

Ocean Power Technologies, Inc.
Form S-3
February 12, 2016

As filed with the Securities and Exchange Commission on February 12, 2016

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

OCEAN POWER TECHNOLOGIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware **22-2535818**
(State or Other Jurisdiction of (I.R.S. Employer

Incorporation or Organization) Identification Number)

1590 Reed Road

Pennington, New Jersey 08534

(609) 730-0400

(Address, Including Zip Code, and Telephone Number, Including Area Code, of registrant's principal executive offices)

Mark Featherstone

Chief Financial Officer

1590 Reed Road

Pennington, New Jersey 08534

(609) 730-0400

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

With a Copy to:

Ellen Canan Grady, Esq.

Cozen O'Connor

1650 Market Street, Suite 2800

Philadelphia, PA 19103

(215) 665-5583

From time to time after the effective date of this Registration Statement as determined by the Registrant

(Approximate date of commencement of proposed sale to the public)

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 Each Class of Securities to be Registered(1) | Amount to be Registered | Proposed | | Amount of Registration Fee(2) |
|--|-------------------------|---------------------------------|----------------------------------|-------------------------------|
| | | Maximum Offering Price Per Unit | Maximum Aggregate Offering Price | |
| Common Stock, par value \$0.001 per share | (3) | (3) | (3) | — |
| Preferred Stock, par value \$0.001 per share | (3) | (3) | (3) | — |
| Debt Securities | (3) | (3) | (3) | — |
| Warrants to Purchase Shares of Common Stock, Shares of Preferred Stock or other securities | (3) | (3) | (3) | — |
| Rights to Purchase Shares of Common Stock, Shares of Preferred Stock or other securities | (3) | (3) | (3) | — |
| Units | (3) | (3) | (3) | — |

Total (3) (3) \$15,000,000 \$ (4)

The offered securities may be sold separately, (1) together or as units with other offered securities.

(2) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, as amended, or the "Securities Act," based on the proposed maximum offering price of all the securities listed. Pursuant to Rule 415(a)(6) under the Securities Act, the securities registered pursuant to this registration statement, or the "Registration Statement," include unsold securities previously registered by the Registrant on the Registrant's Registration Statement on Form S-3 (Registration No. 333-186181) originally filed on January 24, 2013 and declared effective on February 15, 2013, or the "Prior Registration

Statement.” The Prior
Registration
Statement registered
the offer and sale of
an indeterminate
number of shares of
common stock,
preferred stock, debt
securities, warrants,
rights, and units of
the Company with an
aggregate initial
offering price not to
exceed \$40,000,000,
\$17,969,304 of which
securities remain
unsold as the date of
filing of this
Registration
Statement, or the
“Unsold Securities.”
Pursuant to
Rule 415(a)(6) under
the Securities Act,
\$15,000,000 of the
Unsold Securities are
being carried over to
this registration
statement, and the
filing fee of \$2,046
relating to the Unsold
Securities under the
Prior Registration
Statement will
continue to be
applied to such
securities registered
pursuant to this
Registration
Statement. To the
extent that, after the
filing date hereof and
prior to the
effectiveness of this
Registration
Statement, the
Registrant sells any
Unsold Securities
pursuant to the Prior
Registration
Statement, the

Registrant will identify in a pre-effective amendment to this Registration Statement the updated amount of Unsold Securities from the Prior Registration Statement to be included in this Registration Statement pursuant to Rule 415(a)(6). Pursuant to Rule 415(a)(6) under the Securities Act, the offering of the Unsold Securities under the Prior Registration Statement will be deemed terminated as of the date of effectiveness of this Registration Statement.

(3) There are being registered hereunder such indeterminate number of shares of common stock, shares of preferred stock, principal amount of debt securities, such indeterminate number of warrants to purchase common stock, preferred stock or debt securities and such indeterminate number of units as shall have an aggregate initial offering price not to exceed \$15,000,000. If any debt securities are issued at an original issue discount, then the principal amount of such debt securities shall be in such greater amount as shall result in an aggregate initial offering price not to exceed \$15,000,000, less the aggregate dollar amount of all securities previously issued hereunder. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. The securities registered also include such indeterminate number of shares of common stock and preferred stock and amount of debt securities as may be issued upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or pursuant to the anti-dilution provisions of any such securities. In addition, pursuant to Rule 416 under the Securities Act, the shares being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions. Pursuant to Rule 457(o), the table does not specify by each class information as to the amount to be registered, proposed maximum offering price per unit or proposed maximum aggregate offering price. Unless otherwise indicated in an amendment to this filing, no separate consideration will be received for common stock, preferred stock or debt securities that are issued upon conversion or exchange of debt securities, preferred stock, warrants, or rights registered hereunder.

