

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

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

AEYE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

One Park Place, Suite 200
Dublin, California
(Address of Principal Executive Offices)

37-1827430
(I.R.S. Employer
Identification No.)

94568
(Zip Code)

AEye, Inc. 2021 Equity Incentive Plan
AEye, Inc. 2022 Employee Stock Purchase Plan
(Full title of the plans)

Matthew Fisch
Chief Executive Officer
One Park Place, Suite 200
Dublin, California 94568
(925) 400-4366

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

With copies to:

Christopher Forrester
Yian Huang
Allen Overy Shearman Sterling US LLP
1460 El Camino Real, 2nd Floor
Menlo Park, California 94025
(650) 838-3600

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

Pursuant to General Instruction E to Form S-8, AEye, Inc. (the “Registrant”) is filing this Registration Statement on Form S-8 (this “Registration Statement”) with the United States Securities and Exchange Commission (the “Commission”) to register (i) 189,299 additional shares of the Registrant’s common stock, par value of \$0.0001 per share (the “Common Stock”), reserved for issuance under the Registrant’s 2021 Equity Incentive Plan (the “2021 EIP”), as a result of the annual increase under the 2021 EIP; and (ii) 63,099 additional shares of Common Stock reserved for issuance under the Registrant’s 2022 Employee Stock Purchase Plan (the “2022 ESPP”), as a result of the annual increase under the 2022 ESPP.

On December 27, 2023, the Registrant effected a 1-for-30 reverse stock split of its issued and outstanding shares of Common Stock (the “Reverse Stock Split”), such that thirty (30) shares of issued and outstanding Common Stock were combined into one (1) share of Common Stock. The par value of the Common Stock did not change and no fractional shares were issued in connection with the Reverse Stock Split. The total number of shares reserved under the 2021 EIP and 2022 ESPP were automatically adjusted by the ratio of the Reverse Stock Split. All applicable share amounts referenced in this Registration Statement reflect the Reverse Stock Split.

The number of shares of Common Stock available for issuance under the 2021 EIP is subject to an annual increase on the first day of each fiscal year during the period specified therein equal to (other than the first annual increase) the lesser of (i) three percent (3%) of the number of shares of Common Stock outstanding as of the conclusion of the Registrant’s immediately preceding fiscal year or (ii) such amount, if any, as the board of directors of the Registrant (the “Board”) may determine (the “2021 EIP Evergreen Provision”). Pursuant to the 2021 EIP Evergreen Provision, the Board, through its Compensation Committee, has determined that the number of shares of Common Stock available for issuance under the 2021 EIP shall be increased by 189,299 shares for fiscal year 2024, effective January 1, 2024. The additional shares available for issuance under the 2021 EIP are of the same class as other securities relating to the 2021 EIP for which the Registrant has filed registration statements with the Commission on Form S-8 (Registration Nos. 333-272570, 333-270731, 333-265064 and 333-260601) filed with the Securities and Exchange Commission (the “Commission”) on June 9, 2023, March 22, 2023, May 19, 2022 and October 29, 2021.

The number of shares of Common Stock available for issuance under the 2022 ESPP is subject to an annual increase on the first day of each fiscal year during the period specified therein equal to the lesser of (i) one percent (1%) of the number of shares of Common Stock issued and outstanding calculated on a fully-diluted basis on the immediately preceding December 31 or (ii) such lesser number of shares as the administrator of the 2022 ESPP shall approve (the “2022 ESPP Evergreen Provision”). Pursuant to the 2022 ESPP Evergreen Provision, the Compensation Committee of the Board, as the 2022 ESPP administrator, has approved an increase in the number of shares of Common Stock available for issuance under the 2022 ESPP by 63,099 shares for fiscal year 2024, effective January 1, 2024. The additional shares available for issuance under the 2022 ESPP are of the same class as other securities relating to the 2022 ESPP for which the Registrant has filed registration statements with the Commission on Form S-8 (Registration Nos. 333-270731 and 333-265064) on March 22, 2023 and May 19, 2022.

