

ADVANCED DRAINAGE SYSTEMS, INC.

Form S-8

July 30, 2014

As filed with the Securities and Exchange Commission on July 30, 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

Advanced Drainage Systems, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

4640 Trueman Boulevard

Hilliard, Ohio 43026

51-0105665
(I.R.S. Employer

Identification Number)

(614) 658-0050

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Advanced Drainage Systems, Inc. Amended 2000 Incentive Stock Option Plan

Advanced Drainage Systems, Inc. 2008 Restricted Stock Plan

Advanced Drainage Systems, Inc. 2013 Stock Option Plan

Advanced Drainage Systems, Inc. Non-Employee Director Compensation Plan

Advanced Drainage Systems, Inc. Employee Stock Ownership Plan

(Full title of the plan)

Joseph A. Chlapaty

Chairman, President & Chief Executive Officer

4640 Trueman Boulevard

Hilliard, Ohio 43026

(614) 658-0050

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

Copies to:

Fredric L. Smith, Esq.

Squire Patton Boggs (US) LLP

41 South High Street, Suite 2000

Columbus, Ohio 43215

(614) 365-2700

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 (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered(1)	Amount to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.01 par value per share -issuable under the Advanced Drainage Systems, Inc. Amended 2000 Incentive Stock Option Plan	2,031,987(2)	\$9.48(3)	\$19,263,236.76	\$2,481.10
-issuable under the Advanced Drainage Systems, Inc. 2008 Restricted Stock Plan	333,397	\$16.00(4)	\$5,334,352.00	\$687.06
-issuable under the Advanced Drainage Systems, Inc. 2013 Stock Option Plan	3,323,142	\$13.64(5)	\$45,327,656.88	\$5,838.20
-issuable under the Advanced Drainage Systems, Inc. Non-Employee Director Compensation Plan	282,420	\$16.00(4)	\$4,518,720.00	\$582.01
-issuable upon conversion of convertible preferred stock held by the Advanced Drainage Systems, Inc. Employee Stock Ownership Plan	20,099,093(6)	\$16.00(4)	\$321,585,488.00	\$41,420.21
Total	26,070,039		\$396,029,453.64	\$51,008.59

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers an indeterminate number of additional shares of common stock, par value \$0.01 per share (Common Stock), of Advanced Drainage Systems, Inc. (ADS or the Company or the Registrant), which may be offered and issued under the plans by reason of any stock dividends, stock splits, recapitalizations or other similar transactions effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.

(2)

Represents shares of Common Stock reserved for future issuance under the Registrant's Amended 2000 Incentive Stock Option Plan, as amended (the 2000 Plan) upon the exercise of outstanding options granted under the 2000 Plan. No further option grants will be made under the 2000 Plan, although existing stock option grants continue to vest and grant recipients may continue to receive reload options in the event that an option holder exercises an option and pays some or all of the option price with shares of Common Stock. In such case the option holder will receive a reload option to purchase the same number of shares as used to pay the exercise price.

- (3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are calculated using a weighted average exercise price of approximately \$9.48 per share for options issued and outstanding under the 2000 Plan based on exercise prices for such shares ranging from \$4.54 to \$13.64 per share.
- (4) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act. The fee is based on a price of \$16.00 per share of Common Stock, which is the initial public offering price as set forth in the Registrant's prospectus filed on July 28, 2014, pursuant to Rule 424(b) of the Securities Act (File No. 333-194980).
- (5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) of the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are calculated using the exercise price of \$13.64 per share for options issued and outstanding under the 2013 Stock Option Plan.
- (6) Represents shares of Common Stock reserved for future issuance upon the conversion of 26,129,868 shares of 2.5% Cumulative Convertible Voting Preferred Stock (ESOP Preferred) held by the Advanced Drainage Systems, Inc. Employee Stock Ownership Plan trustee on behalf of the Advanced Drainage Systems, Inc. Employee Stock Ownership Plan. Upon distribution or other transfer of ESOP Preferred to any person other than the ESOP trustee, each share, upon such transfer, will be automatically converted into 0.7692 shares of Common Stock.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The document(s) containing the information specified in Part I have been or will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. Such documents are not being filed with the Securities and Exchange Commission (the Commission) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by Advanced Drainage Systems, Inc. (ADS or the Company or the Registrant) pursuant to the Securities Act of 1933, as amended (the Securities Act) and the Securities Exchange Act of 1934, as amended the (Exchange Act), are hereby incorporated by reference in this Registration Statement:

- (1) The Company's Registration Statement on Form S-1 (File No. 333-194980) filed with the Commission on April 2, 2014 and any amendment thereto;
- (2) The Company's Prospectus filed pursuant to Rule 424(b) of the Securities Act (File No. 333-194980), relating to the Registration Statement on Form S-1 and any amendments thereto, filed with the Commission on July 28, 2014; and
- (3) The description of the Company's common stock set forth in the Company's registration statement on Form 8-A, filed on July 22, 2014 (File No. 001-36557), pursuant to Section 12(b) of the Exchange Act, including all other amendments and reports filed for the purpose of updating such description.

All documents that the Company subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement (except for any portions of the Company's Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with Commission), and prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

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 other 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 a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

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Item 6. Indemnification of Directors and Officers.

The Company is incorporated under the laws of the State of Delaware.

Section 145(a) of the General Corporation Law of the State of Delaware, or the DGCL, provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person 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 the person's conduct was unlawful.

Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145 of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145(e) of the DGCL provides that expenses, including attorneys' fees, incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in Section 145 of the DGCL. Such expenses, including attorneys' fees, incurred by former directors and officers or other persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Section 145(g) of the DGCL specifically allows a Delaware corporation to purchase liability insurance on behalf of its directors and officers and to insure against potential liability of such directors and officers regardless of whether the corporation would have the power to indemnify such directors and officers under Section 145 of the DGCL.

The Company's Amended and Restated Certificate of Incorporation contains provisions permitted under the DGCL relating to the liability of directors. These provisions eliminate a director's personal liability to the fullest extent permitted by the DGCL for monetary damages resulting from a breach of fiduciary duty, except in circumstances

involving:

any breach of the director's duty of loyalty;

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acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law;

under Section 174 of the DGCL (unlawful dividends); or

any transaction from which the director derives an improper personal benefit.

The Company's Amended and Restated Certificate of Incorporation and Second Amended and Restated Bylaws require the Company to indemnify and advance expenses to its directors and officers to the fullest extent not prohibited by the DGCL and other applicable law, except in the case of a proceeding instituted by the director without the approval of the Company's board of directors. The Company's Amended and Restated Certificate of Incorporation and Second Amended and Restated Bylaws provide that the Company is required to indemnify its directors and officers, to the fullest extent permitted by law, for all judgments, fines, settlements, legal fees and other expenses incurred in connection with pending or threatened legal proceedings because of the director's or officer's positions with the Company or another entity that the director or officer serves at the Company's request, subject to various conditions, and to advance funds to the Company's directors and officers to enable them to defend against such proceedings. To receive indemnification, the director or officer must have been successful in the legal proceeding or have acted in good faith and in what was reasonably believed to be a lawful manner in the Company's best interest and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 102(b)(7) of the DGCL permits a Delaware corporation to include a provision in its certificate of incorporation eliminating or limiting the personal liability of directors to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. This provision, however, may not eliminate or limit a director's liability (1) for breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL, or (4) for any transaction from which the director derived an improper personal benefit. The Company's Amended and Restated Certificate of Incorporation contains such a provision.

The Company has entered into indemnification agreements with its directors and certain of its officers. The indemnification agreements provide the directors and officers with contractual rights to the indemnification and expense advancement rights provided under the Company's amended and restated bylaws, as well as contractual rights to additional indemnification as provided in the indemnification agreements.

The Company has obtained directors' and officers' liability insurance which insures against certain liabilities that the Company's directors and officers and the Company's subsidiaries' directors and officers may, in such capacities, incur.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

For a list of exhibits, see the Index of Exhibits in this Registration Statement, which is incorporated herein by reference.

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.

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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.

(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) 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 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 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, as amended, Advanced Drainage Systems, Inc. has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Hilliard, State of Ohio, on July 30, 2014.

ADVANCED DRAINAGE SYSTEMS, INC.

By: /s/ Joseph A. Chlapaty
Name: Joseph A. Chlapaty
Title: President and Chief Executive

Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities indicated on July 30, 2014.

Signature	Title
/s/ Joseph A. Chlapaty Joseph A. Chlapaty	Chairman of the Board of Directors, Director, President and Chief Executive Officer (Principal Executive Officer)
/s/ Mark B. Sturgeon Mark B. Sturgeon	Executive Vice President, Chief Financial Officer, Secretary and Treasurer (Principal Financial Officer and Principal Accounting Officer)
* Robert M. Eversole	Director
* Alexander R. Fischer	Director
* Tanya Fratto	Director
* M.A. (Mark) Haney	Director
* David L. Horing	Director
*	Director

C. Robert Kidder

*

Director

Mark A. Lovett

*

Director

Richard A. Rosenthal

*

Director

Abigail S. Wexner

Signature

Title

* By: /s/ Joseph A. Chlapaty
Joseph A. Chlapaty
Attorney in Fact

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INDEX OF EXHIBITS

Exhibit	Number	Description of Document
	3.1	Amended and Restated Certificate of Incorporation of Advanced Drainage Systems, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 333-194980) filed with the Commission on July 30, 2014).#
	3.2	Second Amended and Restated Bylaws of Advanced Drainage Systems, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 333-194980) filed with the Commission on July 30, 2014).#
	4.1	Advanced Drainage Systems, Inc. Amended 2000 Incentive Stock Option Plan (incorporated by reference to Exhibit 10.9 to the Registrant's Amendment No. 3 to Form S-1 Registration Statement (File No. 333-194980) filed with the Commission on June 20, 2014).#
	4.2	Advanced Drainage Systems, Inc. 2008 Restricted Stock Plan (incorporated by reference to Exhibit 10.10 to the Registrant's Amendment No. 3 to Form S-1 Registration Statement (File No. 333-194980) filed with the Commission on June 20, 2014).#
	4.3	Advanced Drainage Systems, Inc. 2013 Stock Option Plan (incorporated by reference to Exhibit 10.11 to the Registrant's Amendment No. 3 to Form S-1 Registration Statement (File No. 333-194980) filed with the Commission on June 20, 2014).#
	4.4	Advanced Drainage Systems, Inc. Non-Employee Director Compensation Plan (incorporated by reference to Exhibit 10.8 to the Registrant's Amendment No. 4 to Form S-1 Registration Statement (File No. 333-194980) filed with the Commission on July 2, 2014).#
	4.5	Advanced Drainage Systems, Inc. Employee Stock Ownership Plan, as amended.
	5.1	Opinion of Squire Patton Boggs (US) LLP.
	23.1	Consent of Deloitte & Touche LLP.
	23.2	Consent of Squire Patton Boggs (US) LLP (included as part of Exhibit 5.1).
	24.1	Power of Attorney.

Filed herewith.

Previously filed.