(4) Pursuant to Rule 457(p), the filing fee of \$2,046 relating to the Unsold Securities under the Prior Registration Statement was previously paid. See footnote (2) above. The Registrant is not registering any new securities in addition to the Unsold Securities on this Registration Statement and, therefore, no additional filing fee is payable.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Registration Statement contains:

a base prospectus which covers the offering, issuance and sale by the registrant of up to a maximum aggregate offering price of \$15,000,000 of the registrant's common stock, preferred stock, debt securities, warrants, rights and/or units; and

a prospectus supplement covering the offering, issuance and sale by the registrant of up to a maximum aggregate offering price of \$1,345,499 of the registrant's common stock that may be issued and sold from time to time under a sales agreement with H.C. Wainwright & Co., LLC.

The base prospectus immediately follows this explanatory note. The specific terms of any securities to be offered pursuant to the base prospectus will be specified in a prospectus supplement to the base prospectus. The prospectus supplement immediately follows the base prospectus. The \$1,345,499 of common stock that may be offered, issued and sold by the registrant under the prospectus supplement is included in the \$15,000,000 of securities that may be offered, issued and sold by the registrant under the base prospectus.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is declared effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS

SUBJECT TO COMPLETION, DATED FEBRUARY 12, 2016

\$15,000,000

Common Stock
Preferred Stock
Debt Securities
Warrants
Rights
Units

Ocean Power Technologies, Inc. from time to time may offer, issue and sell, together or separately, (i) shares of common stock; (ii) shares of preferred stock; (iii) debt securities, which may be senior debt securities, senior subordinated debt securities or subordinated debt securities; (iv) warrants to purchase common stock, preferred stock or other securities; (v) rights to purchase common stock, preferred stock or other securities; and (vi) units consisting of two or more classes of the securities registered hereunder.

This prospectus contains a general description of the securities we may offer. Each time we issue the securities we will provide a prospectus supplement containing specific information about the terms of that issuance, which also may add, update or change information contained in this prospectus. You should read carefully this prospectus and any applicable supplements before deciding to invest.

The aggregate of the offering prices of the securities covered by this prospectus will not exceed \$15,000,000.

Our common stock is listed on The NASDAQ Capital Market under the symbol "OPTT." We expect that any common stock sold pursuant to a prospectus supplement will be listed on such exchange, subject to official notice of issuance. Any prospectus supplement will contain information, where applicable, as to any other listing on The NASDAQ Capital Market or any other securities exchange of the other securities covered by the prospectus supplement. On October 27, 2015, we filed a Certificate of Amendment to our Certificate of Incorporation to effect a one-for-10 reverse stock split of our common stock and to decrease our authorized shares of common stock to 50 million shares. All share and per share data included in this Prospectus Supplement has been retroactively restated to reflect the reverse stock split.

As of February 11, 2016, the aggregate market value of our common stock held by non-affiliates was \$4,791,306, based on an aggregate of 1,953,233 shares outstanding, of which 1,893,797 were held by non-affiliates, and the closing price of the common stock on The Nasdaq Capital Market of \$2.53 per share on December 14, 2015. During the twelve calendar months preceding the date of this prospectus, we sold \$251,603 in value of securities in reliance on General Instruction I.B.6 of Form S-3.

The securities may be sold directly to investors, through agents designated from time to time or to or through underwriters or dealers. See “Plan of Distribution” on page 28 of this prospectus. If any agents or underwriters are involved in the sale of any securities in respect of which this prospectus is being delivered, the names of such agents or underwriters and any applicable commissions or discounts will be set forth in the applicable prospectus supplement. The net proceeds we expect to receive from such sale also will be set forth in the applicable prospectus supplement.

This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement.

Consider carefully the Risk Factors on page 2, in any accompanying prospectus supplement, and in the reports we file with the Securities and Exchange Commission that are incorporated by reference into this prospectus before deciding to invest in any of these securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus or any accompanying prospectus supplement is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is , .

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ABOUT THIS PROSPECTUS

Unless the context otherwise requires, we use the terms “Company,” “we,” “us,” and “our” to refer to Ocean Power Technologies, Inc. or to Ocean Power Technologies, Inc. and its subsidiaries.

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration. Under this shelf registration, we may sell any combination of the securities described in this prospectus in one or more offerings up to an aggregate initial offering price of \$15,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell the securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus.

For general information about the distribution of securities offered, please see “Plan of Distribution” on page 28 of this prospectus. You should read both this prospectus and any prospectus supplement, together with the additional information described in “Where You Can Find More Information” and “Incorporation of Certain Information by Reference,” before you decide whether to invest in any of the securities.

You should rely only on the information contained in, or incorporated by reference into, this prospectus and any applicable prospectus supplement. You may obtain the information incorporated by reference into this prospectus without charge by following the instructions under “Where You Can Find More Information” and “Incorporation of Certain Information by Reference” below. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities or soliciting an offer to buy the securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

This prospectus summarizes certain documents and other information, and we refer you to them for a more complete understanding of what we discuss in this prospectus. In making an investment decision, you must rely on your own examination of our Company and the terms of this offering and the securities, including the merits and risks involved.

