

NANOMETRICS INC  
Form S-8  
August 25, 2011

As filed with the Securities and Exchange Commission on August 25, 2011

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**NANOMETRICS INCORPORATED**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

1550 Buckeye Drive

**94-2276314**  
(I.R.S. Employer Identification No.)

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Milpitas, California 95035

(Address of principal executive offices, including zip code)

**2005 EQUITY INCENTIVE PLAN**

(Full title of the plan)

**Ronald W. Kisling**

**1550 Buckeye Drive**

**Milpitas, California 95035**

**408-545-6000**

(Name, address and telephone number, including area code, of agent for service)

*Copy to:*

**Danielle Benderly**

**Perkins Coie LLP**

**1120 N.W. Couch Street, Tenth Floor**

**Portland, Oregon 97209-4128**

**503-727-2000**

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

Smaller reporting company

(Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to Be Registered</b>	<b>Amount to Be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Share(2)</b>	<b>Proposed Maximum Aggregate Offering Price(2)</b>	<b>Amount of Registration Fee(2)</b>
Common Stock, \$0.001 par value, under the 2005 Equity Incentive Plan	2,000,000	\$14.87	\$29,740,000.00	\$3,452.82

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- (1) Plus an indeterminate number of additional shares that may be issued as a result of an adjustment to the number of shares to be issued pursuant to the plan resulting from any future stock split, stock dividend or similar adjustment of the Registrant's outstanding Common Stock.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 under the Securities Act of 1933, as amended. The Proposed Maximum Offering Price Per Share is estimated to be \$14.87 based on the average of the high sales price (\$15.24) and the low sales price (\$14.50) for the Registrant's Common Stock as reported by the Nasdaq Global Market on August 22, 2011.

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**PART II**

**INFORMATION REQUIRED IN REGISTRATION STATEMENT**

**Item 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

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

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended January 1, 2011, filed on March 14, 2011, which contains audited financial statements for the most recent fiscal year for which such statements have been filed;

(b) The Registrant's Quarterly Reports on Form 10-Q for the quarter ended April 2, 2011, filed on May 11, 2011 and for the quarter ended July 2, 2011, filed on and August 10, 2011;

(c) The Registrant's Current Report on Form 8-K filed on June 1, 2011; and

(d) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed on April 29, 2008, including any amendments or reports 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 after the date hereof, and prior to the filing of a post-effective amendment that indicates that the securities offered hereby have been sold or which deregisters the securities covered hereby then remaining unsold, shall also be deemed to be incorporated by reference into this Registration Statement and to be a part hereof commencing on the respective dates on which such documents are filed.

**Item 4. DESCRIPTION OF SECURITIES**

Not applicable.

**Item 5. INTERESTS OF NAMED EXPERTS AND COUNSEL**

None.

**Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 145 of the Delaware General Corporation Law authorizes a corporation to indemnify its directors and officers against liabilities arising out of actions, suits and proceedings to which they are made or threatened to be made a party by reason of the fact of their prior or current service to the Company as a director or officer, in accordance with the provisions of Section 145, which are sufficiently broad to permit indemnification under certain circumstances for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act"). The indemnity may cover expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by the director or officer in connection with any such action, suit or proceeding. Section 145 permits corporations to pay expenses (including attorneys' fees) incurred by directors and officers in advance of the final disposition of such action, suit or proceeding. In addition, Section 145 provides that a corporation has the power to purchase and maintain insurance on behalf of its directors and officers against any liability asserted against them and incurred by them in their capacity as a director or officer, or arising out of their status as such, whether or not the corporation would have the power to indemnify the director or officer against such liability under Section 145. Our bylaws provide that, to the fullest extent permitted by the Delaware General Corporation Law, we shall indemnify any director or officer of Nanometrics who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director,

officer, employee or agent of Nanometrics or is or was serving at the request of Nanometrics as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such proceeding. Notwithstanding the foregoing, our bylaws further provide that Nanometrics shall be required to indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by our board of directors.

Section 102 of the Delaware General Corporation Law allows a corporation to include in its certificate of incorporation a provision that eliminates the personal liability of the directors of that corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. To the fullest extent permitted by the Delaware General Corporation Law, our Certificate of Incorporation eliminates a director's personal liability for monetary damages to Nanometrics and its stockholders arising from a breach of fiduciary duty as a director.

We have entered into indemnification agreements with our officers and directors, which agreements are intended to provide our officers and directors with indemnification to the maximum extent permitted under the Delaware General Corporation Law. We also have obtained an insurance policy covering our directors and officers with respect to certain liabilities, including liabilities arising under the Securities Act.

#### **Item 7. EXEMPTION FROM REGISTRATION CLAIMED**

Not applicable.

#### **Item 8. EXHIBITS**

Exhibit Number	Description
5.1	Opinion of Perkins Coie LLP regarding legality of the Common Stock being registered
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of BDO USA, LLP (formerly known as BDO Seidman, LLP)
23.3	Consent of Perkins Coie LLP (included in Exhibit 5.1)
24.1	Power of Attorney (see signature page)
99.1	2005 Equity Incentive Plan (incorporated by reference to the Registrant's Definitive Proxy Statement on Schedule 14A for the 2011 Annual Meeting of Stockholders filed on April 13, 2011 (File No. 000-13470))

#### **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:

(a) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(b) To reflect in the prospectus any facts or events arising after the effective date of this 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 this Registration Statement; and

(c) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (1)(a) and (1)(b) above do not apply if 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 15(d) of the Exchange Act that are incorporated by reference in this 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 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefits plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this 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 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 Milpitas, State of California, on August 25, 2011.

NANOMETRICS INCORPORATED

/s/ RONALD W. KISLING

By: Ronald W. Kisling

Chief Financial Officer

**POWER OF ATTORNEY**

Each person whose signature appears below authorizes Timothy J. Stultz and Ronald W. Kisling, or either of them, as attorneys-in-fact with full power of substitution, to execute in the name and on the behalf of each person, individually and in each capacity stated below, and to file, any and all amendments to this Registration Statement, including any and all post-effective amendments.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated below on August 25, 2011.

<b>Signature</b>	<b>Title</b>
/s/ Timothy J. Stultz Timothy J. Stultz	President, Chief Executive Officer and Director (Principal Executive Officer)
/s/ Ronald W. Kisling Ronald W. Kisling	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
/s/ Bruce C. Rhine Bruce C. Rhine	Chairman of the Board of Directors
/s/ Howard Bain III Howard Bain III	Director
/s/ J. Thomas Bentley J. Thomas Bentley	Director
/s/ Norman Coates Norman Coates	Director
/s/ Stephen G. Newberry Stephen G. Newberry	Director
/s/ William G. Oldham William G. Oldham	Director
/s/ Stephen J. Smith Stephen J. Smith	Director

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