The contents of the Registrant’s Registration Statements on Form S-8 (File Nos. 333-272570, 333-270731, 333-265064 and 333-260601) filed with the Commission on June 9, 2023, March 22, 2023, May 19, 2022 and October 29, 2021 relating to the 2021 EIP and the 2022 ESPP are incorporated by reference into this Registration Statement, except to the extent supplemented, amended or superseded by the information set forth herein.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the “Note” to Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the 2021 EIP and in the 2022 ESPP as required 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 following documents previously filed by the Registrant with the Commission are incorporated by reference in this Registration Statement:

- (a) The Registrant’s annual report on [Form 10-K](#) for the fiscal year ended December 31, 2023 (the “Annual Report”), filed with the Commission on March 27, 2024, which includes audited financial statements for the Registrant’s latest fiscal year;
- (b) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), since the end of the fiscal year covered by the audited financial statements described in (a) above (other than portions of the Registrant’s Current Reports on Form 8-K that are furnished or otherwise not deemed to be filed); and
- (c) The description of the Registrant’s Common Stock in our Registration Statement on [Form S-3](#) filed on September 15, 2023, including any amendment or reports filed for the purpose of updating such description.

All documents subsequently 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 to this Registration Statement which indicates that all of the shares of Common Stock offered have been sold or which deregisters all of such shares 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 the filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document that is not deemed filed under such provisions.

For purposes of 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 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.

None.

Item 6. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law (“DGCL”) provides that a corporation’s certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director or an officer to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or an officer, provided that such provision shall not eliminate or limit the liability of a director or an officer (i) for any breach of the director’s or officer’s 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) under Section 174 of the DGCL, or (iv) for any transaction from which the director or officer derived an improper personal benefit, and provided further that such provision shall not eliminate or limit the liability of an officer in any action by or in the right of the corporation. The Registrant’s Second Amended and Restated Certificate of Incorporation, as amended by the Certificate of Amendment filed with the State of Delaware on May 9, 2023 (the “Amended Charter”), provides that no director or officer of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director or an officer, notwithstanding any provision of law imposing such liability, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors or officers, as applicable, for breaches of fiduciary duty.

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 was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he 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 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 Amended Charter and the Amended and Restated Bylaws of the Registrant provide that the Registrant will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Registrant), by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at the Registrant’s request as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (all such persons being referred to as an “Indemnitee”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such proceeding. Expenses must be advanced to an Indemnitee under certain circumstances.

The Registrant has entered into indemnification agreements with each of its directors and officers. These indemnification agreements may require the Registrant, among other things, to indemnify its directors and officers for some expenses, including attorneys’ fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of the Registrant’s directors or officers, or any of its subsidiaries or any other company or enterprise to which the person provides services at the Registrant’s request.

The Registrant maintains a general liability insurance policy that covers certain liabilities of directors and officers of the Registrant’s corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
4.1	Second Amended and Restated Certificate of Incorporation of AEye, Inc.	8-K	8/23/2021	3.1	
4.2	Certificate of Amendment of the Second Amended and Restated Certificate of Incorporation of AEye, Inc.	10-Q	5/11/2023	3.2	
4.3	Amended and Restated Bylaws of AEye, Inc.	8-K	8/23/2021	3.2	
5.1	Opinion of Allen Overy Shearman Sterling US LLP.				X
10.1#	AEye, Inc. 2021 Amended and Restated Equity Incentive Plan.	14A	3/20/2023		
10.2#	AEye, Inc. 2022 Employee Stock Purchase Plan.	S-8	5/19/2022	10.2	
23.1	Consent of Deloitte & Touche LLP.				X
23.2	Consent of Allen Overy Shearman Sterling US LLP (included in Exhibit 5.1).				X
24.1	Power of Attorney (included on the signature page).				X
107	Filing Fee Table.				X

Management contract or compensatory plan

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 20% 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 clauses (1)(i) and (1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those clauses 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 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, 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 Dublin, State of California on the 18th day of June, 2024.

AEYE, INC.

/s/ Matthew Fisch

Matthew Fisch
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Matthew Fisch and Conor B. Tierney as his or her true and lawful attorneys-in-fact and agents, each of whom may act alone, 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 on Form S-8, and to sign any related registration statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all 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 in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or their substitute or substitutes, 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 below by the following persons in the capacities indicated on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Matthew Fisch</u> Matthew Fisch	Chief Executive Officer and Director (Principal Executive Officer)	June 18, 2024
<u>/s/ Conor B. Tierney</u> Conor B. Tierney	Chief Financial Officer and Treasurer (Principal Financial Officer)	June 18, 2024
<u>/s/ Timothy J. Dunn</u> Timothy J. Dunn	Director	June 18, 2024
<u>/s/ Luis C. Dussan</u> Luis C. Dussan	Director	June 18, 2024
<u>/s/ Prof. Dr. Bernd Gottschalk</u> Prof. Dr. Bernd Gottschalk	Director	June 18, 2024
<u>/s/ Jonathon B. Husby</u> Jonathon B. Husby	Director	June 18, 2024
<u>/s/ Sue E. Zeifman</u> Sue E. Zeifman	Director	June 18, 2024

