

ILLUMINA INC
Form S-8
May 22, 2002

Table of Contents

As filed with the Securities and Exchange Commission on May 22, 2002

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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

ILLUMINA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

33-0804655
(IRS Employer Identification No.)

9885 Towne Centre Drive
San Diego, California 92121

(Address of principal executive offices) (Zip Code)

2000 Stock Plan

(Full title of the Plan)

Jay T. Flatley
Chief Executive Officer and President
Illumina, Inc.
9885 Towne Centre Drive, San Diego, California, 92121

(Name and address of agent for service)

(858) 202-4500
(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered(1) | Offering Price per Share | Aggregate Offering Price | Amount of Registration Fee |
|---|-------------------------------|--------------------------------|-----------------------------|-------------------------------|
| 2000 Stock Plan Common Stock, \$0.01 par value | 1,500,000 shares | \$ 6.60 | \$9,900,000 | \$911(2) |

(1) This Registration Statement shall also cover any additional shares of Common Stock, par value \$0.01 (the Common Stock), of Illumina, Inc. which become issuable under the Illumina, Inc. 2000 Stock Plan (the 2000 Option Plan) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares of Common Stock.

(2) The Registration Fee with respect to the 2000 Option Plan is based solely on 1,500,000 shares of Common Stock newly available for issuance under the 2000 Option Plan and is calculated solely for purposes of this offering under Rule 457(h) of the Securities Act of 1933 on the basis of the average of the high and low selling price per share of Common Stock on May 20, 2002, as reported by the Nasdaq National Market. The applicable filing fees for the remaining shares authorized for issuance under the 2000 Option Plan were paid in connection with the Registration Statements on Form S-8, as amended (File Nos.

333-42866
and
333-69058,
filed on
August 2,
2000, as
amended on
September 6,
2001, and
September 6,
2001,
respectively).

TABLE OF CONTENTS

PART II

Item 3. Information Incorporated by Reference.

Item 4. Description of Securities.

Item 5. Interests of Named Experts and Counsel.

Item 6. Indemnification of Directors and Officers.

Item 7. Exemption From Registration Claimed.

Item 8. Exhibits.

Item 9. Undertakings.

SIGNATURES

EXHIBIT INDEX

EXHIBIT 5.1

EXHIBIT 23.1

Table of Contents

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we have on file at the SEC's public reference rooms in Washington, DC, New York, New York and Chicago, Illinois. Please call the SEC at 1-800-SEC-0330 for further information about the public reference rooms. Our SEC filings are also available to the public at the SEC's web site at <http://www.sec.gov>.

PART II

Information Required in the Registration Statement

Item 3. Information Incorporated by Reference.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this registration statement, and later information filed with the SEC will update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, until our offering is complete:

- (1) Our Annual Report on Form 10-K for the fiscal year ended December 30, 2001 filed with the SEC on March 29, 2002;
- (2) Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2002 filed with the SEC on May 13, 2002;
- (3) Our Registration Statement on Form 8-A filed with the SEC on April 14, 2000 (File No. 000-30361), which describes the terms, rights and provisions applicable to our Common Stock; and
- (4) Our Registration Statement on Form 8-A filed with the SEC on May 14, 2001 (File No. 000-30361), which describes the terms, rights and provisions applicable to our preferred stock purchase rights.

All reports and other documents that we subsequently file under Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered under this registration statement 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 of this registration statement from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference into this registration statement shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in this registration statement or in any subsequently filed document which also is deemed to be incorporated by reference in this registration statement 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.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

ILLUMINA, INC.
9885 Towne Centre Drive
San Diego, California 92121
Attn: Corporate Secretary
(858) 202-4500

Item 4. Description of Securities.

Not applicable.

Table of Contents**Item 5. Interests of Named Experts and Counsel.**

None.

Item 6. Indemnification of Directors and Officers.

The General Corporation Law of Delaware (the "DGCL") permits indemnification of officers and directors of a corporation under certain conditions and subject to certain limitations. The DGCL also provides that a corporation has the power to maintain insurance on behalf of its officers and directors against any liability asserted against such person and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of Section 145. In addition, the DGCL provides that expenses incurred by a director or executive officer in defending any civil, criminal, administrative or investigative action, suit or proceeding by reason of the fact that he or she is a director or officer of a corporation (or is serving at a corporation's request as a director or officer of another corporation) may be paid by a 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 he or she is not entitled to be indemnified by the corporation as authorized by the relevant section of the DGCL.

