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

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

OPTEX SYSTEMS HOLDINGS, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State of
Incorporation)

90-0609531
(I.R.S. Employer
Identification Number)

**1420 Presidential Drive
Richardson, Texas 75081-2439
(972) 764-5700**
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Optex Systems Holdings, Inc. 2023 Equity Incentive Plan
(Full title of the plan)

**Danny Schoening
Chief Executive Officer
1420 Presidential Drive
Richardson, Texas 75081-2439
(972) 764-5700**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
**Roland S. Chase
Hill Ward Henderson
101 E. Kennedy Blvd., Suite 3700
Tampa, Florida 33602
(813) 221-3900**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is filed by Optex Systems Holdings, Inc. to register the issuance of 600,000 shares of its common stock, par value \$0.001 per share, to be offered and sold under the Optex Systems Holdings, Inc. 2023 Equity Incentive Plan.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act, and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the Plan as specified by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the SEC:

- Our Annual Report on [Form 10-K](#) for the year ended October 2, 2022, filed on December 19, 2022, including the portions of our proxy statement for our 2023 annual meeting of stockholders incorporated by reference therein;

- Our Quarterly Report on [Form 10-Q](#) for the quarter ended January 1, 2023, filed on February 13, 2023;
- Our Current Reports on Form 8-K or 8-K/A filed on [October 25, 2022](#), [November 22, 2022](#), [November 28, 2022](#) and [February 17, 2023](#); and
- The description of our common stock contained in Amendment No. 6 to Registration Statement on [Form S-1](#) (File No. 333-159334), filed with the Commission on September 3, 2010, including all amendments and reports filed for the purpose of updating such description, including [Exhibit 4.1](#) to our Annual Report on Form 10-K for the year ended October 3, 2021, filed on December 20, 2021.

All documents subsequently filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment to this registration statement, which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents, except as to specific sections of such documents as set forth therein. 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 in any subsequently filed document, which also is deemed to be incorporated by reference herein, modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware ("DGCL") permits a corporation to eliminate the personal liability of directors or officers of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director or officer, except where the director or officer breached his or her 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 (directors only), or obtained an improper personal benefit, or in an action by or in the right of the corporation (officers only). The Registrant's certificate of incorporation provides that no director shall be personally liable to the Registrant or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing, under the certificate of incorporation, a director shall be liable to the extent provided by applicable law (i) for breach of the director's duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he or she was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to 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 Court of Chancery or other adjudicating court determines 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 Court of Chancery or such other court shall deem proper.

The Registrant has entered into indemnification agreements with each of its directors and officers. These indemnification agreements provide that the Registrant's directors and officers will be indemnified to the fullest extent permitted or required by the laws of the State of Delaware or as such laws may from time to time be amended to increase the scope of such permitted or required indemnification, against any and all indemnifiable claims and indemnifiable losses and will have the right to the advancement of expenses. The Registrant also has directors' and officers' liability insurance, which provides coverage against certain liabilities that may be incurred by the Registrant's directors and officers in their capacities as directors and officers of the Registrant.

Disclosure of SEC Position on Indemnification for Securities Act Liabilities

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Registrant, the Registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Description
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4.1	Optex Systems Holdings, Inc. 2023 Equity Incentive Plan (incorporated by reference to Annex B to the Registrant's Definitive Proxy Statement on Schedule 14A, filed with the SEC on January 17, 2023)**
5.1	Opinion of Hill, Ward, & Henderson, P.A.*
23.1	Consent of Hill, Ward & Henderson, P.A. (included in Exhibit 5.1)*
23.2	Consent of Whitley Penn LLP*
24.1	Power of Attorney (included as part of the signature page of the Registration Statement)*

- * Filed herewith
 ** 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;

(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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(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 this Registration Statement.

Provided, however, that paragraphs (A)(1)(i) and (A)(1)(ii) 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 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 Section 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 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, 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 Richardson, State of Texas, on March 6, 2023.

OPTEX SYSTEMS HOLDINGS, INC.

By: /s/ Danny Schoening
 Danny Schoening
 Chief Executive Officer

Each person whose signature appears below constitutes and appoints Danny Schoening and Karen Hawkins, and each of them, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this registration statement (and any additional registration statement related hereto permitted by Rule 462(b)), and to file the same, with exhibits thereto and other documents in connection therewith, 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 and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities listed below on March 6, 2023.