A&O SHEARMAN

1460 El Camino Real 2nd Floor
Menlo Park, CA 94025
+1.650.838.3600

June 18, 2024

AEye, Inc.
One Park Place, Suite 200
Dublin, CA 94568

Ladies and Gentlemen:

We are acting as counsel for AEye, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing by the Company of a registration statement on Form S-8 (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to (i) 189,299 additional shares of common stock, \$0.0001 par value per share, of the Company (the "EIP Shares") that may be delivered from time to time pursuant to the AEye, Inc. 2021 Equity Incentive Plan (the "2021 EIP"), (ii) 63,099 additional shares of common stock of the Company (the "ESPP Shares", together with EIP Shares, the "Shares") that may be delivered from time to time pursuant to the AEye, Inc. 2022 Employee Stock Purchase Plan (the "2022 ESPP", and together with 2021 EIP, the "Plans").

In connection with the foregoing, we have reviewed originals or copies identified to our satisfaction of the following documents:

- (a) the Registration Statement;
- (b) the certificate of incorporation and bylaws of the Company, in each case as amended, if applicable; and
- (c) originals or copies of such other corporate records of the Company, certificates of public officials and of officers of the Company, and agreements and other documents as we have deemed necessary as a basis for the opinions expressed below.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents, certificates and instruments submitted to us as originals and the conformity with originals of all documents submitted to us as copies.

Our opinion set forth below is based on the text of the Plans as referenced in the Exhibit Index to the Registration Statement.

Our opinion expressed below is limited to the General Corporation Law of the State of Delaware, and we do not express any opinion herein concerning any other law.

Based upon and subject to the foregoing and having regard for such legal considerations as we have deemed relevant, we are of the opinion that authorized but not previously issued Shares which may be delivered under the applicable Plan have been duly authorized by the Company and, when (a) issued and delivered by the Company in accordance with the terms of the applicable Plan and (b) paid for in full in accordance with the terms of the applicable Plan, will be validly issued, fully paid and non-assessable.

This opinion letter speaks only as of the date hereof. We expressly disclaim any responsibility to advise you of any development or circumstance of any kind, including any change of law or fact that may occur after the date of this opinion letter that might affect the opinions expressed herein.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby concede that we come within the category of persons whose consent is required by the Securities Act or the General Rules and Regulations of the Commission promulgated thereunder.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose without our prior written consent.

Very truly yours,

/s/ Allen Overy Shearman Sterling US LLP
Allen Overy Shearman Sterling US LLP

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 March 26, 2024 relating to the financial statements of AEye, Inc., appearing in the Annual Report on Form 10-K of AEye, Inc. for the year ended December 31, 2023.

/s/ DELOITTE & TOUCHE LLP

San Francisco, CA
June 18, 2024

Calculation of Filing Fee Tables

Form S-8

(Form Type)

AEye, 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 (2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock, par value \$0.0001 per share	Other (2)	189,299 (3)	\$2.24	\$424,029.76	\$0.00014760	\$62.59
Equity	Common stock, par value \$0.0001 per share	Other (2)	63,099 (4)	\$2.24	\$141,341.76	\$0.00014760	\$20.86
Total Offering Amounts					\$565,371.52	\$0.00014760	\$83.45
Total Fee Offsets							—
Net Fee Due							\$83.45

- (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 common stock, par value \$0.0001 per share (the “Common Stock”) of AEye, Inc. (the “Registrant”) that may become issuable under the terms of the AEye, Inc. 2021 Equity Incentive Plan (the “2021 EIP”) or the AEye, Inc. 2022 Employee Stock Purchase Plan (the “2022 ESPP”), as applicable, by reason of any share split, share dividend, recapitalization or other similar transaction effected without the Registrant’s receipt of consideration which results in an increase in the number of the outstanding shares of Common Stock.
- (2) Estimated pursuant to Rules 457(c) and 457(h) under the Securities Act, solely for the purposes of calculating the registration fee and based on the average of the high and low prices of the Common Stock as reported on The Nasdaq Stock Market LLC on June 17, 2024, which date is within five business days prior to the filing of this registration statement.
- (3) Represents the additional shares of the Common Stock reserved for issuance under the 2021 EIP resulting from the increase determined by the Board pursuant to 2021 EIP Evergreen Provision. The increase was effective as of January 1, 2024.
- (4) Represents the additional shares of the Common Stock reserved for issuance under the 2022 ESPP resulting from the increase determined by the Board pursuant to 2022 ESPP Evergreen Provision. The increase was effective as of January 1, 2024.