Our certificate of incorporation provides that our directors shall not be personally liable to us and our stockholders for monetary damages for breach of their fiduciary duty as directors. Our certificate of incorporation and Bylaws provide for mandatory indemnification of our directors and officers and permissible indemnification of employees and other agents to the maximum extent permitted by law. The rights to indemnity continue as to a person who has ceased to be a director, officer, employee or agent and inure to the benefit of the heirs, executors and administrators of the person. This indemnification by us does not eliminate a director's fiduciary duty and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of non-monetary relief, will remain available. In addition, each of our directors will continue to be subject to liability for breach of such director's duty of loyalty for acts or omission not in good faith or involving international misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Section 174 of the DGCL. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

We have also entered into indemnification agreements with our officers and directors containing provisions which are in some respects broader than the specific indemnification provisions contained in the DGCL. The indemnification agreements may require us, among other things, to indemnify such officers and directors against certain liabilities that may arise by reason of their status or service as directors or officers (other than liabilities arising from willful misconduct of a culpable nature) 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 | Exhibit |
|----------------|---|
| 4.1 | Instruments Defining Rights of Stockholders. Reference is made to Registrant's Registration Statements on Form 8-A, as amended, and the exhibits thereto, which are incorporated herein by reference pursuant to Item 3 of this Registration Statement. |
| 5.1 | Opinion of Brobeck, Phleger & Harrison LLP. |
| 23.1 | Consent of Ernst & Young LLP, Independent Auditors. |

Edgar Filing: ILLUMINA INC - Form S-8

- 23.2 Consent of Brobeck, Phleger & Harrison LLP is contained in Exhibit 5.1.
- 24.1 Power of Attorney. Reference is made to page II-4 of this Registration Statement.

II-2

Table of Contents

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 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;
- 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 which remain unsold at the termination of the 2000 Option Plan.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act of 1934) 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 an initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 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.

Table of Contents**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 San Diego, State of California on this 22nd day of May, 2002.

ILLUMINA, INC

By: /s/ JAY T. FLATLEY

 Jay T. Flatley
 President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY PRESENTS, that the undersigned officers and directors of Illumina, Inc., a Delaware corporation, do hereby constitute and appoint Jay T. Flatley and John R. Steuelpnagel, and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms that all said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated. Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|--|--------------|
| _____ /s/ JAY T. FLATLEY Jay T. Flatley | President, Chief Executive Officer and Director (Principal Executive Officer) | May 22, 2002 |
| _____ /s/ TIMOTHY M. KISH Timothy M. Kish | Chief Financial Officer (Principal Financial and Accounting Officer) | May 22, 2002 |
| _____ /s/ JOHN R. STUELPNAGEL John R. Steuelpnagel, D.V.M | Director | May 22, 2002 |
| _____ /s/ R. SCOTT GREER R. Scott Greer | Director | May 22, 2002 |
| _____ /s/ ROBERT T. NELSEN Robert T. Nelsen | Director | May 22, 2002 |

Edgar Filing: ILLUMINA INC - Form S-8

| | | |
|--|----------|--------------|
| <u>/s/ GEORGE POSTE</u> George Poste, D.V.M., Ph. D | Director | May 22, 2002 |
| <u>/s/ WILLIAM H. RASTETTER</u> William H. Rastetter, Ph. D | Director | May 22, 2002 |
| <u>/s/ DAVID R. WALT</u> David R. Walt, Ph. D | Director | May 22, 2002 |

Table of Contents

EXHIBIT INDEX

| <u>Exhibit Number</u> | <u>Exhibit</u> |
|-----------------------|---|
| 4.1 | Instruments Defining Rights of Stockholders. Reference is made to Registrant's Registration Statements on Form 8-A, as amended, and the exhibits thereto, which are incorporated herein by reference pursuant to Item 3 of this Registration Statement. |
| 5.1 | Opinion of Brobeck, Phleger & Harrison LLP. |
| 23.1 | Consent of Ernst & Young LLP, Independent Auditors. |
| 23.2 | Consent of Brobeck, Phleger & Harrison LLP is contained in Exhibit 5.1. |
| 24.1 | Power of Attorney. Reference is made to page II-4 of this Registration Statement. |