SIGNATURE	TITLE
<u>/s/ Danny Schoening</u> Danny Schoening	Chairman and Director, Chief Executive Officer
<u>/s/ Karen Hawkins</u> Karen Hawkins	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
<u>/s/ Dale Lehmann</u> Dale E. Lehmann	Director
<u>/s/ Rimmy Malhotra</u> R. Rimmy Malhotra	Director

/s/ Dayton Judd
Dayton Judd

Director



March 6, 2023

Optex Systems Holdings, Inc.
1420 Presidential Drive
Richardson, TX 75081-2439

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

In our capacity as counsel to Optex Systems Holdings, Inc., a Delaware corporation (the "Company"), we have been asked to render this opinion in connection with the registration statement on Form S-8 (the "Registration Statement"), filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), relating to the offering and sale of up to 600,000 shares (the "Shares") of common stock, par value \$0.001 per share, of the Company (the "Common Stock"), issuable pursuant to stock options, restricted stock, restricted stock units, performance shares, performance units, and stock appreciation rights (collectively, the "Awards") to be granted under the Company's 2023 Equity Incentive Plan (the "Plan"). We are delivering this opinion to you at your request in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act.

In connection with rendering this opinion, we have examined and are familiar with (i) the Company's Certification of Incorporation, as amended (the "Charter"), (ii) the Company's Bylaws (the "Bylaws"), (iii) the Plan, (iv) the Registration Statement, and (v) such other documents and records as we have deemed necessary to enable us to render this opinion.

In making the aforesaid examinations, we have assumed that (a) the Company will at all times reserve a sufficient number of shares of its unissued Common Stock as is necessary to provide for the issuance of the Shares, (b) all signatures on documents examined by us are genuine, (c) all documents submitted to us as originals, and the originals of all documents submitted to us as copies, are authentic, (d) all documents submitted to us as copies conform with the originals of those documents, (e) all documents submitted to us are accurate and complete, (f) the Charter and the Bylaws are in full force and effect, have not been amended and no amendment of such documents is pending or has been proposed, (g) each party that has executed a document reviewed by us has the legal capacity to execute and deliver such document, and (h) the representations of officers and employees given to us in connection with this opinion are correct as to questions of fact.

Optex Systems Holdings, Inc.
March 6, 2023
Page 2

Based upon the foregoing and subject to the assumptions and qualifications set forth herein, we are of the opinion that the Shares have been duly authorized and that, subsequent to the Registration Statement becoming effective under the Act, when the Shares are issued upon full payment therefor in accordance with the terms of the Plan and any Awards made under the Plan, the Shares will be validly issued, fully paid and non-assessable.

This opinion is limited to the Act and the Delaware General Corporation Law (the "DGCL"), each as in effect on the date hereof, and we have not considered and express no opinion on any other laws, rules or regulations.

This opinion letter speaks only as of the date hereof. We assume no obligation to update or supplement this opinion letter if any applicable laws change after the date hereof or if we become aware of any facts or other developments, whether existing before or first arising after the date hereof, that might change the opinions expressed above.

We hereby consent to the use of our opinion as an exhibit to the Registration Statement. In giving such consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations of the Commission thereunder.

Sincerely,

/s/ Hill, Ward & Henderson, P.A.

HILL, WARD & HENDERSON, P.A.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated December 19, 2022, relating to the consolidated financial statements of Optex Systems Holdings, Inc., which appears in the Annual Report on Form 10-K of Optex Systems Holdings, Inc. for the year ended October 2, 2022.

/s/ Whitley Penn LLP

Dallas, Texas
March 6, 2023

CALCULATION OF FILING FEE TABLE

Form S-8
(Form Type)

Optex Systems Holdings, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1 – Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	
Equity	Common stock, \$0.001 par value per share	Rule 457(c) and 457(h)	600,000(2)	\$ 3.015(3)	\$ 1,809,000	0.0001102	\$ 199.35	
Total Offering Amount					—	\$ 1,809,000	—	\$ 199.35
Total Fees Previously Paid					—	—	—	—
Total Fee Offsets (4)					—	—	—	—
Net Fee Due					—	—	—	\$ 199.35

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “*Securities Act*”), this Registration Statement on Form S-8 shall cover any additional shares of Optex Systems Holdings, Inc.’s (the “*Registrant*”) common stock that become issuable under the Optex Systems Holdings, Inc. 2023 Equity Incentive Plan (the “*Plan*”) by reason of any stock dividend, stock split, recapitalization, or other similar transaction which results in an increase in the number of the outstanding shares of the Registrant’s common stock.
- (2) Represents shares of the Registrant’s common stock issuable upon awards outstanding under the Plan.
- (3) Estimated in accordance with Rule 457(c) and (h) of the Securities Act, solely for the purpose of calculating the registration fee for the shares reserved under the Plan, on the basis of the average of the high and low prices of the Registrant’s common stock as reported on OTCQB on March 3, 2023.
- (4) The Registrant does not have any fee offsets.