

DIGITAL ANGEL CORP
Form S-8
April 12, 2002

As filed with the Securities and Exchange Commission on April 12, 2002

Registration No. 333-92471

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
Under
The Securities Act of 1933

DIGITAL ANGEL CORPORATION
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization)

52-1233960
(I.R.S. Employer Identification No.)

490 Villaume Avenue, South St. Paul MN
(Address of Principal Executive Offices)

55075
(Zip Code)

DIGITAL ANGEL CORPORATION
TRANSITION STOCK OPTION PLAN

(Full Title of the Plan)

Randolph K. Geissler
President
490 Villaume Avenue
South St. Paul, MN 55075
(Name and Address of Agent for Service)
(651) 455-1621
(Telephone Number, Including Area Code, of Agent for Service)

CALCULATION OF REGISTRATION FEE

| Title of Securities To Be Registered | Amount To Be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|--------------------------------|--|--|-----------------------------------|
| Common Stock, \$0.005 par value | 5,195,312 | \$0.73(1) | \$2,154,141 | \$199.00 |

- (1) Estimated in accordance with Rule 457 solely for the purpose of determining the registration fee. The fee with respect to 2,273,438 shares is based on \$0.05 per share, the price at which these options may be exercised, the fee with respect to 1,996,875 shares is based on \$0.73 per share, the price at which these options may be exercised, and the fee with respect to 924,999 shares is based on \$0.63 per share, the price at which these options may be exercised.
-

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The documents listed in (a) through (d) below are incorporated by reference into this Registration Statement. All documents filed by Digital Angel Corporation (the Registrant) with the Securities and Exchange Commission (the Commission) pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) subsequent to the date of the filing of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities registered hereunder have been sold, or that de-registers all securities then remaining unsold, shall be deemed to be incorporated by reference in the Registration Statement and to be a part hereof from the date of the filing of such documents.

- (a) The Registrant's Annual Report on Form 10-KSB for the fiscal year ended October 31, 2001;
- (b) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Exchange Act since October 31, 2001, including the Registrant's Form 10-QSB for the quarter ended January 31, 2002;
- (c) The Registrant's Proxy Statement dated February 14, 2002, for its Special Meeting of Stockholders held on March 18, 2002, that was filed with the Commission on February 14, 2002; and
- (d) The description of the Registrant's common stock contained in the Form 8-A/A Registration Statement filed with the Commission on August 12, 1999 under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The legality of the common stock offered hereby has been passed upon for the Registrant by Baker & Hostetler LLP, Washington, D.C.

Item 6. Indemnification of Directors and Officers.

As permitted under the Delaware General Corporation Law, the Registrant's Certificate of Incorporation eliminates the personal liability of a director to the Registrant and its stockholders for monetary damages for breach of fiduciary duty of care as a director. Liability is not eliminated or limited for (i) any breach of the director's duty of loyalty to the Registrant or its stockholders; (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) unlawful payment of dividends or stock purchases or redemptions pursuant to Section 174 of the Delaware General Corporation Law; or (iv) any transaction from which the director derived an improper personal benefit.

The Registrant's bylaws also provide for indemnification of officers, directors, employees and agents of the Registrant to the full extent allowed by Delaware law, provided that, in the event of an action or suit by or in the right of the Registrant, the person shall be indemnified only to the extent of his expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of the action or suit and not for judgments, fines or amounts paid in settlement. The Delaware General Corporation Law authorizes indemnification of officers, directors and persons serving other entities in certain capacities at the request of the corporation, subject to certain conditions and limitations set forth therein, against all expenses and liabilities incurred by or imposed upon them as a result of actions, suits and proceedings brought against them in such capacity 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.

The Registrant maintains a directors' and officers' insurance policy that insures the officers and directors of the Registrant from any claim arising out of an alleged wrongful act by such persons in their respective capacities as officers and directors of the Registrant.

Item 7. Exemption From Registration Claimed

Not applicable.

Item 8. Exhibits.

| Exhibit Number | Description of Exhibit |
|----------------|--|
| 4.1 | Digital Angel Corporation Transition Stock Option Plan |
| 5.1 | Opinion of Baker & Hostetler LLP as to legality of the common stock and interests in the Plan being registered |
| 23.1 | Consent of BDO Seidman, LLP |
| 23.2 | Consent of Baker & Hostetler LLP (included in Opinion filed as Exhibit 5 hereto) |
| 24.1 | Powers of Attorney (included at page II-4) |

Item 9. Undertakings.

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 to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the Securities Act), which reflects any facts or events which, individually or together, represent a fundamental change in the information in this Registration Statement, and 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;
- (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; and
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

The undersigned Registrant further 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.

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 a 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

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 South St. Paul, State of Minnesota, on this 12th day of April, 2002.

DIGITAL ANGEL CORPORATION

By: /s/ Randolph K. Geissler

 Randolph K. Geissler
 President

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Randolph K. Geissler and James P. Santelli, or either of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all post-effective amendments to this Registration Statement, and to file the same with all exhibits hereto, and other documents in connection herewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed on April 12, 2002 by the following persons in the capacities indicated below.

| Signature | Title |
|-----------------------------------|--|
| _____ /s/ Randolph G. Geissler | President, Chief Executive Officer and Director (Principal Executive Officer) |
| _____ Randolph G. Geissler | |
| _____ /s/ James P. Santelli | Vice President Finance and Chief Financial Officer |
| _____ James P. Santelli | |
| _____ /s/ Richard J. Sullivan | Director |
| _____ Richard J. Sullivan | |
| _____ /s/ Kenneth D. Larson | Director |
| _____ Kenneth D. Larson | |
| _____ /s/ Richard S. Friedland | Director |
| _____ Richard S. Friedland | |
| _____ /s/ Howard S. Weintraub | Director |
| _____ Howard S. Weintraub | |

EXHIBIT INDEX

| Exhibit Number | Description of Exhibit |
|-----------------------|--|
| 4.1 | Digital Angel Corporation Transition Stock Option Plan |
| 5.1 | Opinion of Baker & Hostetler LLP as to legality of the common stock and interests in the Plan being registered |
| 23.1 | Consent of BDO Seidman, LLP |
| 23.2 | Consent of Baker & Hostetler LLP (included in Opinion filed as Exhibit 5 hereto) |
| 24.1 | Powers of Attorney (included at page II-4) |