of agent for service)

(610) 208-1991

(Telephone number, including area code, of agent for service)

Copies to:

Sunjeet S. Gill, Esq.
Dana M. Eddis, Esq.
Stevens & Lee, P.C.
111 North Sixth Street
P.O. Box 679
Reading, PA 19603-0679

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(610) 478-2000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or smaller reporting company. See definition of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

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

CALCULATION OF REGISTRATION FEE

| Title of securities | Amount to be registered(1) | Proposed maximum offering price per share(2) | Proposed maximum aggregate offering price(2) | Amount of Registration Fee |
|---|-----------------------------------|---|---|-----------------------------------|
| Common Stock, par value \$0.01 per share, to be issued under the 2010 Equity Incentive Plan | 2,200,000 | \$23.99 | \$52,778,000 | \$3,763.07 |
| Common Stock, par value \$0.01 per share, to be issued under the 2010 Equity Incentive Plan (3) | 977,477 | \$23.99 | \$23,449,673 | N/A |
| TOTAL: | 3,177,477 | | \$76,227,673 | \$3,763.07 |

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement on Form S-8 covers an indeterminate number of shares which may be subject to grant or otherwise issuable by reason of stock splits, stock dividends, or similar transactions.
- (2) Estimated pursuant to Rule 457(c) and (h) under the Securities Act solely for the purpose of calculating the amount of the registration fee based upon the average of the high and low prices for a share of the registrant's common stock on August 6, 2010, as reported on the New York Stock Exchange.
- (3) The offer and sale of 977,477 shares registered hereby (the Carryover Shares) were previously registered pursuant to a registration statement on Form S-8 (File No. 333-143209) filed by the registrant and effective on May 24, 2007 and a registration statement on Form S-8 (File No. 333-120660) and effective on November 22, 2004 (collectively, the Prior Registration Statements), for offer and sale under the 2006 Equity Incentive Plan and the 2004 Equity Incentive Plan, respectively (collectively, the Prior Plans). As of the date of filing hereof, the Carryover Shares have not been issued and sold pursuant to the Prior Plans. The 2010 Equity Incentive Plan is the successor plan to the Prior Plans. The Carryover Shares and the corresponding portion of the fee paid by the registrant with respect to the Prior Plans are being carried over to this Registration Statement in accordance with Instruction E to Form S-8. Accordingly, no additional registration fee is payable with respect to the Carryover Shares.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The information called for in Part I of this Registration Statement on Form S-8 is not being filed with or included herein (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the Commission).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

In this Registration Statement, the registrant, we, us, and our refer to EnerSys.

The following documents, which have been filed with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are hereby incorporated by reference, and shall be deemed to be a part of, this Registration Statement:

- (a) The registrant's latest Annual Report on Form 10-K for the year ended March 31, 2010, filed with the Commission on June 1, 2010;
- (b) All other reports filed by the 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 on Form 10-K referred to in (a) above, including the registrant's definitive proxy statement filed with the Commission on June 16, 2010 and the registrant's current reports on Form 8-K during such period; and
- (c) The description of the registrant's Common Stock contained in any registration statement or report that the registrant has filed under the Exchange Act, including any amendment or report 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 Exchange Act prior to the filing of a post-effective amendment, which indicates that all securities offered have been sold, or which deregisters all securities then remaining unsold, are incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under Items 2.02, 7.01 and 9.01 of Form 8-K that is not deemed filed under such provisions.

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 in any subsequently filed document which also is or is deemed to be incorporated by reference herein, modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interest of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law generally provides that all directors and officers (as well as other employees and individuals) may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with certain specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation or a derivative action), if they acted in good faith and in a manner they 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 their conduct was unlawful. A similar standard of care is applicable in the case of derivative actions, except that indemnification extends only to expenses (including attorneys' fees) actually and reasonably incurred in connection with defense or settlement of an action and the Delaware General Corporation Law requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. Section 145 of the Delaware General Corporation Law also provides that the rights conferred thereby are not exclusive of any other right which any person may be entitled to under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, and permits a corporation to advance expenses to or on behalf of a person to be indemnified upon receipt of an undertaking to repay the amounts advanced if it is determined that the person is not entitled to be indemnified.

We have included in our certificate of incorporation and bylaws provisions to (a) eliminate the personal liability of our directors for monetary damages resulting from breaches of their fiduciary duty (provided that such provision does not eliminate liability for breaches of the duty of loyalty, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, violations under Section 174 of the Delaware General Corporation Law or for any transaction from which the director derived an improper personal benefit) and (b) indemnify our directors and officers to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, including circumstances in which indemnification is otherwise discretionary.

