

Lumentum Holdings Inc.
Form S-8
July 29, 2015

As filed with the Securities and Exchange Commission on July 29, 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

Lumentum Holdings Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

400 N. McCarthy Blvd.

47-3108385
(I.R.S. Employer
Identification No.)

95035

Milpitas, California
(Address of Principal Executive Offices) **(Zip Code)**
Lumentum Holdings Inc. 2015 Equity Incentive Plan

Lumentum Holdings Inc. 2015 Employee Stock Purchase Plan

(Full Title of the Plans)

Alan Lowe

President and Chief Executive Officer

Lumentum Holdings Inc.

400 N. McCarthy Blvd.

Milpitas, California

(408) 546-5000

(Name, Address, and Telephone Number, Including Area Code, of Agent For Service)

Copy to:

Ed Batts, Esq.

DLA Piper LLP (US)

2000 University Avenue

East Palo Alto, California 94303

(650) 833-2000

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 | Amount to be registered ⁽¹⁾ | Proposed maximum offering price per share ⁽²⁾ | Proposed maximum aggregate offering price ⁽²⁾ | Amount of registration fee |
|---|--|---|---|-------------------------------|
| Common Stock, par value \$0.001 per share | 8,500,000 shares ⁽³⁾ | \$17.80 | \$151,300,000 | \$17,581.06 |
| Common Stock, par value \$0.001 per share | 3,000,000 shares ⁽⁴⁾ | \$17.80 | \$53,400,000 | \$6,205.08 |
| Total | 11,500,000 shares | | \$204,700,000 | \$23,786.14 |

- (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 securities that may be necessary to adjust the number of shares reserved for issuance pursuant to the Registrant's 2015 Equity Incentive Plan (the *2015 Plan*) or the Registrant's 2015 Employee Stock Purchase Plan (the *ESPP*) by reason of any stock split, stock dividend or similar adjustment effected without the Registrant's receipt of consideration that results in an increase in the number of outstanding shares of the Registrant's common stock.
- (2) Estimated solely for the purposes of determining the amount of the registration fee in accordance with Rule 457(c) and 457(h) of the Securities Act on the basis of the average of the high and low sales prices per share of the Registrant's common stock (*Common Stock*) in the when issued trading market as reported on The NASDAQ Stock Market LLC on July 23, 2015.
- (3) Represents the number of shares of Common Stock reserved for issuance pursuant to future awards under the 2015 Plan.
- (4) Represents the number of shares of Common Stock reserved for issuance pursuant to future awards under the ESPP.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information specified in this Part I will be delivered to the participants in the Lumentum Holdings Inc. 2015 Equity Incentive Plan (the *2015 Plan*) and the Lumentum Holdings Inc. 2015 Employee Stock Purchase Plan (the *ESPP*) covered by this Registration Statement as required by Rule 428(b)(1) of the Securities Act of 1933, as amended (the *Securities Act*). Such documents are not required to be filed with the Securities and Exchange Commission (the *Commission*) as part of 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.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Lumentum Holdings Inc. (the *Registrant*) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

- (a) The Registrant's Registration Statement on Form 10, initially filed with the Commission on February 26, 2015, as amended, including the description of the Registrant's common stock (*Common Stock*) contained therein, and any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities and Exchange Act of 1934, as amended (the *Exchange Act*) after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered hereby have been sold or that 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 respective dates of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration statement.

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 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.

Reference is made to Section 102(b)(7) of the Delaware General Corporation Law (the *DGCL*), which permits a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's fiduciary duty of loyalty to the corporation 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 (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions), or (iv) for any transaction

from which the director derived an improper personal benefit. The Registrant's amended and restated certificate of incorporation will contain the provisions permitted by Section 102(b)(7) of the DGCL.

Reference is made to Section 145 of the DGCL, which provides that a corporation may indemnify any persons, including directors and officers, who are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such director, officer, employee or agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal actions or proceedings, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify directors and/or officers in an action or suit by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the director or officer is adjudged to be liable to the corporation. Where a director or officer is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such director or officer actually and reasonably incurred.

The Registrant's amended and restated certificate of incorporation will provide indemnification of directors and officers to the fullest extent permitted by applicable law. The Registrant has obtained liability insurance for each director and officer for certain losses arising from claims or charges made against them while acting in their capacities as the Registrant's directors or officers. The Registrant intends to enter into indemnification agreements with each of its executive officers and directors. These agreements provide that, subject to limited exceptions and among other things, the Registrant will indemnify each of its executive officers and directors to the fullest extent permitted by law and advance expenses to each indemnitee in connection with any proceeding in which a right to indemnification is available.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See the Exhibit Index on the page immediately following the signature pages to the Registration Statement, which Exhibit Index is incorporated herein by reference.

Item 9. Undertakings.

(a) The 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 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; 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 the 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 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 into 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 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, 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 Milpitas, State of California, on this 29th day of July, 2015.

LUMENTUM HOLDINGS INC.

By: */s/ Alan Lowe*
 Alan Lowe
 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 Alan Lowe and Aaron Tachibana, and each of them, as their 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 to this Registration Statement and to file the same, with all exhibits thereto and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact, proxy 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 or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact, proxy 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 and the Power of Attorney has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|----------------------------|--|---------------|
| <i>/s/ Alan Lowe</i> | President, Chief Executive Officer and Director | July 29, 2015 |
| Alan Lowe | (Principal Executive Officer) | |
| <i>/s/ Aaron Tachibana</i> | Chief Financial Officer | July 29, 2015 |
| Aaron Tachibana | (Principal Financial Officer and Principal Accounting Officer) | |
| <i>/s/ Rex Jackson</i> | Director | July 29, 2015 |
| Rex Jackson | | |

EXHIBIT INDEX

Exhibit

Number

Description of Exhibit

| | |
|-------|--|
| 4.1 | Form of Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to Amendment No. 2 to Registration Statement on Form 10 filed with the Commission on June 17, 2015). |
| 4.2 | Form of Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to Amendment No. 2 to Registration Statement on Form 10 filed with the Commission on June 17, 2015). |
| 5.1* | Opinion of DLA Piper LLP (US). |
| 23.1* | Consent of Independent Registered Public Accounting Firm. |
| 23.2* | Consent of DLA Piper LLP (US) (included in Exhibit 5.1). |
| 24.1* | Powers of Attorney (included on the signature page of this Registration Statement). |
| 99.1* | 2015 Equity Incentive Plan. |
| 99.2* | 2015 Employee Stock Purchase Plan. |

* Filed herewith.