

EnerSys
Form S-8
August 08, 2018

As filed with the Securities and Exchange Commission on August 8, 2018.
Registration No. 333-

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

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

EnerSys
(Exact name of registrant as specified in its charter)

Delaware 23-3058564
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification Number)

2366 Bernville Road 19605
Reading, Pennsylvania
(Address of Principal Executive Offices) (Zip Code)

EnerSys 2018 Employee Stock Purchase Plan
(Full title of the plan)

Joseph G. Lewis, Esq.
Vice President, General Counsel, Chief Compliance Officer & Secretary
EnerSys
2366 Bernville Road
Reading, Pennsylvania 19605
(Name and address of agent for service)
(610) 208-1991
(Telephone number, including area code, of agent for service)
Copies to:
Sunjeet S. Gill, Esq.
Stevens & Lee, P.C.
620 Freedom Business Center Drive, Suite 620
King of Prussia, Pennsylvania 19406
(610) 205-6000

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 definition of “large accelerated filer,” “accelerated filer,” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one):

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Large accelerated filer: ☒

Accelerated filer: ☐

Non-accelerated filer: ☐ (Do not check if a smaller reporting company)

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. ☐

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 \$0.01 per share, to be issued under the 2018 Employee Stock Purchase Plan	500,000	\$ 80.82	\$ 40,410,000	\$ 5,032
Common Stock, par value \$0.01 per share, to be issued under the 2018 Employee Stock Purchase Plan (3)	885,086	\$ 80.82	\$ 71,532,651	N/A
TOTAL:	1,385,086		\$ 111,942,651	\$ 5,032

Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement (1) on Form S-8 covers an indeterminate number of shares which may be subject to grant or otherwise issuable by reason of stock splits, stock dividends, or similar transactions.

Estimated pursuant to Rule 457(c) and (h) under the Securities Act solely for the purpose of calculating the amount (2) of the registration fee based upon the average of the high and low prices for a share of the registrant’s common stock on August 3, 2018, as reported on the New York Stock Exchange.

The offer and sale of 885,086 shares registered hereby (the “Carryover Shares”) were previously registered pursuant to a registration statement on Form S-8 (File No. 333-120660) filed by the registrant and effective on November 22, 2004 (the “Prior Registration Statement”), for offer and sale under the EnerSys Employee Stock Purchase Plan (the “Prior Plan”). As of the date of filing hereof, the Carryover Shares have not been issued and sold pursuant to the (3) Prior Plan. The 2018 Employee Stock Purchase Plan is the successor plan to the Prior Plan. The Carryover Shares and the corresponding portion of the fee paid by the registrant with respect to the Prior Plan are being carried over to this Registration Statement in accordance with Instruction E to Form S-8. Accordingly, no additional registration fee is payable with respect to the Carryover Shares.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The information called for in Part I of this Registration Statement on Form S-8 is not being filed with or included herein (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

In this Registration Statement, “the registrant,” “we,” “us,” and “our” refer to EnerSys.

The following documents, which have been filed with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are hereby incorporated by reference, and shall be deemed to be a part of, this Registration Statement:

- (a) the registrant’s latest Annual Report on Form 10-K for the year ended March 31, 2018, filed with the Commission on May 30, 2018;
- (b) all other reports filed by the registrant pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Annual Report on Form 10-K referred to in (a) above, including the registrant’s definitive proxy statement filed with the Commission on June 21, 2018 and the registrant’s current reports on Form 8-K during such period; and
- (c) the description of the registrant’s Common Stock contained in any registration statement or report that the registrant has filed under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All documents filed by the registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment, which indicates that all securities offered have been sold, or which deregisters all securities then remaining unsold, are incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under Items 2.02, 7.01 and 9.01 of Form 8-K that is not deemed filed under such provisions.

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 part of this Registration Statement.

Item 4. Description of Securities.
Not applicable.

Item 5. Interest of Named Experts and Counsel.
Not applicable.

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Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law generally provides that all directors and officers (as well as other employees and individuals) may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with certain specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation — a "derivative action"), if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard of care is applicable in the case of derivative actions, except that indemnification extends only to expenses (including attorneys' fees) actually and reasonably incurred in connection with defense or settlement of an action and the Delaware General Corporation Law requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. Section 145 of the Delaware General Corporation Law also provides that the rights conferred thereby are not exclusive of any other right which any person may be entitled to under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, and permits a corporation to advance expenses to or on behalf of a person to be indemnified upon receipt of an undertaking to repay the amounts advanced if it is determined that the person is not entitled to be indemnified.