We are not making any representation to any purchaser of the securities regarding the legality of an investment in the securities by such purchaser. You should not consider any information in this prospectus to be legal, business or tax advice. You should consult your own attorney, business advisor or tax advisor for legal, business and tax advice regarding an investment in the securities.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

In addition to historical information, this prospectus supplement and the accompanying base prospectus, including the information incorporated by reference into this prospectus supplement and the accompanying base prospectus, contain statements relating to future events or our future financial position, business strategy, pending, threatened and current litigation, liquidity, budgets, projected costs, plans and objectives of management for future operations. These statements are forward-looking statements within the meaning of the United States Private Securities Litigation Reform Act of 1995. Generally, words such as “may,” “will,” “should,” “could,” “would,” “anticipate,” “expect,” “intend,” “es,” “plan,” “project,” “continue,” “goal” and “believe,” or other variations on these and other similar expressions identify forward-looking statements. Forward-looking statements are only predictions and, as such, are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. Forward-looking statements are based upon our assumptions as to future events or our future financial performance that may not prove to be accurate. These statements speak only as of the date they were made, and we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated, and actual results could differ materially from those anticipated or implied by the forward-looking statements. The forward-looking statements, as well as our prospects as a whole, are subject to risks and uncertainties, including the following:

- our estimates regarding expenses, future revenues and capital requirements;
- the adequacy of our cash balances and our need for additional financings;
 - our ability to develop and manufacture a commercially viable PowerBuoy product;
 - that we will be successful in our efforts to commercialize our PowerBuoy or the timetable upon which commercialization can be achieved, if at all;
- our ability to identify and penetrate markets for our PowerBuoys and our wave energy technology;
- our ability to implement our commercialization strategy as planned, or at all;
- our ability to maintain the listing of our common stock on The NASDAQ Capital Market;
- the reliability of our technology and our PowerBuoys;
- our ability to improve the power output, survivability and reliability of our PowerBuoys;
- the impact of pending and threatened litigation on our business, financial condition and liquidity;
- changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;
- our ability to compete effectively in the renewable energy market;
- our limited operating history and history of operating losses;
- our sales and marketing capabilities and strategy in the United States and internationally; and
- our ability to protect our intellectual property portfolio.

For more information regarding these risks and uncertainties as well as certain additional risks that we face, investors should review the risks described in this prospectus supplement and the accompanying base prospectus and those incorporated by reference into this prospectus supplement and the accompanying base prospectus, including those risks contained in our most recent Annual Report on Form 10-K and our subsequent Quarterly Reports on Form 10-Q, as updated by our subsequent filings under the Securities Exchange Act of 1934, as amended, or the Exchange Act. We caution you not to place undue reliance on these forward-looking statements, which are current only as of the date

on which we filed this prospectus.

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OCEAN POWER TECHNOLOGIES, INC.

We are developing and seeking to commercialize proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. Our PowerBuoy® systems use proprietary technologies to convert the mechanical energy created by the rising and falling of ocean waves into electricity. We currently continue to develop our PowerBuoy line, which consists of our autonomous PowerBuoy system. Since fiscal 2002, the U.S. Navy and other government agencies have accounted for a significant portion of our revenues. These revenues were largely for the support of our product development efforts. Our goal, over time, is that an increased portion of our revenues be from the sale of products and services, as compared to revenue to support our product development efforts. As we continue to advance our proprietary technologies and develop our products, we expect to have a net use of cash from operating activities unless and until we achieve positive cash flow from the planned commercialization of our products and services.

Our principal executive offices are located at 1590 Reed Road, Pennington, New Jersey 08534, and our telephone number is (609) 730-0400. The Company was incorporated in New Jersey in 1984 and reincorporated in Delaware in 2007. We maintain a website at www.oceanpowertechnologies.com where general information about us is available. We are not incorporating the contents of the website into this prospectus supplement or the accompanying base prospectus.

RISK FACTORS

Investing in our securities involves substantial risk. You should carefully consider the risk factors contained in our most recent Annual Report on Form 10-K and our subsequent Quarterly Reports on Form 10-Q, which are incorporated by reference herein, and the other information contained in this prospectus, as updated by our subsequent filings under the Securities Exchange Act of 1934, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of such securities. These risks could have a material adverse effect on our business, results of operations or financial condition and cause the value of our securities to decline. You could lose all or part of your investment.

This prospectus and any prospectus supplement also contain or incorporate by reference forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of certain factors, including the risk factors faced by us described or incorporated by reference in this prospectus or any prospectus supplement. See “Cautionary Statement Regarding Forward-Looking Information.”

USE OF PROCEEDS

We do not currently know the number or types of securities that ultimately will be sold pursuant to this prospectus or the prices at which such securities will be sold. Unless otherwise specified in a prospectus supplement accompanying this prospectus, we intend to use the net proceeds of any sale of securities under this prospectus for any combination of working capital, capital expenditures, and general business purposes, including additional development and deployments of our PowerBuoy systems. Until we use the net proceeds in the manner described above, we may temporarily use them to make short-term investments.

GENERAL DESCRIPTION OF THE OFFERED SECURITIES

We may from time to time offer under this prospectus, separately or together:

common stock;

preferred stock;

senior, senior subordinated or subordinated debt securities;

warrants to purchase from us shares of our common stock, preferred stock or other securities;