Acting pursuant to the provisions of our certificate of incorporation and bylaws and the provisions of Section 145 of the Delaware General Corporation Law, we have entered into agreements with each of our officers and directors to indemnify them to the fullest extent permitted by such provisions and such law. We are also expressly authorized to carry directors' and officers' insurance providing indemnification for our directors, officers and certain employees for some liabilities. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive officers.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibits:

| Number | Description |
|--------|---|
| 3.1 | Fifth Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Amendment No. 3 to EnerSys Registration Statement on Form S-1 (File No. 333-115553) filed on July 13, 2004). |
| 3.2 | Bylaws (incorporated by reference to Exhibits 3.2 to Amendment No. 3 to EnerSys Registration Statement on Form S-1 (File No. 333-115553) filed on July 13, 2004). |
| 4.1 | 2004 Securityholder Agreement (incorporated by reference to Exhibit 4.2 to Amendment No. 4 to EnerSys Registration Statement on Form S-1 (File No. 333-115553) filed on July 26, 2004). |

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- 4.2 Consent to Waiver dated as of November 1, 2007, between EnerSys, Morgan Stanley Dean Witter Capital Partners IV, L.P. and MSDW IV 892 Investors, L.P. (incorporated by reference to Exhibit 4.2 to EnerSys Annual Report on Form 10-K (File No. 001-32253) filed on June 11, 2008).
 - 4.3 Consent to Waiver dated as of February 2, 2008, by and between Morgan Stanley Dean Witter Capital Partners IV, L.P., MSDW IV 892 Investors, L.P. and EnerSys (incorporated by reference to Exhibit 4.3 to EnerSys Annual Report on Form 10-K (File No. 001-32253) filed on June 11, 2008).
 - 5.1 Opinion and consent of Stevens & Lee, P.C. regarding the legality of the shares of common stock being of the registrant offered hereby (filed herewith).
 - 10.1 EnerSys 2010 Equity Incentive Plan (incorporated by reference to Appendix A to EnerSys Definitive Proxy Statement on Schedule 14A (File No. 001-32253) filed on June 16, 2010).
 - 23.1 Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm (filed herewith).
 - 23.2 Consent of Stevens & Lee, P.C (included in Exhibit 5.1 and filed herewith).
 - 24.1 Powers of Attorney of Directors and Officers (included on signature page and filed herewith)

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. 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 a 20% 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:

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section 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 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; and

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration is on Form S-3 or Form F-3 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 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, or is contained in a form prospectus filed pursuant to Rule 424(b) that is part of 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 any 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 (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 therein, 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 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 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 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 that it has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Reading, Commonwealth of Pennsylvania, on August 5, 2010.

ENERSYS

By: /s/ JOHN D. CRAIG
John D. Craig,
Chairman, President, and
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Richard W. Zuidema, Michael J. Schmidtlein and Joseph G. Lewis, and each of them, his true and lawful attorney-in-fact, as agent with full power of substitution and resubstitution of him and in his name, place and stead, in any and all capacity, to sign any or all amendments to this Registration Statement for purposes of registering the shares allocated to the EnerSys 2010 Equity Incentive Plan, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto such attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as they might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their 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 and on the dates indicated.

| Signature | Capacity | Date |
|-------------------------------|---|----------------|
| /s/ JOHN D. CRAIG | Chairman, President, and Chief | August 5, 2010 |
| John D. Craig | Executive Officer and Director (Principal Executive Officer) | |
| /s/ MICHAEL J. SCHMIDTLEIN | Senior Vice President Finance and | August 5, 2010 |
| Michael J. Schmidtlein | Chief Financial Officer (Principal Financial Officer) | |
| /s/ KERRY M. KANE | Vice President, Corporate | August 5, 2010 |
| Kerry M. Kane | Controller and Principal Accounting Officer | |
| /s/ HWAN-YOON CHUNG | Director | August 5, 2010 |
| Hwan-yoon Chung | | |
| /s/ SEIFI GHASEMI | Director | August 5, 2010 |
| Seifi Ghasemi | | |

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/s/ HOWARD I. HOFFEN

Director

August 5, 2010

Howard I. Hoffen

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/s/ ARTHUR T. KATSAROS Director August 5, 2010

Arthur T. Katsaros

/s/ JOHN F. LEHMAN Director August 5, 2010

John F. Lehman

/s/ ROBERT MAGNUS Director August 5, 2010

General Robert Magnus, USMC (Retired)

/s/ DENNIS S. MARLO Director August 5, 2010

Dennis S. Marlo

/s/ JOSEPH C. MUSCARI Director August 5, 2010

Joseph C. Muscari