We have included in our certificate of incorporation and bylaws provisions to (a) eliminate the personal liability of our directors for monetary damages resulting from breaches of their fiduciary duty (provided that such provision does not eliminate liability for breaches of the duty of loyalty, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, violations under Section 174 of the Delaware General Corporation Law or for any transaction from which the director derived an improper personal benefit) and (b) indemnify our directors and officers to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, including circumstances in which indemnification is otherwise discretionary.

Acting pursuant to the provisions of our certificate of incorporation and bylaws and the provisions of Section 145 of the Delaware General Corporation Law, we have entered into agreements with each of our officers and directors to indemnify them to the fullest extent permitted by such provisions and such law. We are also expressly authorized to carry directors' and officers' insurance providing indemnification for our directors, officers and certain employees for some liabilities. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive officers.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibits:

Number Description

- | | |
|------|---|
| 3.1 | <u>Fifth Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to Amendment No. 3 to EnerSys' Registration Statement on Form S-1 (File No. 333-115553) filed on July 13, 2004).</u> |
| 3.2 | <u>Third Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to EnerSys' Current Report on Form 8-K (File No. 001-32253) filed on August 3, 2016).</u> |
| 5.1 | <u>Opinion and consent of Stevens & Lee, P.C. regarding the legality of the shares of common stock being of the registrant offered hereby (filed herewith).</u> |
| 10.1 | <u>EnerSys 2018 Employee Stock Purchase Plan (incorporated by reference to Appendix A to EnerSys' Definitive Proxy Statement filed on June 21, 2018).</u> |
| 23.1 | <u>Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm (filed herewith).</u> |
| 23.2 | <u>Consent of Stevens & Lee, P.C (included in Exhibit 5.1 and filed herewith).</u> |

24.1 Powers of Attorney of Directors and Officers (included on signature page and filed herewith).

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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 of 1933;

(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% 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:

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8, and 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 the registration statement; and

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration is on Form S-3 or Form F-3 and 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 the registration statement, or is contained in a form prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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.

(h) 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 foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 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 that it has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Reading, Commonwealth of Pennsylvania, on August 8, 2018.

ENERSYS

By: /s/ David M. Shaffer
David M. Shaffer
President & Chief Executive Officer

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POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David M. Shaffer, Michael J. Schmidtlein and Joseph G. Lewis, and each of them, his true and lawful attorney-in-fact, as agent with full power of substitution and resubstitution of him and in his name, place and stead, in any and all capacity, to sign any or all amendments to this Registration Statement for purposes of registering the shares allocated to the EnerSys 2018 Employee Stock Purchase Plan, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto such 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 and about the premises, as fully and to all intents and purposes as they might or could do in person, hereby ratifying and confirming all that 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 and on the dates indicated.

Signature	Capacity	Date
/s/ David M. Shaffer David M. Shaffer	President, and Chief Executive Officer and Director (Principal Executive Officer)	August 8, 2018
/s/ Michael J. Schmidtlein Michael J. Schmidtlein	Executive Vice President Finance and Chief Financial Officer (Principal Financial Officer)	August 8, 2018
/s/ Kerry M. Kane Kerry M. Kane	Vice President and Corporate Controller (Principal Accounting Officer)	August 8, 2018
/s/ Hwan-yoon F. Chung Hwan-yoon F. Chung	Director	August 8, 2018
/s/ Nelda J. Connors Nelda J. Connors	Director	August 8, 2018
/s/ Howard I. Hoffen Howard I. Hoffen	Director	August 8, 2018
/s/ Arthur T. Katsaros Arthur T. Katsaros	Non-Executive Chairman and Director	August 8, 2018
/s/ John F. Lehman John F. Lehman	Director	August 8, 2018
/s/ Robert Magnus General Robert Magnus, USMC (Retired)	Director	August 8, 2018
/s/ Dennis S. Marlo Dennis S. Marlo	Director	August 8, 2018
/s/ Paul J. Tufano Paul J. Tufano	Director	August 8, 2018

/s/ Ronald P. Vargo
Ronald P. Vargo

Director

August 8,
2018

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