

ADESTO TECHNOLOGIES Corp
Form S-8
October 27, 2015

As filed with the Securities and Exchange Commission on October 27, 2015

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

ADESTO TECHNOLOGIES CORPORATION
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

1250 Borregas Avenue

16-1755067
(I.R.S. Employer
Identification Number)

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Sunnyvale, CA 94089

(408) 400-0578

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

2015 Equity Incentive Plan

2015 Employee Stock Purchase Plan

2007 Equity Incentive Plan

(Full title of the plans)

Narbeh Derhacobian

President and Chief Executive Officer

Adesto Technologies Corporation

1250 Borregas Avenue

Sunnyvale, CA 94089

(408) 400-0578

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

Please send copies of all communications to:

Mark A. Leahy, Esq.

William L. Hughes, Esq.

Fenwick & West LLP

801 California Street

Mountain View, CA 94041

(650) 988-8500

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company (as defined in Rule 12b-2 of the Exchange Act):

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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 Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed	Proposed	Amount of Registration Fee
		Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	
Common Stock, \$0.0001 par value				
-- To be issued under the 2015 Equity Incentive Plan	1,813,272(2)	\$5.00(3)	\$ 9,066,360	\$ 913
-- To be issued under the 2015 Employee Stock Purchase Plan	150,000	\$4.25(4)	\$ 637,500	\$ 65
-- Outstanding under the 2007 Equity Incentive Plan	797,456(5)	\$2.50(6)	\$ 1,993,640	\$ 201
Total	2,760,728		\$11,697,500	\$1,179

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the *Securities Act*), this Registration Statement shall also cover any additional shares of the Registrant's common stock that becomes issuable under the Registrant's 2015 Equity Incentive Plan, 2015 Employee Stock Purchase Plan, or 2007 Equity Incentive Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.
- (2) Shares of common stock reserved for issuance under the 2015 Equity Incentive Plan consists of 1,813,272 shares of common stock previously reserved but unissued under the 2007 Equity Incentive Plan on the effective date of the 2015 Equity Incentive Plan that are now available for issuance under the 2015 Equity Incentive Plan. In addition, any shares subject to outstanding awards under the 2007 Equity Incentive Plan that are issuable upon the exercise of options that expire without having been exercised in full, are forfeited or repurchased by us at the original purchase price or are used to pay the exercise price or withholding obligations related to any award will be available for future grant and issuance under the 2015 Equity Incentive Plan.
- (3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act and based upon the initial public offering price of \$5.00 per share (the Initial Public Offering Price).
- (4) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(h) under the Securities Act and based upon the Initial Public Offering Price, multiplied by 85%, which is the percentage of the trading price per share applicable to purchasers under the 2015 Employee Stock Purchase Plan.
- (5) Represents shares of common stock reserved for issuance pursuant to outstanding stock option awards under the 2007 Equity Incentive Plan. Any such shares of common stock that are subject to outstanding awards under the 2007 Equity Incentive Plan that are issuable upon the exercise of options that expire without having been exercised in full, are forfeited or repurchased by us at the original purchase price or are used to pay the exercise price or withholding obligations related to any award will be available for future grant and issuance under the 2015 Equity Incentive Plan. See footnote 2 above.
- (6) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) under the Securities Act on the basis of the weighted average exercise price of \$2.50 per share (rounded up to the nearest cent).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended (the Securities Act) and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the Commission) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Commission pursuant to the Securities Act and the Securities Exchange Act of 1934, as amended (the Exchange Act) are incorporated herein by reference:

- (a) the Registrant's prospectus filed on October 27, 2015 pursuant to Rule 424(b) under the Securities Act relating to the Registration Statement on Form S-1, as amended (File No. 333-206940), which contains audited consolidated financial statements for the Registrant's latest fiscal year for which such statements have been filed; and
- (b) The description of the Registrant's common stock contained in the Registrant's registration statement on Form 8-A (File No. 001-37582) filed on October 5, 2015 under Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment 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 into this Registration Statement and to be a part hereof from the date of filing 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.

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation includes a provision that eliminates, to the fullest extent permitted by law, the personal liability of a director for monetary damages resulting from breach of his fiduciary duty as a director, except for liability:

for any breach of the director's duty of loyalty to the Registrant or its stockholders;

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

under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends, stock purchases or redemptions); or

for any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant's bylaws provide that:

the Registrant is required to indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law, subject to certain very limited exceptions;

the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;

the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to certain very limited exceptions; and

the rights conferred in the restated bylaws are not exclusive.

In addition, the Registrant has entered into indemnity agreements with each of its current directors and executive officers. These agreements provide for the indemnification of directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and amended and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director, executive officer or employee of the Registrant for which indemnification is sought.

The Registrant currently carries liability insurance for its directors and executive officers for securities matters.

The indemnification provisions in the Registrant's restated certificate of incorporation and restated bylaws and the indemnification agreements entered into between the Registrant and each of its directors and executive officers is sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

In addition, Messrs. Alexei Andreev and Keith Crandell, directors of the Registrant, are indemnified by their employers with regard to serving on the Registrant's board of directors.

See also the undertakings set out in response to Item 9 hereof.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed herewith:

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed
		Form	File No.	Exhibit	Filing Date	Herewith
4.1	Restated Certificate of Incorporation, as amended to date	S-1	333-206940	3.01	10/26/2015	
4.2	Form of Restated Certificate of Incorporation of the Registrant	S-1	333-206940	3.02	10/5/2015	
4.3	Bylaws of the Registrant, as currently in effect	S-1	333-206940	3.03	10/5/2015	
4.4	Form of Restated Bylaws of the Registrant	S-1	333-206940	3.04	10/5/2015	
5.1	Opinion of Fenwick & West LLP					X
23.1	Consent of Fenwick & West LLP (contained in Exhibit 5.1)					X
23.2	Consent of Burr Pilger Mayer, Inc., independent registered public accounting firm					X
24.1						X

Power of Attorney (included on the signature page to this Registration Statement)

99.1	2007 Equity Incentive Plan and form of option grant	S-1	333-206940	10.02	9/14/2015
99.2	2015 Equity Incentive Plan and forms of equity awards	S-1	333-206940	10.03	10/5/2015
99.3	2015 Employee Stock Purchase Plan	S-1	333-206940	10.04	10/5/2015

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 the 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;

(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 periodic 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 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 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 hereby, 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 Sunnyvale, California, on this 27th day of October 2015.

**ADESTO TECHNOLOGIES
CORPORATION**

By: /s/ Narbeh Derhacobian
Narbeh Derhacobian
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Narbeh Derhacobian and Ron Shelton, and each of them, as his or her true and lawful attorney-in-fact and agent with full power of substitution, for him or her in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Name	Title	Date
/s/ Narbeh Derhacobian	President, Chief Executive Officer and Director	October 27, 2015
Narbeh Derhacobian	(Principal Executive Officer)	
/s/ Ron Shelton	Chief Financial Officer	October 27, 2015
Ron Shelton	(Principal Financial and Accounting Officer)	
/s/ Alexei Andreev	Director	October 27, 2015
Alexei Andreev		
/s/ Nelson Chan	Director	October 27, 2015
Nelson Chan		

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/s/ Barry Cox	Chairman	October 27, 2015
Barry Cox		
/s/ Keith Crandell	Director	October 27, 2015
Keith Crandell		
/s/ Francis Lee	Director	October 27, 2015
Francis Lee		
/s/ Kevin Palatnik	Director	October 27, 2015
Kevin Palatnik		

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