

SemiLEDs Corp
Form S-8
July 15, 2014

As filed with the Securities and Exchange Commission on July 15, 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

SEMILEDs CORPORATION

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-2735523
(I.R.S. Employer
Identification No.)

3F, No. 11 Ke Jung Rd., Chu-Nan Site,
Hsinchu Science Park, Chu-Nan 350,
Miao-Li County, Taiwan, R.O.C.

(Address of Principal Executive Offices)

2010 Equity Incentive Plan

(Full title of the plan)

National Corporate Research Ltd.

Process Agent

615 South DuPont Highway

Dover, DE 19901

(Name and address of agent for service)

1-(800)-483-1140

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

Copy to:

Brett Cooper

Thomas H. Tobiason

Orrick, Herrington & Sutcliffe LLP

405 Howard Street

San Francisco, CA 94105-2669

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. (Check one):

Large accelerated filer

Accelerated filer

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

Smaller reporting company

(Calculation of Registration Fee on following page)

CALCULATION OF REGISTRATION FEE

| Title of each class 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 |
|--|------------------------------------|--|--|-----------------------------------|
| Options and Rights to purchase Common Stock Under the 2010 Equity Incentive Plan | 2,500,000 | N/A | N/A | N/A |
| Common Stock, par value \$0.0000056 per share Under the 2010 Equity Incentive Plan | 2,500,000 | \$ 1.01505(2) | \$ 2,537,625(2) | \$ 326.85 |

- (1) Pursuant to Rule 416 under the Securities Act of 1933 as amended, this Registration Statement shall also cover any additional shares of Common Stock which become issuable under the Registrant's 2010 Equity Incentive Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the Registrant's outstanding shares of Common Stock.
- (2) The registration fee with respect to these shares has been computed in accordance with paragraphs (c) and (h) of Rule 457, based upon the average of the daily high and low prices of shares of the Common Stock on July 9, 2014, as reported by The Nasdaq Stock Market, Inc.

PART I

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Securities and Exchange Commission are hereby incorporated by reference in this Registration Statement:

- (a) Annual Report on Form 10-K for the fiscal year ended August 31, 2013 (File No.001-34992) filed with the Commission on November 26, 2013, as amended on December 30, 2013;
- (b) Quarterly Reports on Form 10-Q for the fiscal quarters ended November 30, 2013, February 28, 2014 and May 31, 2014 (File No. 001-34992) filed with the Commission on January 14, 2014, April 14, 2014 and July 15, 2014, respectively;
- (c) Current reports on Form 8-K filed with the Commission on September 24, 2013 and April 14, 2014; and
- (d) The description of Registrant's Capital Stock contained in Registrant's registration statement on Form 8-A, filed on December 2, 2010 pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by Registrant pursuant to Section 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, 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.

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 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers, as well as other employees and individuals, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee of or agent to the corporation. The statute provides that it is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise. The Registrant's restated certificate of incorporation to be in effect upon the completion of this offering provides for indemnification of its directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and the Registrant's amended and restated bylaws to be in effect upon the completion of this offering provide for indemnification of its directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law.

The Registrant maintains a directors and officers insurance policy which insures the officers and directors for any claim arising out of an alleged wrongful act by such persons in their respective capacities as one of the Company's officers or directors.

In addition, the Registrant has entered into indemnification agreements with its directors, officers and some employees containing provisions which are in some respects broader than the specific indemnification provisions contained in the Delaware General Corporation Law. The indemnification agreements may require the Registrant, among other things, to indemnify its directors against certain liabilities that may arise by reason of their status or service as directors and to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

**Exhibit
Number**

| | |
|------|--|
| 5.1 | Opinion of Orrick, Herrington & Sutcliffe LLP |
| 23.1 | Consent of KPMG, Independent Registered Public Accounting Firm |
| 23.2 | Consent of ShineWing Certified Public Accountants |
| 23.3 | Consent of Orrick, Herrington & Sutcliffe LLP (included in Exhibit 5.1) |
| 24.1 | Power of Attorney (included on page 5) |
| 99.1 | SemiLEDs Corporation 2010 Equity Incentive Plan, as amended effective as of April 10, 2014 (Incorporated herein by reference to Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended May 31, 2014. (File No. 001-34992, Exhibit 10.1) filed with the Commission on July 15, 2014. |

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 the registration statement:
- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

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(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) 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 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 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to 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 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 City of Hsinchu, Taiwan, on July 15, 2014.

SEMILEDs CORPORATION

By:

/s/ Trung Tri Doan
Trung Tri Doan

Chairman, Chief Executive Officer and President

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Trung Tri Doan and Timothy Lin and each of them, his true and lawful attorneys-in-fact and agents, each with the power of substitution and resubstitution, for him and in his name, place or stead, in any and all capacities, to sign any amendments to this Registration Statement on Form S-8, and to file such amendments, together with exhibits and other documents in connection therewith, with the Securities and Exchange Commission, granting to each 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 as he might or could do in person, and ratifying and confirming all that the attorneys-in-fact and agents, or his substitute or substitutes, may 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 | Title | Date |
|--------------------------------------|---|---------------|
| /s/ Trung Tri Doan Trung Tri Doan | Chairman and Chief Executive Officer (Principal Executive Officer) | July 15, 2014 |
| /s/ Timothy Lin Timothy Lin | Interim Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | July 15, 2014 |
| Arthur H. del Prado | Director | |

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/s/ Edward K. Hsieh
Dr. Edward Kuan Hsiung Hsieh

Director

July 15, 2014

/s/ Jack Lau
Dr. Jack Lau

Director

July 15, 2014

/s/ Scott R. Simplot
Scott R. Simplot

Director

July 15, 2014

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