

Fabrinet
Form S-8
November 09, 2011

As filed with the Securities and Exchange Commission on November 9, 2011

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

Under

The Securities Act of 1933

FABRINET

(Exact name of Registrant as specified in its charter)

Cayman Islands
(State or other jurisdiction of
incorporation or organization)

Walker House

Not applicable
(I.R.S. Employer
Identification Number)

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87 Mary Street

George Town

Grand Cayman

KY1-9005

Cayman Islands

(662) 998-9956

(Address, including zip code and telephone number, of principal executive offices)

2010 PERFORMANCE INCENTIVE PLAN

(Full title of the plan)

Corporation Service Company

1090 Vermont Avenue, N.E., Suite 430

Washington, D.C. 20005

(Name and address of agent for service)

(800) 927-9800

(Telephone number, including area code, of agent for service)

Copies to:

Robert P. Latta, Esq.

Nathaniel P. Gallon, Esq.

Wilson Sonsini Goodrich & Rosati,

Professional Corporation

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650 Page Mill Road

Palo Alto, CA 94304-1050

(650) 493-9300

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. (Check one):

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Large accelerated filer Accelerated filer x
 Non-accelerated filer (Do not Check if a smaller reporting company) Smaller Reporting Company

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|------------------------------------|--|--|-----------------------------------|
| Ordinary shares, \$0.01 par value To be issued under the 2010 Performance Incentive Plan | 500,000 | \$13.02(2) | \$6,510,000.00 | \$746.05 |

- (1) This amount results from an increase to the number of shares reserved for issuance under the 2010 Performance Incentive Plan of 500,000 ordinary shares, which was previously approved by the Registrant's board of directors and shareholders. Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant's ordinary shares that become issuable under the listed plan by reason of any share dividend, share split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding ordinary shares.
- (2) Estimated in accordance with Rules 457(c) and (h) solely for the purpose of calculating the registration fee on the basis of \$13.02 per share, which represents the average of the high and low prices per share of the Registrant's ordinary shares as reported on the New York Stock Exchange on November 2, 2011.

REGISTRATION STATEMENT ON FORM S-8

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

ITEM 1. PLAN INFORMATION.

The documents containing the information specified in this Item 1 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). 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 under the Securities Act.

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.

The documents containing the information specified in this Item 2 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of 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 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 in this Registration Statement the following documents and information previously filed with the Commission:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended June 24, 2011, filed with the Commission on August 31, 2011, pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the Exchange Act), including portions of the Registrant's Proxy Statement on Schedule 14A filed on October 21, 2011, to the extent incorporated by reference into such Form 10-K;
- (2) The Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, filed with the Commission on November 9, 2011, pursuant to Section 13 of the Exchange Act;
- (3) The Registrant's Current Report on Form 8-K filed with the Commission on August 16, 2011, pursuant to Section 13(a) of the Exchange Act;
- (4) Item 5.02 of the Registrant's Current Report on Form 8-K filed with the Commission on October 21, 2011, pursuant to Section 13(a) of the Exchange Act;
- (5) Item 8.01 of the Registrant's Current Report on Form 8-K filed with the Commission on November 7, 2011, pursuant to Section 13(a) of the Exchange Act; and
- (6) The description of the Registrant's ordinary shares contained in the Registrant's Registration Statement on Form 8-A (File No. 001-34775) filed with the Commission on June 14, 2010, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

In addition, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicate that all securities offered have been sold or that 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.

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.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Cayman Islands law does not limit the extent to which a company's memorandum and articles of association may provide for indemnification of directors and officers, except to the extent any such provision may be held by the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against civil fraud or the consequences of committing a crime. The Registrant's amended and restated memorandum and articles of association provide for indemnification of directors and officers for actions, costs, charges, losses, damages and expenses incurred in their capacities as such, except that such indemnification does not extend to any matter in respect of any fraud or dishonesty that may attach to any of them.

The Registrant has entered into, and expects to continue to enter into, agreements to indemnify its directors and officers. These indemnification agreements generally provide that the Registrant will indemnify its directors and officers against certain liabilities and expenses incurred by such persons in connection with claims by reason of their being such a director or officer.

In addition to the indemnification provisions set forth above, the Registrant also maintains directors' and officers' liability insurance. These indemnification provisions and the indemnification agreements entered into between the Registrant and its directors and officers may be sufficiently broad to permit indemnification of the Registrant's directors and officers for liabilities (including reimbursement of expenses incurred) arising under the Securities Act

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

| Exhibit Number | Description | Form | Incorporated by reference herein | | |
|----------------|---|-------|----------------------------------|-------------------|------------|
| | | | Exhibit No. | Filing Date | File No. |
| 5.1 | Opinion of Walkers, regarding the legality of the securities being registered | | | | |
| 23.1 | Consent of PricewaterhouseCoopers ABAS Ltd. | | | | |
| 23.2 | Consent of Walkers (included in Exhibit 5.1) | | | | |
| 24.1 | Power of Attorney (included as part of the signature page to this Registration Statement) | | | | |
| 99.1.1 | Fabrinet 2010 Performance Incentive Plan | 8-K | 10.1 | December 23, 2010 | 001-34775 |
| 99.1.2 | Form of Agreement under the Fabrinet 2010 Performance Incentive Plan | S-1/A | 10.2.2 | May 3, 2010 | 333-163258 |
| 99.1.3 | Form of Notice of Grant of Restricted Shares under the Fabrinet 2010 Performance Incentive Plan | S-1/A | 10.2.3 | May 3, 2010 | 333-163258 |

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 this 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 this 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;

(iii) 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.

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 Securities Exchange Act of 1934 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 Securities 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 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 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.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 San Francisco, California on November 9, 2011.

FABRINET

By: /s/ Mark J. Schwartz
 Name: **Mark J. Schwartz**
 Title: **Executive Vice President, Chief Financial Officer
 and Secretary**

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints David T. Mitchell and Mark J. Schwartz, and each of them, as his true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to file the same, with all exhibits thereto and all 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 in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming that said attorneys-in-fact and agents or any of them, 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, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

| Signature | Title | Date |
|---|--|------------------|
| /s/ DAVID T. MITCHELL David T. Mitchell | Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer) | November 9, 2011 |
| /s/ MARK J. SCHWARTZ Mark J. Schwartz | Executive Vice President, Chief Financial Officer, and Secretary (Principal Financial Officer) | November 9, 2011 |
| /s/ MARK A. CHRISTENSEN Mark A. Christensen | Director | November 9, 2011 |
| /s/ TA-LIN HSU Ta-lin Hsu | Director | November 9, 2011 |
| /s/ THOMAS F. KELLY Thomas F. Kelly | Director | November 9, 2011 |
| /s/ FRANK H. LEVINSON Frank H. Levinson | Director | November 9, 2011 |
| /s/ ROLLANCE E. OLSON | Director | November 9, 2011 |

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Rollance E. Olson

/s/ VIRAPAN PULGES

Director

November 9, 2011

Virapan Pulges

/s/ WILLIAM J. PERRY

Director

November 9, 2011

William J. Perry

INDEX TO EXHIBITS

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